WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PEDRO LEIVA, *Applicant*

vs.

WEBCOR CONSTRUCTION; PROPERTY AND CASUALTY COMPANY OF HARTFORD, administered by THE HARTFORD, *Defendants*

Adjudication Numbers: ADJ11372081 (MF); ADJ15621674; ADJ11645081
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant and defendant Webcor Construction, insured by Property and Casualty Insurance Company of Hartford (defendant) each seek reconsideration of the August 28, 2025 Joint Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found in Case No. ADJ11372081 that applicant, while employed as a day laborer on March 28, 2018, sustained industrial injury to his head, headaches, right shoulder, neck, low back, TMJ, left ear tinnitus, both eyes, loss of consciousness, and psyche, resulting in permanent total disability. After application of nonindustrial apportionment, the WCJ awarded 80 percent permanent partial disability. In ADJ15621674, the WCJ found that applicant, while similarly employed from March 1, 2017 to May 18, 2018, sustained industrial injury in the form of bilateral hearing loss resulting in no ratable permanent disability. In ADJ11645081, applicant while similarly employed on June 20, 2017, sustained industrial injury to his left wrist, left index finger, and left hand, resulting in 14 percent permanent partial disability.

Applicant's Petition contends that he is permanently and totally disabled pursuant to the conclusive presumption of Labor Code[1] section 4662(a)(4); that each injured body part should be individually rated under section 4660.1; that the sum of said ratings exceeds 100 percent permanent

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

and total disability even after apportionment; that the WCJ erred in applying the psychiatric apportionment to non-psychiatric body parts/systems; and that the apportionment identified in the record is not substantial evidence.

Defendant's Petition also contends that applicant's various injured body parts should be individually rated pursuant to section 4660.1 and that the resulting ratings should be combined using the Combined Values Chart (CVC).

We have received an Answer to Defendant's Petition from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) responding to each petition, recommending in each instance that the petition be denied.

Applicant has also filed a Request for Permission to file a Supplemental Response and an accompanying Response to the WCJ's Report on Applicant's Petition. Pursuant to Workers' Compensation Appeals Board (WCAB) Rule 10964 (Cal. Code Regs., tit. 8, § 10964), we have granted the request and have reviewed the Supplemental Response herein.

We have considered the allegations of the Petitions for Reconsideration, the Answer, the Supplemental Response, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and restate the WCJ's Findings of Fact, except that in ADJ11372081, we will find that applicant has sustained 100 percent permanent and total disability after apportionment.

FACTS

Applicant has three pending cases. In ADJ11372081, applicant claimed injury to his head, headaches, right shoulder, neck, low back, TMJ, left ear, both eyes, loss of consciousness, psyche, traumatic brain injury, sleep disorder, and teeth while employed as a laborer by defendant on March 28, 2018. Defendant admits injury to all claimed body parts save traumatic brain injury, sleep disorder, and teeth.

In ADJ15621674, applicant sustained injury in the form of bilateral hearing loss while similarly employed from March 1, 2017 to May 18, 2018.

In ADJ11645081, applicant sustained injury to the left wrist, left index finger, and left hand while similarly employed on June 1, 2017.

The parties have selected Agreed Medical Evaluators (AMEs) David Friedman, M.D., Ph.D., in psychiatry; Alexander Angerman, M.D., in orthopedic medicine; and Robert Wilson,

M.D., in orthopedic medicine. The parties have further selected Qualified Medical Evaluators (QMEs) Fredric Edelman, M.D., in neurology/neurosurgery, and Alfred Roven, M.D., in otolaryngology. The WCJ has appointed Philip Corrado, Ph.D., as the regular physician in neuropsychology.

Applicant has obtained treatment and reporting from Edwin Haronian, M.D., in orthopedic medicine, Marcia Lamm, Ph.D., in psychology, and Carl Garbus, O.D., in optometry. The parties have further obtained vocational expert reporting from Laura Wilson, for applicant, and Amy Koellner, for defendant.

On March 3, 2025, the parties proceeded to trial on all three pending matters. The parties framed multiple issues for decision in each pending case, including in relevant part, issues of permanent disability and apportionment. (Minutes of Hearing and Order of Consolidation, dated March 3, 2025, at pp. 3:2; 4:15; 5:15.) The WCJ continued the trial for witness testimony.

On April 28, 2025, the WCJ heard testimony from applicant, and continued the matter for additional testimony.

On May 19, 2025, the WCJ heard testimony from applicant and from witness Rosanna Jennett, applicant's nurse case manager. The WCJ ordered the matter submitted for decision as of July 7, 2025.

