WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HUMBERTO CARRILLO, *Applicant*

vs.

CITY OF SALINAS, permissibly self-insured, administrated by CORVEL, *Defendants*

Adjudication Numbers: ADJ9237916, ADJ8651488, ADJ8073759, ADJ7672461, ADJ8651494
Salinas District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant City of Salinas seeks reconsideration of the Second Amended September 5, 2025 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant's injuries caused permanent disability of 100%.

Defendant contends that applicant is not entitled to one permanent disability award; instead, it argues that applicant's multiple injuries should be awarded separately. Defendant further contends that the 100% permanent disability award is not substantiated even if all the disabilities are attributed to one date of injury. Defendant also contends that the September 5, 2025 Second Amended Findings and Award is not clear as to the credit defendant is to take from past paid permanent disabilities.

We received an answer from applicant Humberto Carrillo. Applicant contends that he is entitled to the heart trouble presumption in Labor Code[1] section 3212 and the anti-attribution clause contained in section 4663(e).

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

[1] All statutory references are to the Labor Code unless otherwise indicated.

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

FACTS

As stated in the Report:

> There are 5 injuries plead. Three of these are specific injuries. [ADJ7672461] is an admitted 1/21/2021 specific injury to the heart, hypertensive heart disease, arrhythmia, coronary atherosclerosis, eyes/retinopathy, vision, and psyche, and all body parts are admitted as AOE/COE by both parties. In [ADJ8073759], Defendant has admitted injury to the low back but denies Applicant's claim to have also injured his heart, hypertensive heart disease, arrhythmia, coronary atherosclerosis, eyes/retinopathy, and psyche. In [ADJ8651488], Defendant admits injury to the psyche but denies injury to the heart, hypertensive heart disease, arrhythmia, coronary atherosclerosis, and eyes/retinopathy.
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> The remaining 2 injuries are cumulative. The first, ADJ8651494, alleges injury during the period 1/3/1994 through 10/[22]/2012 to Applicant's his right shoulder, hypertensive heart disease, arrhythmia, coronary atherosclerosis, eyes/retinopathy, and psyche. Defendant admits injury only to the right shoulder and psyche. The second CT claim is ADJ9237916. In that case, Defendant admits injury to Applicant's low back, left hand, left thumb, and right hand during the period 1/3/1994 through 8/7/2013.Applicant proved that in addition, he sustained injury to his heart, hypertensive heart disease, arrhythmia, coronary atherosclerosis, eyes/retinopathy, and psyche. After trial, the two CT injuries were amended to show the same dates of injurious exposure and to include all injured body parts. ADJ 8651494 was then dismissed as duplicative. This brought the pleadings into accord with the evidence.
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> All of these injuries are agreed to have taken place as the result of actual events of Applicant's employment with Defendant City of Salinas as a firefighter.
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> …
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> The main dispute in this case lies in the interaction between Section 4664/Benson apportionment and the effect on apportionment in cases involving multiple injuries where each injury involves at least one body part compensable under a Section 3212 presumption [and] the anti-attribution statutes. Applicant's position at trial and since has been that such a case requires a single award including all body parts including those not subject to the presumption. Defendant claims that *Benson* requires separate awards for each claim of injury, with separate treatment for presumed and non-presumed injuries.

> A Findings and Award was filed on 8/4/2025 which contained multiple errors. Defendant filed a timely Petition for Reconsideration pointing out some of these errors, and so the Award was withdrawn and a Second Amended Findings and Award on 9/5/2025. This F&A followed recent multiple Board cases holding that under these circumstances a combined Award was warranted and awarded 100% PD in all cases, with benefits to begin after the last payment of TD under the most recent case. The Award specified that Defendant was permitted credit for all payment previously made on account. From this F&A, Defendant [brought] the instant Petition for Reconsideration. (Report, pp. 2-5.)

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

Under 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 September 26, 2025 and 60 days from the date of transmission is November 25, 2025. This decision is issued by or on November 25, 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 September 26, 2025, and the case was transmitted to the Appeals Board on September 26, 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 September 26, 2025.

