WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MICHELE LOPEZ, *Applicant*

vs.

CITY OF VISALIA, permissibly self-insured;
administered by KEENAN & ASSOCIATES, *Defendants*

Adjudication Numbers: ADJ9873208; ADJ9484905; ADJ10413544
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant and applicant both seek reconsideration of the Findings and Awards (F&A) dated August 28, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed by defendant as a parking enforcement officer, sustained injury arising out of and in the course of employment (AOE/COE) 1) on January 13, 2015 (ADJ9873208) to the left thumb, wrist, and knee, resulting in a 22% permanent disability; 2) during the period from February 5, 2013 through February 5, 2014 (ADJ9484905) to the bilateral feet (tarsal tunnel), resulting in a 14% permanent disability; and, 3) during the period ending on January 27, 2016 (ADJ10413544) to the right shoulder, bilateral hands and wrists (carpal tunnel), bilateral elbows (cubital tunnel), bilateral thumbs, and left ankle, resulting in an 81% permanent disability. The WCJ further found in ADJ10413544, that "[d]efendant is entitled to credit for an alleged overpayment of TD per [defendant's] petition dated [November 2, 2023] in the amount of $36,336.39." (F&A, p. 5.)

Defendant contends that the use of the addition method for rating impairment by the Agreed Medical Evaluator (AME), Scott Graham, M.D., in ADJ10413544 "fails to meet the standard" outlined under *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688-689 (Appeals Bd. en banc) for rebuttal of the CVC. (Defendant's Amended Petition for

Reconsideration (Defendant's Petition), p. 2.) Defendant further contends that application of the 25% non-industrial apportionment for the left wrist in ADJ10413544 is erroneous and should be amended to reflect a 50/50 split between the January 13, 2015 specific injury and the cumulative injury ending January 27, 2016. (*Id*. at p. 5.)

Applicant asserts that the WCJ erred in issuing the Order for credit in the amount of $36,336.39 against applicant's permanent disability for the "alleged overpayment of TD per [defendant's] [P]etition [for Credit for Temporary Disability Overpayment (Petition for Credit)] dated [November 2, 2023]." (F&A, p. 5.) Applicant contends that the Order should be disallowed as it lacks substantial evidence, violates WCAB Rule 10555, misapplies Labor Code[1] section 4656(c)(2), and abuses the discretion allowed under section 4909. (Applicant's Petition for Reconsideration (Applicant's Petition), p. 6.)

We have received Answers from both parties. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), admitting to erroneously applying 25% non-industrial apportionment to the left wrist in ADJ10413544, but otherwise recommending that the Petitions be denied. (Report, pp. 9-10.)

We have considered the Petitions, the Answers, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, rescind the F&A, substitute it with new Findings, Awards, and Orders which defers the issues of: apportionment for the left wrist in ADJ10413544, credit towards permanent disability for alleged temporary disability overpayments concerning claims, ADJ9873208 and ADJ10413544, and any other relevant and corresponding issues, and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant filed three separate Applications for Adjudication wherein he claimed that while employed by defendant as parking enforcement officer, he sustained injury AOE/COE on January 13, 2015 (ADJ9873208) to the left wrist, hand, fingers, and ankle; during the period from February 5, 2013 through February 5, 2014 (ADJ9484905), to the bilateral feet; and during the period from January 27, 2015 through January 27, 2016 (ADJ10413544), to the right shoulder, bilateral arms, and bilateral hands.

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

The parties proceeded with discovery and retained William Ramsey, M.D., as the orthopedic AME, who was later replaced by Scott Graham, M.D. Dr. Graham evaluated applicant on three occasions and issued reports dated September 23, 2020, March 15, 2021, June 11, 2021, April 20, 2022, January 17, 2023, June 4, 2024, and November 8, 2024. Dr. Graham was deposed by the parties on March 13, 2025.

