WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ESPERANZA SANCHEZ, *Applicant*

vs.

MCDONALD'S; USF&G, administered by BROADSPIRE, *Defendants*

Adjudication Numbers: ADJ8015424; ADJ8102669
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the April 7, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a crew person from January 1, 2006 to August 3, 2011, sustained industrial injury to her heart, circulatory [system], brain/stroke, and diabetes. The WCJ found in relevant part that applicant's disability was permanent and total, but subject to valid apportionment to nonindustrial factors. Accordingly, the WCJ awarded net permanent disability of 41 percent.

Applicant contends that evidentiary record does not support apportionment to preexisting nonindustrial factors.

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

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will affirm the Findings of Fact, except that we will amend it to find that applicant sustained permanent and total disability without a legal basis for apportionment. We will further defer the issue of attorney's fees and return the matter to the WCJ additional proceedings as necessary.

FACTS

Applicant sustained industrial injury to her heart, circulatory system, brain/stroke and in the form of diabetes while employed as a crew person by defendant McDonald's/MJD's from January 1, 2006 to August 3, 2011.

On August 3, 2011, applicant began to feel ill toward the end of her shift while employed at a McDonald's restaurant. Applicant reported her illness to her supervisor, and was subsequently transported to Olive View Hospital, where she was diagnosed with hemorrhagic stroke. (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at p.3.)

The WCJ appointed Jeffrey A. Hirsch, M.D., as the regular physician in internal medicine, pursuant to Labor Code section 5701.[1] The parties have also obtained reporting in neurology from Qualified Medical Evaluator (QME) Ezekiel Fink, M.D.

On November 8, 2022, the parties proceeded to trial and placed in issue, in relevant part, whether applicant's claim of cumulative injury from January 1, 2006 to August 2, 2011 (ADJ8102669) was compensable.

On February 7, 2023, the WCJ ordered the submission vacated and set the matter for conference.

On March 14, 2023, the parties stipulated to the compensability of the cumulative injury claim and requested that matter be submitted for decision on the issue of the nature and extent of the injury. (Stipulations and Order of Submission, dated March 15, 2023.)

On June 28, 2023, the WCJ issued a Third Amended Findings and Award, and on July 10, 2023, applicant petitioned for reconsideration of the decision.

On September 7, 2023, we granted applicant's petition and noted inconsistencies in the record with respect to the identity of applicant's counsel, if any, and with respect to the issues being raised and decided. We rescinded the June 28, 2023 decision and returned the matter to the trial level for further proceedings.

Following the retirement of the WCJ, a new WCJ was appointed and the parties proceeded to trial on March 13, 2025. The parties waived the provisions of section 5700 and submitted for decision the issue of the nature and extent of applicant's industrial injuries. The parties further

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

raised whether the reporting of regular physician Dr. Hirsch constituted substantial evidence. (Minutes of Hearing, dated March 13, 2025, at p. 2:8.)

On April 7, 2025, the WCJ issued an F&A in ADJ8102669, determining that applicant sustained both temporary and permanent disability. (Findings of Fact Nos. 3 & 4.) The WCJ determined there to be a legal basis for apportionment (Finding of Fact No. 5) and awarded 41 percent permanent partial disability after apportionment to nonindustrial factors. (Finding of Fact No. 4; Award No. "b".) The accompanying Opinion on Decision explained that both QME Dr. Fink and regular physician Dr. Hirsch had identified applicant's stroke as resulting from both industrial and nonindustrial factors. The physicians apportioned two-thirds of the disability resulting from applicant's diabetes to nonindustrial factors, and 75 percent of the disability arising from her stroke to preexisting hypertensive cardiovascular/cerebrovascular factors. (Opinion on Decision, at p. 12.) On the same day, the WCJ issued Findings of Fact in ADJ8015424 determining that applicant did not sustain a specific injury on August 2, 2011.[2]

Applicant's Petition avers that her job was stressful and that the medical evidence establishes that industrial exposures were the predominant cause of her injury. (Petition, at p. 7.) Applicant contends her disability is both permanent and total and that the apportionment opinions of Drs. Hirsch and Fink are not substantial evidence. (*Id.* at pp. 12-13.)

