

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

NADESH MOFOR, *Applicant*

vs.

**CA DEPARTMENT OF CORRECTIONS, administered by
STATE COMPENSATION INSURANCE FUND MCO,
STATE EMPLOYEES SACRAMENTO, *Defendants***

**Adjudication Numbers: ADJ14336798
(Sacramento District Office)**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION AND
DECISION AFTER RECONSIDERATION**

Defendant seeks reconsideration of the Finding of Fact and Award (F&A) issued on July 23, 2025 by the workers' compensation administrative law judge (WCJ) which found in pertinent part that applicant's current level of ratable permanent disability for head (headaches) is 3% after apportionment and defendant is not entitled to a credit for the claimed temporary total disability overpayment for the period April 11, 2022 through "October 21," 2022 totaling \$9,838.54.

Defendant contends that it was prejudiced and/or denied its due process right because the F&A issued before its post-trial brief was timely filed and its post-trial brief was not considered; the Almaraz/Guzman assignment of whole person impairment for headaches is not substantial medical evidence; and it should be allowed some temporary disability overpayment credit.

We received an Answer from applicant. The WCJ filed a Report and Recommendation (Report) on the Petition for Reconsideration recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer and the contents of the report of the WCJ with respect thereto. Based on our review of the record and for the reasons discussed below, we will grant reconsideration solely to correct the period of temporary disability to April 11, 2022 to June 2, 2022 as stipulated by the parties.

I.

Preliminarily, we note that former Labor Code¹ 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 August 20, 2025 and 60 days from the date of transmission is Sunday, October 19, 2025, a weekend. The next business day that is 60 days from the date of transmission is Monday, October 20, 2025. (See Cal. Code Regs., tit. 8 § 10600(b).)² This decision was issued by or on October 20, 2025, so that we have timely acted on the petition as required by section 5909(a).

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

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers’ Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 WCJ, the Report was served on August 20, 2025, and the case was transmitted to the Appeals Board on August 20, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 20, 2025.

II.

BACKGROUND

The WCJ's Report states as follows:

The purpose of utilizing the AMA Guides is to remove the extreme variances in the reporting of physicians. Dr. Alvarellos addresses the psychiatric permanent disability as follows:

The current global assessment of functioning of this applicant is given as a result of my objective observations and the applicant's subjective reports. I believe the applicant currently expresses a global assessment of functioning of 60 Given all the information contained above, the reasonable medical evidence supports a global assessment of functioning of 60.

(See Joint Exhibit 5, Pages 38-39)

According to the Schedule of Rating Permanent Disabilities, a GAF score of 60 equates to a 15% whole person impairment. (See Page 1-16)

As for the headaches, Dr. Franc address permanent disability as follows:

The permanent impairment noted here and has been performed based on the criteria and methodology of the AMA guides fifth edition. Ms. Mofor reports moderate headaches that occur 4 days

per week on average and have not resulted in documented loss of work or other activities, and given the AMA Guides criteria on page 576-584, she has an estimated headache pain-related impairment score of 40. I would thus determine a whole person impairment rating of 2% for chronic headaches.

Taking into account the Almaraz/Guzman decisions, the most accurate measurement of the patient's impairment is obtained as follows. An approach to the headaches within the "four corners" of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition is the criteria for rating trigeminal neuralgia using Table 13-11, page 331. This is facial pain rather than head pain but is reasonably good analogy. The patient had mild uncontrolled pain multiple days per week that interferes with activities of daily living. I would rate this as a midrange Class I impairment. The impairment rates from 0% to 14%. Because the headaches are somewhat improved on medication, I would rate them as having a 5% Whole Person Impairment. This level of impairment is felt to most accurately reflect the residual effects of the work injury and takes into account the Almaraz/Guzman II decision.