In his September 23, 2020 report, Dr. Graham diagnosed applicant with tarsal tunnel syndrome, failed tarsal tunnel decompression, chronic right elbow lateral condylitis, bilateral wrist osteoarthritis, bilateral carpal tunnel, left wrist fusion surgery, multiple right wrist surgeries (including a failed carpal tunnel release), bilateral thumb CMC reconstruction, left knee patellofemoral chondromalacia, and a left ankle sprain with "residuals[.]" (Exhibit AA, p. 20.) Based upon "a reasonable degree of medical probability[,]" Dr. Graham concluded that applicant's left wrist, carpal tunnel, knee, and ankle conditions were the result of the January 13, 2015 injury, applicant's bilateral tarsal tunnel conditions were the result of the cumulative injury through February 5, 2014, and applicant's right shoulder, elbow, wrist, hand, and carpal tunnel conditions were the result of the cumulative injury through January 27, 2016. (*Id*. at pp. 20-21.) Applicant sustained a 4% whole person impairment (WPI) to the right shoulder, 8% to the right wrist, 5% to the left wrist, 8% to the right thumb, 7% to the left thumb, 2% to the left knee, 6% for bilateral carpal tunnel to each arm, 3% to the left ankle, and 4% for bilateral tarsal tunnel to each leg. (*Id*. at pp. 21-22.) He noted that the upper and lower extremity impairments should be added separately due to "synergist effect" but that the sum of both would be combined for "a final total impairment rating." (*Id*. at p. 23.) Apportionment was not indicated.

In his June 11, 2021 report, Dr. Graham found an additional 10% WPI to the right shoulder due to multiple surgeries. (Exhibit CC, p. 2.) He did not find further impairment to the left thumb or hand despite additional surgeries on those body parts. (*Ibid*.) Lastly, he discussed a "Framingham osteoarthritis study" wherein 25% of the women in the study had symptomatic osteoarthritis of the hand most frequently involving the "thumb base and DIP joints." (*Ibid*.) Based upon this study, he apportioned 25% of applicant's wrist impairment to "the degenerative process." (*Id*. at pp. 2-3.) For the right wrist, the remaining 75% was apportioned to the cumulative injury through January 27, 2016. (*Id*. at p. 3.) For the left wrist, the remaining 75% was apportioned 25% to the cumulative injury through January 27, 2016, and 50% to the specific injury of January 13,

2015. (*Ibid*.) No further analyses were provided, and copies of the studies were not located in the evidentiary record.

In his April 20, 2022 report, Dr. Graham opined that within a reasonable degree of medical probability, applicant's bilateral tarsal tunnel conditions were the result of the cumulative injury through February 5, 2014. (Exhibit DD, p. 17.)

In his January 17, 2023 report, Dr. Graham added 4% WPI for bilateral cubital tunnel, and increased impairment from 12% to 14% WPI for the bilateral carpal tunnel, due to applicant's "grade 3 hypesthesia in the ulnar nerve distribution of both hands." (Exhibit EE, p. 16.) He also added 2% WPI for pain related effects on applicant's activities of daily living (ADLs). (*Ibid*.)

In his November 8, 2024 report, Dr. Graham added 6% WPI to the right shoulder for applicant's resection arthroplasty and 7% WPI to the left wrist due to a proximal row carpectomy. (Exhibit GG, p. 1.) Per *Vigil*, he opined that all impairments should be added rather than combined as the CVC method would "compress" applicant's impairment which would not be reflective of applicant's total impairment given the injuries' enhanced and deleterious effects on her ADLs. (*Id*. at p. 2.) He noted that "due to [the] bilaterality" of applicant's injuries, she experienced limitations "reflective in self-care [and] physical activity[,] including pushing, pulling, reaching, light housework, [and] hand activities." (*Ibid*.) For the lower extremities, Dr. Graham noted limitations to applicant's "physical activity, [including] walking on uneven ground, sitting, rising from a seated position, reclining, bending, squatting, stooping, [and] kneeling." (*Ibid*.)