Defendant's Answer responds that "[b]oth Dr. Jeffrey Hirsch and Dr. Ezekeil Fink identified multiple non-industrial causes contributing to Applicant's stroke, hypertension, and diabetes—ranging from pre-existing medical conditions (including poorly controlled hypertension and obesity) to non-compliance with treatment, undiagnosed pregnancy with probable pre-eclampsia, and chronic health issues documented well before the industrial period." (Answer, at p. 2:11.) Accordingly, defendant asserts the apportionment opinions are "legally sound."

The WCJ's Report observes that there are both industrial and nonindustrial factors identified by Dr. Hirsch and that section 4663 requires an analysis of causation of permanent disability including asymptomatic conditions. (Report, at p. 7.) The WCJ observes that per the reporting of Dr. Hirsch, applicant's stroke "was the result of out of control hypertension aggravated

[2] We observe that applicant's pending cases in ADJ8015424 and ADJ8102669 were ordered consolidated on December 17, 2013. (Minutes of Hearing and Order of Consolidation, dated December 17, 2013, at p. 2:10.) Notwithstanding this consolidation, the WCJ has issued a *joint* opinion but *separate* findings of fact. Although we acknowledge that this matter has a protracted and complex procedural history, we observe that when cases are consolidated, it is generally appropriate for the WCJ to issue both a joint findings of fact and a corresponding joint opinion on decision.

by pre-eclampsia," and that applicant "already had left ventricular hypertrophy … was obese and not complaint with [medications]." (*Id.* at p. 8.) Because "there were numerous non-industrial causes overlaying her work environment," and because "[t]he stroke is a well-known end organ damage from hypertension," the WCJ recommends we deny reconsideration.

DISCUSSION

I.

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 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 May 2, 2025, and 60 days from the date of transmission is July 1, 2025. This decision is issued by or on July 1, 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 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 May 2, 2025, and the case was transmitted to the Appeals Board on May 2, 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 May 2, 2025.

II.

Applicant challenges the apportionment of her permanent disability to nonindustrial factors. The WCJ has noted that the medical reporting in evidence is unanimous in its assessment that applicant sustained a brain hemorrhage caused by hypertension. (Opinion on Decision, at p. 8.) The WCJ has further observed that Drs. Fink and Hirsch are in agreement that applicant's disability is both permanent and total. (*Id.* at p. 10.)

However, Dr. Hirsch has opined that applicant's stroke arose out of both industrial and nonindustrial factors. In his report of June 18, 2019, Dr. Hirsch concluded that "it is reasonably medically probable that [applicant's] employment at McDonald's contributed to the evolution of hemorrhagic stroke on August 3, 2011," but that applicant had "pre-existing hypertension, was noncompliant with treatment, and was unaware that she was pregnant (after having pre-eclampsia during the pregnancy only about two years before the stroke)." (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at pp. 9-10.) The regular physician noted that echocardiography confirmed the presence of left ventricular hypertrophy (LVH), which is "the abnormal thickening of the left ventricle, which is a sign of longstanding exposure to elevated blood pressure," and that "[t]his type of hypertensive heart disease usually occurs after three to five years of exposure to inadequately-controlled hypertension." (*Id.* at pp. 15-16.) Dr. Hirsch analyzed the factors of causation as follows:

> Ms. Levya Sanchez developed hypertension in the 1990's [based on the date offered by Mr. Lopez in his Advocacy Letter]. She was overweight on a non-industrial basis. She was non-compliant with medical care in multiple respects

> (repeatedly documented in these records). At the time of her first episode of pre-eclampsia, echocardiography revealed moderate left ventricular hypertrophy. When she experienced stroke, her hypertension was probably aggravated by recurrent pre-eclampsia (in contrast to the assertions of Dr. Bertoldi, it is highly medically probable that pre-eclampsia recurred in the 2011 pregnancy). She did not smoke cigarettes or consume alcohol in a manner that promoted hypertension. She is unaware of any details from her family history. 75% of the permanent disability caused by hypertension is non-industrial and 25% is industrial.

(*Id.* at p. 17.)

Dr. Hirsch also opined that applicant's adoption of sedentary habits resulted in a worsening of her diabetic condition, because "[n]ear-uniform consensus exists amongst medical researchers recognizing that physical exercise and physical activity are strongly protective against both diabetes and cardiovascular diseases." (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at p. 18.) Dr. Hirsch concludes that "[t]he predominance of causation of diabetes is non-industrial [because] [s]tress does not permanently worsen Type 2 diabetes." Accordingly, "67% of the permanent disability caused by diabetes is non-industrial and 33% is industrial." (*Id.* at p. 19.)