Pursuant to Labor Code §4663, after considering the entirety of the medical evidence in this case, it is my opinion, to a degree of reasonable medical probability, that 60% of the permanent disability/ whole person impairment from chronic headaches in this case is due to pre-existing non-industrial medical conditions, specifically the report of chronic migraine headaches treated with botulinum toxin injections. It is my opinion, to a degree of reasonable medical probability, that 40% of the permanent disability/ whole person impairment in this case is due to the industrial injury in 2020. If additional medical documentation becomes available regarding treatments previous to and subsequent to her industrial injury, further consideration of apportionment may be made.

(See Joint Exhibit 3, Pages 3-4)

Any finding or award by a WCJ must be supported by substantial evidence in light of the entire record. To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth the reasoning used to support the expert conclusions reached. A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess.

Pursuant to Labor Code section 4660.1(d), a scheduled rating pursuant to the AMA Guides is prima facie evidence of an employee's permanent disability. However, as explained in the *Guzman* decisions, a scheduled rating under the AMA Guides is rebuttable. Specifically, the whole person impairment (WPI) portion of the scheduled rating may be rebutted by showing that "a different chapter, table, or method of assessing impairment of the AMA Guides more accurately reflects the injured employee's impairment than the chapter, table, or method used by the physician being challenged."

However, physicians must still evaluate permanent impairment while staying within the "four corners of the Guides" pursuant to the Labor Code. To properly rate an impairment under *Guzman*, rather than the "strict" method, the physician is expected to: 1) provide a strict rating per the AMA Guides; 2) explain why the strict rating does not accurately reflect the employee's disability; 3) provide an alternative rating within the four corners of the AMA Guides; and 4) explain why the alternative rating most accurately reflects the employee's level of disability. The physician's opinion must also constitute substantial medical evidence.

It is clear that Dr. Franc's analysis complies with the foregoing requirements to comply with the Almar[a]z/Guzman alternative rating requirements.

Based on the factors of permanent disability and the apportionment analysis provided by the doctor, this matter rates as follows:

90% (14.01.00.00-15-[1.4]21-340D-17-1 6%) 14%
40% (13.07.04.00-5-[1.4]7-340F-7-7%) 3%
CVC 14C3=17

As such, Applicant was appropriately awarded permanent disability of 17% less attorney's fees.

...

There was no abuse of discretion in denying the claimed TTD overpayment credit. During the more acute stage immediately after an injury, an injured worker may receive temporary disability (TD) benefits. These benefits help to alleviate the consequences of the temporary inability to work by providing biweekly payments to make up, at least in part, for lost wages. The term "temporary disability" is not specifically defined in the Labor Code. However, "temporary disability" is generally described as the incapacity to work that is reasonably expected to be cured or materially improved with proper medical treatment. The term "disability" has been found to contain two elements, actual incapacity to perform the tasks usually encountered in one's employment and wage loss. Temporary disability payments generally end if the employee

returns to work, is deemed able to return to work, or achieves permanent and stationary status.

Labor Code, Section 4909 provides as follows:

Any payment, allowance, or benefit received by the injured employee during the period of his incapacity, or by his dependents in the event of his death, which by the terms of this division was not then due and payable or when there is any dispute or question concerning the right to compensation, shall not, in the absence of any agreement, be an admission of liability for compensation on the part of the employer, but any such payment, allowance, or benefit may be taken into account by the appeals board in fixing the amount of the compensation to be paid. The acceptance of any such payment, allowance, or benefit shall not operate as a waiver of any right or claim which the employee or his dependents has against the employer.

The foregoing clearly establishes that the allowance of a credit for overpaid temporary total disability (TTD) benefits lies squarely within the sound discretion of the trial judge. This discretion is fact dependent on each given case. If the overpayment effectively wipes out most of the PD or even a significant portion of it, then denial of the credit is appropriate.

In this case Defendant overpaid TTD from April 11, 2022, through October 21, 2022, totaling \$9,838.54. In this case the PD value is 17% or \$17,545.00. The TTD overpayment represents 56% of the total value in this matter. The TTD overpayment effectively wipes out a significant portion of the PD and is therefore not appropriate.