During his March 13, 2025 deposition, Dr. Graham reiterated his above findings and confirmed impairment as follows: 2% for the left knee, a combined 4% for bilateral cubital tunnel (2% for each ulnar nerve), a combined 14% for bilateral carpal tunnel, 10% for the right shoulder, 8% for the right wrist, 12% for the left wrist, 8% for the right thumb, 7% for the left thumb, a combined 8% for tarsal tunnel syndrome, 3% for the left ankle, and a 2% pain add-on. (Exhibit HH, pp. 4:25-8:14.) He noted that his decision to add versus combine impairments was based upon *Vigil* and the fact that the CVC method would reduce impairment which was not accurate given the functional impact of the injuries to the various body parts and the amplified limitations to applicant's activities of daily living. (*Id*. at pp. 8:15-10:22.)

On May 6, 2025, applicant filed a Declaration of Readiness to proceed to a mandatory settlement conference in all three claims. The matter was set for a mandatory settlement conference then set for trial.

Prior to trial, on June 26, 2025, defendant filed a Petition Credit wherein defendant requested credit towards permanent disability for alleged temporary disability overpayments totaling $36,336.39. Defendant argued that pursuant to *Foster v. Workers' Comp. Appeals Bd.* (2008) 161 Cal.App.4th 1505, periods of temporary disability from separate injuries run concurrently, not consecutively and that since the January 13, 2015 specific injury (ADJ9873208) and cumulative injury ending on January 27, 2016 (ADJ10413544) pertain to overlapping body parts, their temporary disability periods overlapped causing payment "in excess of the 104 weeks" under section 4656(c)(2). (Petition for Credit, p. 2.)

At the June 30, 2025 trial, the following issues were set for determination: attorney's fees and credit for alleged temporary disability overpayments, in ADJ9873208 and ADJ10413544; as well as permanent disability, apportionment, need for further medical treatment, use of the CVC versus the addition method, whether Dr. Graham's reporting constituted substantial medical evidence on the use of the addition versus CVC method per *Vigil*, and need for further development of the record, in ADJ10413544. The parties submitted as joint exhibits, the reports of Dr. Graham dated September 23, 2020, March 15, 2021, June 11, 2021, April 20, 2022, January 17, 2023, June 4, 2024, and November 8, 2024, and a copy of the transcript from Dr. Graham's March 13, 2025 deposition. Defendant submitted as exhibits, their Petition for Credit for overpayment of temporary disability, benefit printouts for ADJ9873208 and ADJ10413544, and an Order Suspending Action on said Petition, dated November 6, 2023.

On August 28, 2025, the WCJ issued the F&A wherein it was found, in relevant part, that applicant, while employed by defendant as a parking enforcement officer, sustained injury AOE/COE 1) on January 13, 2015 (ADJ9873208), to the left thumb, wrist, and knee, resulting in a 22% permanent disability; 2) during the period from February 5, 2013 through February 5, 2014 (ADJ9484905), to the bilateral feet (tarsal tunnel), resulting in a 14% permanent disability; and, 3) during the period ending on January 27, 2016 (ADJ10413544), to the right shoulder, bilateral hands and wrists (carpal tunnel), bilateral elbows (cubital tunnel), bilateral thumbs, and left ankle, resulting in an 81% permanent disability. The WCJ further held that the apportionment findings of Dr. Graham were supported by "substantial medical evidence" and that "[d]efendant is entitled to credit for an alleged overpayment of TD per [defendant's] petition dated [November 2, 2023,] in the amount of $36,336.39." (F&A, p. 5.)

It is from these Findings that both applicant and defendant seek reconsideration.

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.
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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 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 October 10, 2025, and 60 days from the date of transmission is December 9, 2025. This decision was issued by or on December 9, 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 October 10, 2025, and the case was transmitted to the Appeals Board on October 10, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

service of the Report provided accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on October 10, 2025.

II.

Turning now to the merits of the Petition, 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 due to a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," "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, the WCJ in *Kite* found that the impairment for the applicant's hips should be added rather than combined.