Neurology QME Dr. Fink echoed Dr. Hirsch's conclusions with respect to apportionment, noting that "[p]rior pre-eclampsia is a risk for recurrent pre-eclampsia and the elevated blood pressure did contribute to the hemorrhagic stroke that was present." (Ex. 7, Report of Ezekiel Fink, M.D., dated July 8, 2021, at p. 19.) Because "hypertension is the major contributing factor to hemorrhagic stroke in this case," Dr. Fink similarly apportioned 75 percent of applicant's permanent disability resulting from her stroke and hypertension to nonindustrial factors. (*Ibid*.)

Section 4663 sets out the requirements for the apportionment of permanent disability and provides, in relevant part, as follows:

> (a) Apportionment of permanent disability shall be based on causation.
>
> (b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.
>
> (c) In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other

> factors both before and subsequent to the industrial injury, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(Lab. Code, § 4663.)

Our Supreme Court has explained that "the new approach to apportionment [since the April 19, 2004 adoption of Senate Bill 899] is to look at the current disability and parcel out its causative sources—nonindustrial, prior industrial, current industrial—and decide the amount directly caused by the current industrial source. This approach requires thorough consideration of past injuries, not disregard of them." (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1328 [72 Cal.Comp.Cases 565].)

In order to comply with section 4663, a physician's report in which permanent disability is addressed must also address apportionment of that permanent disability. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc) (*Escobedo*).)

However, the mere fact that a physician's report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and non-industrial causation does not necessarily render the report substantial evidence upon which we may rely.

Rather, the report 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 that factors other than the industrial injury at issue caused permanent disability. (*Id.* at p. 621.) Our decision in *Escobedo* summed up the minimum requirements for an apportionment analysis as follows:

> [T]o 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.

> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, *how* and *why* it is causing permanent disability at the time of the evaluation, and *how* and *why* it is responsible for approximately 50% of the disability.

(*Ibid.*, italics added.)

Thus, a physician's apportionment determination requires that the physician *first identify the factors causing permanent disability* both before and after the industrial injury. Once the physician has identified each of the factors that are contributing to the employee's overall present permanent disability, the physician must then *make a finding of the approximate percentage* of the permanent disability was caused by each factor.

Accordingly, apportionment under section 4663 involves two separate but related analyses: (1) the identification of the factors causing permanent disability, and (2) a determination of the extent to which each of those factors contributed to present permanent disability, expressed as an approximate percentage.

We also observe that apportionment under section 4663 requires an analysis of causation of permanent disability, rather than causation of the injury. In *Escobedo, supra*, 70 Cal.Comp.Cases 604, we stated:

> Section 4663(a) states that "[a]pportionment of permanent disability shall be based on causation." The plain reading of "causation" in this context is causation of the permanent disability. This reading is consistent with other provisions of section 4663 and 4664. That is: (1) section 4663(b) provides that a physician's report on permanent disability shall address "the issue of causation of the permanent disability;" (2) section 4663(c) provides that a physician's report shall find "what approximate percentage of the permanent disability was caused by the direct result of injury . . . and what approximate percentage of the permanent disability was caused by other factors;" and (3) section 4664(a) provides that an employer "shall only be liable for the percentage of permanent disability directly caused by the injury. . . . " (Emphases added.) The issue of the causation of permanent disability, for purposes of apportionment, is distinct from the issue of the causation of an injury. (See *Reyes v. Hart Plastering* (2005) 70 Cal.Comp.Cases 223 (Significant Panel Decision).) **Thus, the percentage to**

> **which an applicant's injury is causally related to his or her employment is not necessarily the same as the percentage to which an applicant's permanent disability is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions might be different.**

(*Id.* at pp. 16-17.)

Here, the Drs. Hirsch and Fink have identified multiple overlapping factors of apportionment. Dr. Hirsch has reviewed the relevant medical reporting and documented a history of hypertension predating applicant's industrial accident. Dr. Hirsch notes a variety of factors that contributed to applicant's hypertension, including her body habitus, a lack of compliance with a treatment regimen for her hypertension, and one or more episodes of preeclampsia. (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at pp. 9-10.) Dr. Hirsch has opined that these factors all contributed to applicant's elevated blood pressure, which in turn caused the cerebrovascular injury on August 3, 2011. Dr. Hirsch has sourced his conclusions in the medical record and explained why these factors were related to applicant's hypertension. (*Id.* at p. 17.)