On August 28, 2025, the WCJ issued his F&A. In ADJ11372081 corresponding to the March 28, 2018 date of injury, the WCJ determined that in addition to the stipulated body parts applicant sustained a traumatic brain injury. (Finding of Fact No. 1.) The WCJ declined to follow the opinions of applicant's vocational expert Laura Wilson because the reporting did not account for nonindustrial apportionment. (Finding of Fact No. 9.) The WCJ determined that the reporting of defense vocational expert Ms. Koellner was not substantial evidence due to the inability to meet with applicant. (Finding of Fact, No. 10.) The WCJ determined that psychiatric AME Dr. Friedman has appropriately explained why applicant's various disability ratings should be added rather than combined under the CVC. (Finding of Fact No. 13.) The WCJ determined that applicant's permanent disability was 100 percent, less 20 percent nonindustrial apportionment identified by psychiatric AME Dr. Friedman, leaving a residual 80 percent permanent partial disability. (Findings of Fact, Nos. 14 & 16.)

With respect to ADJ11645081 for injury on June 1, 2017, the WCJ found 14 percent permanent partial disability. (Finding of Fact No. 17; Award No. b.). With respect to

ADJ15621674 for cumulative injury from March 1, 2017 to May 18, 2018, the WCJ found zero percent permanent disability. (Finding of Fact No. 18.)

Applicant's Petition contends that his disability is conclusively presumed to be both permanent and total under section 4662(a)(4) because he has sustained an injury to the brain resulting in total mental incapacity. (Applicant's Petition, at p. 4:18.) In the alternative, applicant contends the aggregate ratings of each of injured body parts for both the June 1, 2017, and March 28, 2018 injuries, add to more than 100 percent permanent partial disability. (*Id.* at p. 5:23.) Applicant further contends that the WCJ erred in applying the 20 percent nonindustrial apportionment identified by the psychiatric AME to non-psychiatric body parts. Applicant further contends that the apportionment described by psychiatric AME Dr. Friedman is analytically incomplete and therefore not substantial evidence. (*Id.* at p. 11:16.)

The WCJ's Report on Applicant's Petition responds that while applicant "did have a violent injury to the head," no evaluating physician determined that applicant had sustained permanent mental incapacity. (Report on Applicant's Petition, at p. 4.) Regarding applicant's contention that his various injured body parts should be rated individually and added together, the WCJ observed that no physician had indicated the residual disability from applicant's June 1, 2017 injury to the upper extremities should be combined with the sequelae of the March 28, 2018 injury. (*Id.* at p. 5.) The WCJ further described why he found the apportionment analysis of Dr. Friedman to constitute substantial evidence, as based on a review of applicant's multifactorial preexisting conditions. (*Id.* at p. 6.)

Defendant's Petition contends that the WCJ should have rated applicant's injured body parts individually and combined pursuant to the CVC. (Defendant's Petition, at p. 4:22.) Insofar as psychiatric AME Dr. Friedman opined that applicant's orthopedic, neurologic and psychiatric disabilities should be added, defendant responds that the AME's opinion are not "substantial evidence … because he did not do a personal assessment of each [activity of daily living]." (*Id.* at p. 8:3.)

Applicant's Answer to Defendant's Petition responds that Dr. Friedman's opinions are well-supported in his reports and deposition testimony. (Answer, at p. 3:21.)

The WCJ's Report on Defendant's Petition observes that the report of the AMEs and the regular physician supports both "the serious nature of the injury," as well as the existence of preexisting nonindustrial factors of causation. (Report on Defendant's Petition, at p. 4.)

Applicant's Supplemental Response contends the F&A did not include impairment arising out of applicant's post-traumatic head injury as identified by QME Dr. Edelman. (Supplemental Response, at p. 3:13.) Applicant reiterates his contention that the individual ratings for injured body parts sum to a percentage of disability exceeding 100 percent. (*Id.* at p. 3:7.)

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.
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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 16, 2025, and 60 days from the date of transmission is Saturday, November 15, 2025. The next business day that is 60 days from the date of transmission is Monday, November 17, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on November 17, 2025, so that we have timely acted on the petition as required by section 5909(a).

[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 workers' compensation administrative law judge, the Report on Applicant's Petition was served on September 16, 2025, and the case was transmitted to the Appeals Board on September 16, 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 16, 2025.

II.