Subsequent to *Kite*, the Appeals Board issued its en banc decision in *Vigil* 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 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. (*Vigil*, *supra*, at pp. 688-689.)

Here, defendant contends that "Dr. Graham's analysis is generalized and non-specific" and does not provide an "impairment-by-impairment breakdown" as required under *Vigil* for rebuttal of the CVC. (Petition, pp. 2-4.) Based upon our review of the evidentiary record, Dr. Graham outlined increasing symptomology to various body parts and their growing impact on applicant's overlapping ADLs.

With respect to the lower extremities, Dr. Graham, during his medical record review, noted that prolonged walking or standing led to left ankle/foot swelling and increased pain in the left ankle and knee. (Exhibit CC, pp. 4, 6.) Further, in his November 8, 2024 report, Dr. Graham opined that the combination of applicant's bilateral tarsal tunnel syndrome, failed tarsal tunnel surgery, left knee patellofemoral chondromalacia, and residual symptoms from applicant left ankle sprain

ultimately caused "enhanced deleterious effects on [applicant's] ADLs" including problems with physical activities and increasing limitations on applicant's ability to walk on uneven ground, sit, rise from a seated position, recline, bend, squat, and stoop, and kneel. (Exhibit GG, p. 2.)

With respect to applicant's upper extremities, Dr. Graham outlined early complaints of left thumb pain which made it difficult to perform "any type of grasping or gripping." (Exhibit CC, p. 3.) It was noted that applicant found it difficult to hold objects and often dropped things. (*Ibid*.) With respect to the right hand, applicant experienced "numb[ness] with associated symptoms of decreased grip strength and decreased dexterity." (Exhibit DD, p. 6.) After undergoing right carpal tunnel surgery, applicant noted further complaints of pain and weakness in her right hand, made worse by grasping, lifting, repetitive motion and repetitive use. (Exhibit EE, p. 20.) In his supplemental report dated June 4, 2024, Dr. Graham indicated that upon completion of a functional capacity evaluation "no conclusions [could] be drawn as it was determined that [applicant] could not safely perform several presumed job tasks primarily due to demonstrated loss of balance on several tasks. It was indicated that her hand strength limitations may be related to symptoms of numbness and tingling." (Exhibit FF, p. 1.) He thus determined that "her work restrictions would be semi-sedentary, minimized repetitive use of the right upper extremity at as well as above shoulder level, no repetitive use of both hands vis a vis typing. No pushing, pulling, or lifting greater than two pounds with the upper extremities." (*Id*. at p. 2.) In a further supplemental report dated November 8, 2024, Dr. Graham noted "enhancement of negative effects on ADLs" due to involvement of various parts of the upper extremities including the right shoulder, worsened by the "bilaterality" of the wrists and thumbs, all of which led to increasing limitations on applicant's ability to push, pull, reach, and perform light housework and activities with her hands. (Exhibit GG, p. 2.)

Ultimately, Dr. Graham believed that use of the CVC would reduce impairment, which was not accurate considering the functional impact of the injuries to the various body parts as a whole and the resulting amplification to limitations in applicant's activities of daily living. (Exhibit HH, pp. 8:15-10:22.)

Thus, based upon the totality of the evidence, including the reports of Dr. Graham, we believe that the requirements outlined under *Vigil* have been satisfied and that applicant has successfully rebutted the CVC. We therefore affirm the WCJ's findings on this issue in ADJ10413544. We do not address the issue in ADJ9873208 and ADJ9484905 as it was not raised

in these claims and the parties apparently stipulated to use of the CVC method in both of those claims per the F&A. (See F&A, pp. 2-3.)

III.

Defendant further contends that the apportionment findings for the left wrist are inaccurate. (Petition, p. 5.) As noted above, Dr. Graham relied upon the "Framingham osteoarthritis study" to apportion 25% of applicant's wrist impairment to "the degenerative process." (Exhibit CC, pp. 2-3.) For the right wrist, the remaining 75% was apportioned to the cumulative injury through January 27, 2016. For the left wrist, the remaining 75% was apportioned, 25% to the cumulative injury through January 27, 2016, and 50% to the January 13, 2015 specific injury. (*Id*. at p. 3.) Unfortunately, further analysis was not provided, and copies of the study were not found in the evidentiary record.