Both Drs. Hirsch and Fink have opined that 75 percent of the causation of applicant's permanent disability arising out of her stroke was attributable to these preexisting, nonindustrial factors. (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at p. 17; Ex. 7, Report of Ezekiel Fink, M.D., dated July 8, 2021, at p. 19.) Dr. Hirsch further ascribes 67 percent of the causation of applicant's permanent disability arising out of her diabetic condition to preexisting nonindustrial factors. (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at p. 19.)

However, despite identifying the factors of apportionment, and sourcing the bases for those factors in the medical record, we nonetheless find the apportionment analysis to be incomplete. This is because neither physician offers *any* discussion of how they arrived at their respective figures of apportionment. Rather, both physicians identify 75 percent and 66 percent nonindustrial apportionment for applicant's stroke and diabetes, respectively. Neither physician *adequately explains the extent to which* these factors are contributing to present permanent disability, expressed as an approximate percentage. Nor does any of the subsequent reporting or deposition testimony from either physician shed any light on how and why the identified preexisting factors are presently causing most of applicant's disability. In addition, it is not clear from the record whether Drs. Hirsch and Fink have adequately explained how the identified factors of

apportionment relate to the causation of applicant's residual *permanent disability*, rather than causation of applicant's *injury*.

Moreover, while both physicians ably identify a variety of factors of apportionment, including applicant's preexisting hypertension, body habitus, and episodes of preeclampsia, the *apportionment described in the record fails to address each factor individually*. Rather, the multiple contemporaneous factors of apportionment are aggregated into a single percentage figure, without any substantive discussion of *how each factor* accounts for a percentage of present disability.

A legally sustainable apportionment analysis cannot omit a discussion of how percentage figures were assigned. The analysis required under section 4663 must consider all factors causing permanent disability at the time of evaluation and explicate how much each factor, expressed as a percentage, is contributing to present permanent disability. The evaluating physician's identification of a percentage value of apportionment is the *culmination* of a statutorily required process in which the applicant's medical history, treatment records, clinical presentation, and any other relevant facts or circumstances are reviewed, analyzed, and ultimately distilled down to factors of causation and their corresponding percentages. And while section 4663 does not require medical certainty in assigning percentages of causation, the physician must nonetheless explain *how they have arrived at that percentage*, even if that percentage reflects approximation rather than certitude.

Nor are we persuaded by the opinion of the dissenting commissioner that the Court of Appeal's decision in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687], is incompatible with our analysis herein. In *Gatten*, the court relied on the QME's assignment of an approximate percentage of apportionment in part because the QME offered an analysis of why he had settled on that particular percentage. The QME had "himself noted that apportionment would have been greater if applicant had had more extensive treatment for his back … [o]n the other hand, the doctor may have given applicant a higher disability rating because he appeared to be in more pain than other patients with similar injuries because of the preexisting pathology." (*Gatten, supra*, at p. 930.) Here, in contrast, the record is silent as to any of the considerations used by the regular physician or by the QME in determining that the majority of applicant's permanent disability was attributable to an array of overlapping and interdependent nonindustrial factors impermissibly aggregated after the fact.

Based on the foregoing, we concur with the WCJ's determination that Drs. Hirsch and Fink have identified multiple preexisting nonindustrial factors as causative of applicant's current permanent disability. However, because neither the regular physician nor the QME offers an explanation of how they identified the extent to which each of those factors contributed to present permanent disability, expressed as an approximate percentage, the apportionment analysis is incomplete and cannot be adopted. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 621; *Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 647 [33 Cal.Comp.Cases 647] [Appeals Board may not rely on an apportionment opinion expressed as a mere legal conclusion].)