We first address applicant's contention that he is conclusively presumed to be permanently and totally disabled pursuant to section 4662, which provides:

> (a) Any of the following permanent disabilities shall be conclusively presumed to be total in character:
>
> (1) Loss of both eyes or the sight thereof.
> (2) Loss of both hands or the use thereof.
> (3) An injury resulting in a practically total paralysis.
> (4) An injury to the brain resulting in permanent mental incapacity.

(Lab. Code, § 4664(a).)

Applicant's Petition asserts that QME Dr. Edelman has diagnosed a "post-traumatic head syndrome which includes a traumatic brain injury." (Applicant's Petition, at p. 5, citing Ex. X21, Transcript of the Deposition of Fredric Edelman, M.D., dated July 27, 2023, at p. 17:1.) Applicant appears to contend that such a diagnosis, standing alone, triggers the presumption of section 4662(a)(4), and requires a finding of permanent and total disability. (*Id.* at p. 5:17.)

However, our caselaw evaluating claims of presumptive disability pursuant to section 4664(a)(4) has historically focused on organic brain injury resulting in profound cognitive compromise. In *Sherry v. Connelley's Fine Furniture* (June 27, 2008, OAK216926, OAK207971)

[2008 Cal. Wrk. Comp. P.D. LEXIS 562], a panel[3] of the Appeals Board held that applicant's injuries, which were largely orthopedic and psychiatric in nature, did not include an organic brain syndrome, rendering the presumption of former section 4662(d)(3) inapplicable.[4] Similarly, in *Enriquez v. County of Santa Barbara* (July 18, 2014, ADJ334261 (VNO 0513526)) [2014 Cal. Wrk. Comp. P.D. LEXIS 375], a panel of the Appeals Board held that the effects of a psychiatric injury coupled with the effects of psychotropic medications were insufficient to trigger the presumptions of former section 4662(d). More recently in *Hong v. Barrett Business Services* (June 5, 2025, ADJ11130675, ADJ11325280) [2025 Cal. Wrk. Comp. P.D. LEXIS 207], a panel of the Appeals Board determined that "a traumatic brain injury is not synonymous with having permanent mental incapacity," and that the evidentiary record in that matter did not support the application of the presumption of total disability.

However, in *Hill v. Securitas Sec. Servs. United States* (June 28, 2012, ADJ6682404) [2012 Cal. Wrk. Comp. P.D. LEXIS 294], a panel of the Appeals Board held that applicant's permanent and total disability was supported by the opinions of the QME that applicant was totally and completely neurocognitively disabled without any appreciable chance of becoming functional. And in *Villegas v. Aadlen Bros Auto Wrecking* (May 22, 2015, ADJ2181555 (MON 0336275)) [2015 Cal. Wrk. Comp. P.D. LEXIS 334], a panel of the Appeals Board affirmed the WCJ's determination that applicant had sustained injury resulting in permanent mental incapacity under section 4662(a)(4) when applicant's impairments were sufficiently profound as to require the appointment of a conservator, and where his treating physicians recommended inpatient placement in a nursing home. Conversely, in *Schroeder v. Workers' Comp. Appeals Bd.* (2013) 78 Cal.Comp.Cases 506, 510–507 [2013 Cal. Wrk. Comp. LEXIS 80], a panel of the Appeals Board held that the 12 percent whole person impairment identified by the AME in neurology did not constitute a disability that triggered the section 4662(d) conclusive presumption. The panel held

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[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

[4] The section 4662 presumption of total disability arising out of permanent mental incapacity was originally located in subdivision (d) but has since been renumbered to subdivision (a)(4).

that, "[g]iven its legislative history and purpose, section 4662(d) contemplates a more severe disability," and that section 4662(d) was therefore inapplicable.

Our jurisprudence with respect to section 4662(a)(4) has thus required a showing that applicant has sustained injury to the brain resulting in profound cognitive compromise as described in the medical evidence. Additionally, the opinions of the evaluating medical-legal physicians are highly relevant to any determination concerning presumptive total disability.

Here, the WCJ's Report on Applicant's Petition distinguishes between suffering a brain injury resulting in an inability to work, and a finding of the profound mental incapacity required under section 4662(a)(4). The WCJ notes that no evaluating physicians have opined that applicant's injuries rendered him mentally incapacitated, that applicant was able to take an oath and testify on his own behalf, and that no petition to appoint a guardian ad litem had been submitted on applicant's behalf. (Report on Applicant's Petition, at pp. 3-4.)