In his F&A, the WCJ found apportionment to be based upon "substantial medical evidence." (F&A, p. 5.) However, in his Opinion on Decision (OOD), he concluded the opposite, finding that Dr. Graham's non-industrial apportionment findings did "not meet the *Escobedo* standard because the opinions were wholly conclusory, lacking the requisite 'how and why' explanation[.]" (F&A and OOD, pp. 5, 13.) The WCJ now admits he made an error and agrees to removal of the non-industrial apportionment due to lack of substantial medical evidence. (Report, pp. 9-10.) However, it is unclear how the 25% should now be allocated. Defendant and the WCJ argue that for the left wrist, the 12% WPI should be split evenly between the January 13, 2015 specific injury and the cumulative injury ending on January 27, 2016, but there is no evidence to suggest that this is appropriate. Further development of the record is necessary.

As the parties are aware, the Appeals Board has a constitutional mandate to ensure "substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404.) When the record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. L.A. County Metro. Transit Authority,* 67 Cal.Comp.Cases 138, 141-143 (Appeals Bd. en banc.) As such, the parties should return to Dr. Graham.

Accordingly, we will rescind the WCJ's findings on apportionment for the left wrist and return the issue to the trial level for further development of the record.

IV.

Lastly, applicant contends the WCJ's award of credit towards permanent disability for an alleged temporary disability indemnity overpayment totaling $36,336.39 was a violation of WCAB Rule 10555, misapplies section 4656(c)(2), and abuses the discretion allowed under section 4909. (Applicant's Petition, p. 6.)

Section 4656(c)(2), provides in full that "[a]ggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury." (Lab. Code, § 4656(c)(2).)

Defendant argues that applicant was paid temporary disability in excess of 104 weeks because there were concurrent periods of temporary disability in ADJ10413544 and ADJ9873208. Defendant extrapolates from *Foster*, wherein the Court of Appeal considered whether the statutory cap for temporary disability payments subject to section 4656(c)(1) runs concurrently for two injuries with overlapping injuries:

> There is nothing in the language of section 4656(c)(1) suggesting the limitations period for a single injury causing temporary disability should be tolled for any period during which a worker is entitled to temporary disability benefits based on another injury. There is no language in the statute suggesting the limitations period will not run concurrently where multiple injuries cause an overlap, either partial or complete, during periods of temporary disability. Nor have we found anything in the context of section 4656(c)(1) that suggests a different interpretation is required where multiple injuries result in temporary disability.
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> (*Foster*, *supra*, at pp. 1511-1512.)

Ultimately, the Court of Appeal held the following:

> "In conclusion, we agree with the WCAB that '[w]here independent injuries result in concurrent periods of temporary disability, the 104[-]week/two[-]year limitation likewise runs concurrently.'"
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> (*Id*. at p. 1513.)

As outlined in the F&A, applicant sustained injury AOE/COE to the right shoulder, bilateral hands and wrists (carpal tunnel), bilateral elbows (cubital tunnel), bilateral thumbs, and left ankle as a result of the cumulative injury ending on January 27, 2016, and sustained injury AOE/COE to the left thumb, wrist, and knee as a result of the January 13, 2015 specific injury. (F&A, pp. 1, 4.) Based upon these findings, and per the WCJ, "there is a concurrent overlap [in

these two claims] with respect to injury to the left upper extremity." (Report, p. 12.) Although we agree with the WCJ that an overlap as to injured body parts exists, sufficient findings to support his Order for credit is lacking. The period or periods during which applicant was entitled to temporary disability and basis for said periods were not determined nor were permanent and stationary dates. Absent these findings, we are unable to fully address the issue of defendant's entitlement to credit for the alleged temporary disability indemnity overpayment.

As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (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].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Id.* at p. 475.) This "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Id.* at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].)