Accordingly, we will grant applicant's petition and amend the Findings of Fact to find that applicant sustained permanent and total disability without a legal basis for apportionment. We will defer the issue of attorney fees and return the matter to the WCJ for further proceedings.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of April 7, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 7, 2025 Findings and Award is **AMENDED** as follows:

FINDINGS OF FACT

* * * * *

4. Applicant's injury caused permanent and total disability of 100 percent, entitling applicant to lifetime indemnity payable at the initial rate of $246.09 per week, commencing July 31, 2013, subject to Labor Code section 4659(c) adjustment, less sums previously paid by defendant, and less attorney's fees.
5. There is not a legal basis for apportionment.

* * * * *

8. The issue of attorney's fees is deferred.

AWARD

(f) The issue of attorney's fees is deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 1, 2025

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

ESPERANZA SANCHEZ
LLARENA, MURDOCK, LOPEZ & AZIZAD
PETER HONG, ESQ.
SOLOV & TEITELL
KOSZDIN, FIELDS, SHERRY & KATZ

SAR/abs

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

DISSENTING OPINION OF COMMISSIONER RAZO

I respectfully dissent. In my opinion, the WCJ appropriately relied on the considered apportionment analysis of regular physician Dr. Hirsch and neurology QME Dr. Fink to find valid legal apportionment.

The apportionment analysis offered by both physicians meets the requirements described 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.)

As the WCJ herein observes, the apportionment analysis described by both Drs. Hirsch and Fink contemplates apportionment to applicant's well-documented asymptomatic conditions. These conditions include a nearly 30-year history of pre-existing hypertension, vitamin B-12 deficiency, iron deficiency, obesity, and diabetes mellitus. Moreover, as Dr. Hirsch observes, applicant's hypertension was a major cause of her stroke, and applicant was "non-compliant with medical care in multiple respects." (Ex. 9, Report of Jeffrey Hirsch, M.D., dated June 18, 2019, at p. 17.) In addition, applicant was pregnant at the time of her stroke and had suffered preeclampsia in prior pregnancies. Thus, Dr. Hirsch opined that it was likely applicant's condition following her stroke was aggravated by recurrent preeclampsia, which in turn is strongly correlated with hypertension. (*Ibid*.)

Neurology QME Dr. Fink was equally clear: "[p]rior pre-eclampsia is a risk for recurrent pre-eclampsia and the elevated blood pressure did contribute to the hemorrhagic stroke that was present." (Ex. 7, Report of Ezekiel Fink, M.D., dated July 8, 2021, at p. 19.) Moreover, "hypertension is the major contributing factor to hemorrhagic stroke in this case." (*Ibid*.)

Both physicians have carefully reviewed the medical record and identified relevant, preexisting, nonindustrial conditions which individually and in the aggregate have caused

permanent disability. Applying the analysis used by the Court of Appeal in *Gatten, supra*, each of the evaluating physicians herein has identified the factors of disability, including preexisting asymptomatic conditions, and has appropriately offered the approximate percentage of permanent disability caused by the preexisting factors, based on medical expertise.

I also observe that the insofar as apportionment must address causation of permanent disability rather than causation of the injury, the court of appeal has noted that the analyses may overlap and ultimately depend on the facts of each case. It is for this reason that the court in *City of Jackson v. Workers' Comp. Appeals Bd.* (*Rice*) (2017) 11 Cal.App.5th 109 [82 Cal.Comp.Cases 437] recognized that although separate analyses are required for causation of injury and disability, it "does not mean the two cannot be the same." (See also *City of Petaluma v. Workers' Comp. Appeals Bd.* (*Lindh*) (2018) 29 Cal.App.5th 1175, 1189 [83 Cal.Comp.Cases 1869, 1879].) Here, and following their comprehensive review of the applicant's medical history, both the regular physician and the QME have concluded that the apportionment for applicant's injury and resulting permanent disability are analytically equivalent.

Section 4663, by its own terms, does not require medical certainty. Rather, it relies on the medical expertise of the evaluating physicians to provide a reasonable approximation of percentages of causation. Moreover, the regular physician duly appointed by the WCJ and the QME selected by the parties have both reached *identical conclusions* as to apportionment. The apportionment opinions are amply supported in the medical record and by the clinical judgment of each physician.

Accordingly, and because I believe the apportionment described in the medical record is legally sustainable, I respectfully dissent. I would affirm the WCJ's reliance on the opinions of evaluating physicians to find valid legal apportionment.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 1, 2025

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

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SOLOV & TEITELL
KOSZDIN, FIELDS, SHERRY & KATZ

SAR/abs

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