(Report at pp. 2-5.)

III.

In addition to the analysis set forth in the WCJ's Report above, and reviewing the parties' trial briefs and defendant's post-trial brief, we observe the following.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. I.A.C. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. I.A.C. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

We note defendant's contention that it was denied due process by the timing of the post-trial brief, and we have reviewed and taken into consideration the post-trial brief as well as the entire record.

First, defendant contends that the whole person impairment assigned by Daniel Franc, M.D., panel qualified medical evaluator (QME) in neurology, is not substantial medical evidence.

In *Almaraz v. Environmental Recovery Services* (2009) 74 Cal.Comp.Cases 1127 (Appeals Bd. en banc) (commonly known as, and hereinafter referred to as *Almaraz II*), we held that a "scheduled permanent disability rating may be rebutted by successfully challenging the component element of that rating relating to the employee's WPI under the AMA Guides....by establishing that another chapter, table, or method within the four corners of the Guides most accurately reflects the injured employee's impairment." (*Almaraz II*, 74 Cal.Comp.Cases at pp. 1095-1096.) In *Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837], the Court of Appeal affirmed our decision in *Almaraz II*.

As observed by the WCJ, in order for an applicant to prevail on this whole person impairment (WPI) assigned under *Almaraz II*, additional evidence is necessary: The doctor is expected to 1) provide a strict rating per the AMA Guides, 2) explain why the strict rating does not accurately reflect the applicant's disability, 3) provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that alternative rating most accurately reflects applicant's level of disability. (*Id.* at 828-829.)

Dr. Franc assigned impairment for headaches as follows:

The permanent impairment noted here and has been performed based on the criteria and methodology of the AMA guides fifth edition. Ms. Mofor reports moderate headaches that occur 4 days per week on average and have not resulted in documented loss of work or other activities, and given the AMA Guides criteria on page 576-584, she has an estimated headache pain-related impairment score of 40. I would thus determine a whole person impairment rating of 2% for chronic headaches.

Taking into account the *Almaraz/Guzman* decisions, the most accurate measurement of the patient's impairment is obtained as follows. An approach to the headaches within the "four corners" of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition is the criteria for rating trigeminal neuralgia using Table 13-11, page 331. This is facial pain rather than head pain but is reasonably good analogy. The patient had mild uncontrolled pain multiple days per week that interferes with activities of daily living. I would rate this as a mid-range Class I impairment. The impairment rates from 0% to 14%. Because

the headaches are somewhat improved on medication, I would rate them as having a 5% Whole Person Impairment. This level of impairment is felt to most accurately reflect the residual effects of the work injury and takes into account the Almaraz/Guzman II decision.

(Exhibit 3, at p. 3.)

Dr. Franc assigned applicant 2% WPI for chronic headaches as a strict AMA Guides rating. (*Id.*) Dr. Franc explained that the strict rating is not accurate because applicant had mild uncontrolled pain multiple days per week that interferes with her activities of daily living. (*Id.*) Then, Dr. Franc assigned applicant 5% impairment which is more accurate because this is facial pain rather than head pain but is reasonably good analogy and the headaches are somewhat improved on medication. (*Id.*) Lastly, Dr. Franc's reporting holds with correct legal theory, is not based on guess, is well reasoned and is based on reasonable medical probability. Accordingly, Dr. Franc's assignment of WPI under *Almaraz II* is substantial medical evidence.

IV.

Next, defendant requests a temporary disability overpayment credit for the period of April 11, 2022 through June 2, 2022 based on the reporting of Miguel Alvarelllos, M.D., QME in Psychiatry.