Further, on the issue of credit towards permanent disability, pursuant to section 4909, the Appeals Board is allowed to "take[] into account," (i.e., to allow a credit) for any payment, allowance, or benefit paid by the defendant to the injured employee when it was not then due and payable or when there was a dispute or question concerning the right to compensation. (Lab. Code, § 4909.) The Supreme Court has stated that the allowance of credit is within the Appeals Board's discretion. (*Herrera v. Workmen's Comp. Appeals Bd.* (1969) 71 Cal.2d 254, 258 [34 Cal.Comp.Cases 382].) An Appeals Board panel stated that "[w]hether a credit is to be allowed is a matter directed to the discretionary authority of the trier of fact to be weighed in the light of the circumstances of the particular case and should not be subjected to a harsh dictate that avoids the equities presented." (*Cordes v. General Dynamics-Astronautics* (1966) 31 Cal.Comp.Cases 429.) Thus, the allowance of a credit is a matter of discretion and not a legal entitlement. In *Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106], the Court of Appeal stated that equitable principles are frequently applied to workers' compensation matters,

that equity favors allowance of a credit if the credit is small and does not cause a significant interruption of benefits, that the allowance of a credit of overpayment of one benefit against a second benefit can be disruptive and in some cases totally destructive of the purpose of the second benefit, and that the injured employee should not be prejudiced by defendant's actions when the employee received benefits in good faith with no wrong-doing on their part. (*Id*. at pp. 837-838.)

Thus, the Order for credit also requires consideration of the legal and equitable principles set forth in *Maples*. Upon return to the trial level, we therefore recommend that the WCJ conduct further proceedings on the issue of defendant's Petition for Credit, including a determination on the period or periods during which applicant was entitled to temporary disability, basis for said periods, permanent and stationary dates, and further explanation on the basis for the credit, taking into consideration *Maples*.

Accordingly, we grant both defendant and applicant's Petitions, rescind the F&A, substitute it with new Findings, Awards, and Orders which defer the issues of: apportionment for the left wrist in ADJ10413544, credit towards permanent disability for alleged temporary disability overpayments concerning claims, ADJ9873208 and ADJ10413544, and any other relevant and corresponding issues, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Amended Petition for Reconsideration and applicant's Petition for Reconsideration of the Findings and Award dated August 28, 2025 are **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Awards dated August 28, 2025 is **RESCINDED** and **SUBSTITUTED** with new Findings, Awards, and Orders, as provided below, and that this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

STIPULATED FACTS (ADJ9873208)

1. Michele Lopez, born [], while employed on January 13, 2025 as a parking enforcement officer, Occupational Group Number 250, in Visalia, California, by City of Visalia Police Department, sustained injury arising out of and in the course of employment to left thumb, left wrist, left knee.

2. At the time of injury, the employer's workers' compensation carrier was Keenan & Associates. The employer was permissibly self-insured.

3. At the time of injury, the employee's earnings were $792.50 per week, warranting indemnity rates of $528.33 for temporary disability and $290.00 for permanent disability.

4. The carrier/employer has paid compensation as follows: from January 14, 2015 through February 16, 2015, and from May 8, 2018 through August 7, 2019, at the weekly temporary disability rate of $528.33.

5. The employer has furnished some medical treatment.

6. No attorney fees have been paid, and no attorney fee arrangements have been made.

7. Parties stipulate to an Award of further medical treatment.

8. Parties stipulate to permanent disability as follows:

    Left knee: 100% (17.05.03.00-2-[1.4]3-250F-3-4) 4%
    Left thumb: 75% (16.06.01.04-7-[1.4]10-250F-10-12) 9%
    9 combined 4 = 13% permanent disability

FINDINGS OF FACT (ADJ9873208)

There is a need for future medical treatment to cure or relieve from the effects of the industrial injury.

AWARD (ADJ9873208)

AWARD IS MADE, in favor of the Applicant, MICHELE LOPEZ against Defendant CITY OF VISALIA POLICE DEPARTMENT, of:

Further medical treatment as set forth in the Findings of Fact.