II.

We adopt and incorporate the following from the Report:

> Petitioner's first contention is that Labor Code Section 4664 as interpreted by the Benson decision requires a separate Award for each case. There are four cases at issue here (Defendant has not taken issue with the dismissal of the duplicative CT case, so I will discuss the four remaining cases). Defendant concedes that as to body parts covered by a Section 3212 *et seq*, [*sic*] in this case the heart arrythmia and hypertension, the anti-attribution statute precludes division of the PD covered by a presumption among several injuries. Defendant claims that the PD must be divided in a way that the heart presumption PD be covered in one case, and that the PD produced by 'non-presumption' body parts be attributed to separate injuries.
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> There are several problems with this approach, none of which can be solved by Defendant's proposed method. First, the approach itself violates *Benson*. *Benson*, as cited by Defendant, requires separate awards for separate injuries. Defendant proposes that [these] cases be separated by body part, not by injury. When more than one body part is involved in an incident which causes disability, the law deals with the situation as one injury, and not as multiple injuries, one for each injured body part. In the name of [*Benson's*] requirement that each injury gets its own Award, Defendant requests a scheme in which PD is divided, not by injury but by body part. In effect, Defendant claims that it was error to fail to follow *Benson* in a manner that favors Applicant and instead proposes a way of violating *Benson* that favors Defendant.
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> Of course, the main problem with this approach is that it has been considered by the Board and rejected a number of times in the recent past. There have been a number of panel decisions, as well as at least one writ denied case (*Santiago*, 87 CCC 1011 (2022, *writ denied*), which rely on *Delia v. County of Los Angeles*, 2010 Cal. Wrk. Comp. PD LEXIS 282. This case states "where two or more

presumptive injuries contribute to permanent disability, a joint award of permanent disability is appropriate, even if non-overlapping, non-presumptive body parts are involved". This language is cited in several cases, verbatim, as a well-settled rule of law. It is true that none of these cases are *en banc*, or significant panel decisions, or published Court of Appeal decisions, and are thus not binding and may only be cited for their persuasive value. They do have the virtue of being recent rulings by the WCAB, which are not refuted by contrary precedent. The language cited above from *Delia* appears to describe the circumstances of the instant case perfectly.

Petitioner claims that language in *Delia* requires that the 'non-presumptive' body parts be inextricably intertwined before *Delia* may be applied. This claim is a weak one. First, the language cited forms no part of the holding in [*Delia*]. More importantly, the evidence in this case contains Joint Exhibit CCCC, a report from Dr. Segal that states that the psychiatric disability in these cases is, indeed, inextricably intertwined. Dr. Anderson, at Joint Exhibit FFFF, states that orthopedic, cardiac, and psychiatric disabilities do not overlap and have synergistic effects. No medical report claims to be able to disentangle this synergism.

Petitioner next claims that the Award is untenable because the Opinion on Decision does not contain a string rating. This contention is correct, but irrelevant. The parties were asked to supply proposed ratings with their pre-trial briefs, and [both] complied. In all important respects, these ratings were so similar as to be functionally identical. Either could have been adopted (as to the ratings for each body part) without any change in the final result. I would be remiss if I failed to note that the result was also supported by the vocational evidence of Mr. Westman, although those reports were not heavily relied upon.

Defendant next claims to be confused as to [which] case the Award was entered in. The plain answer is that the Award was issued in ALL cases listed. The [anti-attribution] statute and the medical evidence attributing heart trouble to all four injuries prevented issuance of the amalgamated PD in one case only. Therefore, the Award was made in all four cases.

Petitioner claims to be confused about its claim to credit for amounts paid for PD prior to the Award. This complaint is very difficult to understand. These advances were not [at] issue [in] trial, and the Award specifically allows credit for all sums paid on account. I am unable to understand the problem.