We agree with the WCJ's assessment and note that from our review of the medical and medical-legal record, there is no medical opinion supporting the type of profound cognitive compromise that was envisioned by the legislature in enacting section 4662(a)(4). To the contrary, QME Dr. Edelman identified no neurologically mediated permanent disability beyond headaches, and AME Dr. Friedman has indicated that applicant's residual permanent disability arises out of his psychiatric injury rather than from cognitive impairment. (Ex. X15, Transcript of the Deposition of David Friedman, M.D., dated February 26, 2025, at p. 22:4; Ex. X18, Report of Fredric Edelman, M.D., dated October 4, 2022, at pp. 12-13.) In addition, neither Dr. Friedman nor Dr. Corrado identified the presence of any neurocognitive disorder. (Ex. X12, Report of David Friedman, M.D., dated May 30, 2024, at p. 27.)

Accordingly, we are not persuaded that the conclusive presumption of section 4662(a)(4) applies herein.

III.

We next turn to the issue of permanent disability. The WCJ has determined that based on the entire evidentiary record, applicant's disability is permanent and total. The WCJ's Opinion on Decision observes:

> In the present case, we note that both AME Friedman, MD (psyche) and [regular physician Dr.] Corrado, MD (neuropsyche) had initial questions as to applicant's veracity. However, after extensive evaluations, review of all records, depositions and reporting, these physicians both found the applicant to be permanently totally disabled. If not from the injury to the head, to the combined injuries resulting from the 03/28/2018 specific.

(Opinion on Decision, at p. 3.)

Thus, the WCJ concluded that "applicant has permanent impairment of 100%." (Finding of Fact No. 14.) The WCJ further observed that pursuant to the reporting of psychiatric AME Dr. Friedman and regular physician and neuropsychologist Dr. Corrado, 80 percent of applicant's residual permanent disability is industrial. (Finding of Fact No. 15.) Accordingly, the WCJ awarded 80 percent net permanent partial disability in ADJ11372081 for the March 28, 2018 date of injury. (Award No. "a".)

Section 4660.1 provides that permanent disability is determined by consideration of whole person impairment within the four corners of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides), as applied by the Permanent Disability Rating Schedule (PDRS) in light of the medical record and the effect of the injury on the worker's future earning capacity. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565] ["permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity"]; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (*Fitzpatrick*) (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680]; *Almaraz v. Environmental Recovery Service/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) as affirmed by the Court of Appeal in *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

The scheduled rating is not absolute. (*Fitzpatrick, supra,* 27 Cal.App.5th 607, 619-620.) A rating obtained pursuant to the PDRS may be rebutted by showing applicant's diminished future earning capacity is greater than the factor supplied by the PDRS. (*Ogilvie v. Workers' Comp.*

Appeals Bd. (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624]; *Contra Costa County v. Workers' Comp. Appeals Bd.* (*Dahl*) (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 119].)

Here, however, the WCJ has discounted the reporting of applicant's vocational expert Laura Wilson for failure to adequately consider the apportionment identified by orthopedic AME Dr. Robert Wilson and psychiatric AME Dr. Friedman. (Finding of Fact No. 9; Opinion on Decision, at p. 3; see *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (Appeals Bd. en banc); *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894 (Appeals Bd. en banc).) The WCJ has further determined that the reporting of defendant's vocational expert Amy Koellner is not substantial evidence because she was unable to interview the applicant. (Finding of Fact No. 10; Opinion on Decision, at pp. 3-4.)

Both Applicant's Petition and Defendant's Petition contend that applicant's permanent disability is properly assessed via scheduled ratings. (Applicants' Petition, at p. 5:3; Defendant's Petition, at p. 4:22.) Applicant's Petition avers the permanent disability ratings for applicant's injuries to the left wrist, right finger, cervical spine, right shoulder, lumbar spine, headaches, and psyche sum to 137 percent permanent partial disability before apportionment, and 130 percent after apportionment. (*Id.* at p. 6:5.)

Defendant's Petition similarly suggests that a rating of each body part under section 4660.1 is appropriate. (Defendant's Petition, at p. 4:22.) However, defendant also observes that the current dispute regarding permanent disability levels involves three distinct injuries, specifically the June 1, 2017 specific injury, the March 28, 2018 specific injury, and the March 1, 2017 to May 18, 2018 cumulative injury. (*Id.* at p. 9:2.) Defendant asserts that the permanent disability corresponding to each injury must be rated separately.