ORDER (ADJ9873208)

The issues of permanent disability and apportionment for the left wrist, attorney's fees, and credit towards permanent disability for alleged temporary disability overpayments, are deferred.

STIPULATED FACTS (ADJ9484905)

1. Michele Lopez, born [], while employed during the period from February 5, 2013 through February 5, 2014, as a parking enforcement officer, Occupational Group Number 250 at Visalia, California, by City of Visalia Police Department, sustained injury arising out of and in the course of employment to bilateral feet (tarsal tunnel).

2. At the time of injury, the employer's workers' compensation carrier was administered by Keenan & Associates. The employer was permissibly self-insured.

3. At the time of injury, the employee's earnings were $803.16 per week, warranting indemnity rates of $535.44 for temporary disability and $290.00 for permanent disability.

4. The employer has furnished some medical treatment.

5. No attorney's fees have been paid, and no attorney fee arrangements have been made.

6. Parties stipulate to permanent disability as follows:

   Left tarsal tunnel: 17.08.06.00-4-[1.4]-6-250F-6-7
   Right tarsal tunnel: 17.08.06.00-4-[1.4]-6-250F-6-7
   7 combined 7 = 14% permanent disability

7. Parties stipulate to an Award of future medical treatment.

FINDINGS OF FACT (ADJ9484905)

1. Dr. Graham's AME reporting rates at 14% percent, or $13,412.50.

2. Applicant's Attorney is entitled to a reasonable Attorney's fee of 15%, or $2,011.88.

3. There is a need for future medical treatment to cure or relieve from the effects of the industrial injury.

AWARD (ADJ9484905)

AWARD IS MADE, in favor of the Applicant, MICHELE LOPEZ against Defendant CITY OF VISALIA POLICE DEPARTMENT, of:

1. Permanent Disability indemnity as set forth in Findings of Fact No. 1.

2. Reasonable attorney fees as set forth in Findings of Fact No. 2.

3. Further medical treatment as set forth in Findings of Fact No. 3.

STIPULATED FACTS (ADJ10413544)

1. Michele Lopez, born [], while employed during the period ending January 27, 2016, as a parking enforcement officer, Occupational Group Number 250, at Visalia, California, by City of Visalia Police Department, sustained injury arising out of and in the course of employment to the right shoulder, bilateral

hands/wrist/carpal tunnel; bilateral elbows/cubital tunnel; bilateral thumbs; and left ankle.

2. At the time of injury, the employer's workers' compensation carrier was administered by Keenan & Associates. The employer was permissibly self-insured.

3. At the time of injury, the employee's earnings were $803.16 and $792.50 per week, warranting indemnity rates of $535.44 and $528.33 for temporary disability and $290.00 for permanent disability.

4. The carrier/employer has paid compensation as follows: from May 10, 2016 through May 16, 2018, at the weekly temporary disability rate of $535.44.

5. The employer has furnished some medical treatment.

6. No attorney's fees have been paid, and no attorney fee arrangements have been made.

FINDINGS OF FACT (ADJ10413544)

1. Applicant has successfully rebutted the CVC and has established that the more accurate method of rating is to add rather than combine impairments, in accordance with *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688-689 (Appeals Bd., en banc).

2. There is a need for future medical treatment to cure or relieve the effects of the industrial injury.

AWARD (ADJ10413544)

AWARD IS MADE, in favor of the Applicant, MICHELE LOPEZ against Defendant CITY OF VISALIA POLICE DEPARTMENT, of:

Further medical treatment as set forth in the Findings of Fact.

ORDER (ADJ10413544)

The issues of permanent disability, apportionment, attorney's fees, and credit towards permanent disability for alleged temporary disability overpayments, are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 9, 2025

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

MICHELE LOPEZ
MITCHELL & POWELL A P.L.C.
HANNA, BROPHY, MacLEAN, McALEER & JENSEN, LLP

RL/*cs*

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