On May 23, 2022 Dr. Alvarelllos indicated applicant was temporarily totally disabled from June 22, 2020 until April 10, 2022 and had reached maximum medical improvement (MMI) on April 11, 2022. (Exhibit 5, at p. 40.) This report dated May 23, 2022 was served on June 13, 2022. (Exhibit 5, at p. 74.) There were no temporary disability payments after June 2, 2022. (Pre-trial conference statement, at p. 2; Exhibit 7.)

As defendant aptly points out, there is no evidence in the current record about the reporting of PTP Hutchinson. (Defendant's post-trial brief, at p. 2:14-16.) Accordingly, only the reporting of Dr. Alvarelllos can be considered. Hence, the entire period of overpayment and credit requested by defendant, April 11, 2022 through June 2, 2022 is based on a retroactive permanent and stationary date assigned by Dr. Alvarelllos.

Section 4909 permits a temporary disability overpayment credit but does not mandate it. The granting of a credit for temporary disability overpayments is discretionary. There must be consideration for how the credit can impact the overall receipt of benefits. It would be equitable to

award a small overpayment credit if there is no significant interruption of benefits. A credit can be denied if the employer failed to act reasonably.³

In *Minouge v. Santa Cruz Regional 9-1-1*, we denied credit where the overpayment of temporary disability was caused by a 41 days delay in receiving the QME's report following the evaluation. (2021 Cal. Wrk. Comp. P.D. LEXIS 219.) In *Minouge*, the credit amounted to approximately one-third of the permanent disability due. We adopted the reasoning of the WCJ, who found that applicant would have suffered a significant hardship in having the credit asserted against the permanent disability award. We noted in *Minouge* that the appropriate standard for adjudicating credit as follows:

Pursuant to Labor Code section 4909, the WCJ has discretion to award a credit against permanent disability for an overpayment of temporary disability. In fixing the amount of compensation to be paid, the WCAB 'may take into account' any payment, allowance, or benefit that the employer has provided to the injured employee that was not then due and payable. (Lab. Code, § 4909; see *Herrera v. Workers' Comp. Appeals Bd.* (1969) 71 Cal.2d 254 [34 Cal.Comp.Cases 382]; *Mercury Aviation Co. v. Industrial Accident Com.* (1921) 186 Cal. 375.) The intent of § 4909 is to encourage the employer to make voluntary payments to an injured worker by allowing it to later obtain credit and a reduction in the amount subsequently determined to be due the employee. (*Appleby v. Workers' Comp. Appeals Bd.* (1994) 27 Cal.App.4th 184 [59 Cal.Comp.Cases 520].)

However, the allowance of a credit for overpayment of one benefit against a second benefit can be disruptive and, in some cases, totally destructive of the purpose of the second benefit. (*Maples v. Workers' Comp. Appeals Bd.* (1980) 111 Cal.App.3d 827 [45 Cal.Comp.Cases 1106].) In those circumstances, the WCJ has discretion to award permanent disability without 'taking into account' the payment of another benefit and reducing the amount."

(*Id.* at *3-4.)

Here, as explained by the WCJ, the temporary disability overpayment credit asserted is over one-half of the award, and we do not disturb his conclusion with respect to the credit.

However, when the parties proceeded to trial on July 16, 2025, they stipulated that April 11, 2022 to June 2, 2022 was the period of temporary disability. As explained above, once a

³ There is no evidence that the employer acted inappropriately. However, there is no evidence that a request that the QME issue a contemporaneous summary report immediately following the evaluation.

timely petition for reconsideration is filed, the Appeals Board has the authority to review the entire record and to issue further findings.

Accordingly, we grant the Petition for Reconsideration solely to amend the period of temporary disability, and we otherwise affirm the F&A.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Award of July 23, 2025, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDING OF FACT

16. Defendant is not entitled to a credit for the claimed TTD overpayment for the period April 11, 2022 through June 2, 2022, totaling \$9,838.54.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 20, 2025

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

**NADESH MOFOR
LAW OFFICES OF SANDRA GOMES
STATE COMPENSATION INSURANCE FUND**

SL/abs

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