Finally, Petitioner points out a typographical error on one of the dates of injury in the Opinion on Decision. This is correct. I confess error. The Opinion on decision does not form part of the Award and Petitioner is not aggrieved by the error, particularly since the error was spotted and resulted in no actual confusion as to what was awarded and why. (Report, pp. 5-6.)

Defendant contends that we should follow *Benson v. Workers' Compensation Appeals Board (Permanente Medical Group)* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113] and award separate awards for each injury. We note that *Benson* did not address the anti-attribution clause in section 4663(e). Even then, *Benson* acknowledged that "there may be limited circumstances, not present here, when the evaluating physician cannot parcel out, with reasonable medical probability, the approximate percentage to which each distinct industrial injury causally contributed to the employee's overall permanent disability. In such limited circumstances, when the employer has failed to meet its burden of proof, a combined award of permanent disability may still be justified. [citation omitted.]." (*Id.* at p. 1560.)

On the other hand, *Delia v. County of Los Angeles* (July 23, 2010, ADJ2246339, ADJ4352653, ADJ2131157) [2010 Cal. Wrk. Comp. P.D. LEXIS 282] specifically addressed apportionment with respect to the anti-attribution clause of section 4663(e) and in relation to the holding in *Benson*. The "anti-attribution provisions of sections 3212 and 3212.3 preclude apportionment of the causation of permanent disability pursuant to section 4663. [citation omitted.] For that same reason, the permanent disability caused by each of applicant's three injuries cannot be separately apportioned to separate awards pursuant to section 4663 as described in *Benson*." (*Id.*) In *Delia*, the three injuries at issue were (1) a specific injury to the cervical and lumbar spine, (2) a specific injury to the lumbar spine and both hands, and (3) a cumulative trauma injury to the cardiovascular system, abdominal wall (hernia), bilateral hands and auditory system (loss of hearing). (*Id.*) The Appeals Board panel in *Delia* concluded that because of the anti-attribution clause, the applicant was entitled to one award even though the applicant's first two injuries were not the subject of section 3212 et seq. presumptions.

Defendant erroneously contends that the conclusions in *Delia* relied on the defendant's failure to prove overlap and that a single award is only justified when the non-presumptive body parts are inextricably linked with presumptive body parts. (Petition, pp. 5:24-6:1.) The discussion on overlap and inextricably linked body parts in *Delia* was in relation to apportionment under section 4664 between the three injuries at issue and two past injuries that were the subject of a stipulated award. (*Delia, infra.*) There is no issue regarding apportionment between the current injuries and past awards.

As to the issue of substantiating the 100% award, we agree with the WCJ that the Agreed Medical Evaluators have presented substantial evidence as to the addition of the many disabilities.

In his August 31, 2013 report, Jonathan Ng, M.D., opined that the most accurate combination method of applicant's cardiovascular condition and other conditions such as his orthopedic, psyche, and neurological conditions, is to add them. (Join Exhibit ZZ, Dr. Ng's report dated August 31, 2023, p. 48.) Perry Segal, M.D., opined that "simple addition of a psychiatric impairment to those deriving from the medical and orthopedic disabilities is the most accurate way of deriving Mr. Carrillo's resulting total disability." (Joint Exhibit CCC, Dr. Segal's report dated January 16, 2022, p. 3.) Mark A. Anderson, M.D., opined, applicant's "difficulties essentially set up a cascade/waterfall effect and the problems simply amplify and stack up on each other. Is an individual with one problem less disabled than an individual with 12 or more difficulties, no, the more problems you add, the more synergism is required because each problem amplifies the other." (Joint Exhibit GGG, Dr. Anderson's report dated January 30, 2025, p. 2.) "It is my belief referable to orthopedic complaints that this is yet a further restriction, which is more appropriately treated with addition than combination. . . . If there is any restriction that seems the least intrusive, it is that for the left eye injury . . . this would be the only finding that I would combine and not add." (*Id*. at p. 3.)

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant City of Salinas' Petition for Reconsideration of the Second Amended September 5, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 25, 2025

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

HUMBERTO CARRILLO
DILLES LAW GROUP PC
YRULEGUI & ROBERTS

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