In B*enson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113, 133], the Court of Appeal held that sections 4663 and 4664 require apportionment to each distinct industrial injury causing permanent disability. (*Id.* at p. 1544.) This is because the "plain language of section 4663, subdivision (c) … calls for a physician to 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*.'" (*Id.* at p. 1550, italics original.) Thus, based on the legislative history and the Appeals' Board's contemporaneous

interpretation of the statute, "apportionment is required for each distinct industrial injury causing a permanent disability, regardless of the temporal occurrence of permanent disability or the injuries themselves." (*Id.* at p. 1559.) However, the Court of Appeals in *Benson* also observed that:

> [T]here may be limited circumstances … when the evaluating physician cannot parcel out, with reasonable medical probability, the approximate percentages 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. (See § 4663, subd. (c); *Kopping v. Workers' Comp. Appeals Bd.*, supra, 142 Cal.App.4th at p. 1115 ["the burden of proving apportionment falls on the employer because it is the employer that benefits from apportionment"].)

(*Id.* at p. 1560.)

Here, the injuries claimed by applicant in response to the June 1, 2017 injury are orthopedic in nature. (See Minutes of Hearing, dated March 3, 2025, at p. 5:4.) Pursuant to the opinions of orthopedic AME Dr. Wilson, applicant's injuries to the left wrist, hand, and index finger are solely attributable to his June 1, 2017 injury. (Ex. X29, Report of Robert Wilson, M.D., dated September 11, 2022, at p. 5.) Applicant cites to no other opinions in the record that would otherwise establish an inability of an evaluating physician to "parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the employee's overall permanent disability." (*Benson*, *supra*, at p. 1560.) Accordingly, and pursuant to section 4663 and *Benson*, *supra*, the injured body parts and their corresponding percentages of permanent disability arising out of the June 1, 2017 injury are distinct from the injured body parts and corresponding permanent disability arising out of the March 28, 2018 injury.

Returning to the ratings analysis advanced in Applicant's Petition, we observe that the suggested ratings amalgamate body parts injured on June 1, 2017, including the left wrist, hand and index finger, as well as the body parts injured on March 28, 2018, including the cervical spine, right shoulder, lumbar spine, headaches, and psyche. (Applicant's Petition, at p. 5:28.) To the extent that applicant's formulation intermingles the disability arising out of two distinct injuries, and in the absence of the exemption to sections 4663 and 4664 described in *Benson*, *supra*, such aggregation of the disabilities from distinct injuries is impermissible. We therefore conclude that the WCJ appropriately rated and awarded the permanent disability arising out of each individual

injury, rather than aggregating them into a single award. (*Benson*, *supra*, at p. 1560.) The left wrist, left index finger, and left hand disability is properly the subject of the WCJ's separate award of 14 percent permanent partial disability. (Finding of Fact No. 17; Award No. b.)

With respect to the March 28, 2018 injury, Dr. Wilson has identified 9 percent whole person impairment to the right shoulder without apportionment, which rates as 16.02.02.00 – 9 – [1.4]13 – 480G – 15 – 15. (Ex. X29, Report of Robert Wilson, M.D., dated September 11, 2022, at pp. 5-6; Report on Defendant's Petition, at p. 3.) Dr. Wilson also assigns 8 percent whole person impairment to the cervical spine, and 13 percent to the lumbar spine with an additional 3 percent for pain, both subject to 10 percent nonindustrial apportionment. Dr. Wilson explains his apportionment by noting a history of prior back complaints and a prior 2015 low back injury superimposed on degenerative changes verified in MRI scan findings. (*Id.* at p. 5.) Insofar as Dr. Wilson has identified preexisting nonindustrial pathology in the form of degenerative changes to the lumbar spine as confirmed in diagnostic scanning, we are persuaded that the apportionment opinions of the AME constitute substantial evidence. (See *Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc).) Accordingly, applicant's cervical spine disability rates as 90% (15.01.01.00 - 8 - 11 - 480I - 16 - 16%) 14%, while applicant's lumbar spine rates as 90% (15.03.01.00 - 16 - 22 - 480I - 29 - 29%) 26%.

Psychiatric AME Dr. Friedman has assessed applicant's GAF score at 53 with a corresponding whole person impairment of 26 percent. With respect to apportionment, the AME opined:

> [I]t is evident that there was a significant alcohol problem in (sic) the applicant predating his injury, although I have no evidence to suggest that this has recurred since the injury of 3/28/18, other than the single binge drinking episode leading to the Kaiser visit in October 2022. Nevertheless, this was a significant preinjury history of alcohol use and depression, and clearly predisposed him to an intense reaction to the injury herein. Accordingly, I believe it is reasonable to apportion 20% of the permanent psychiatric disability to the emotional vulnerability to trauma based upon this earlier psychiatric history.

(Ex. X12, Report of David Friedman, M.D., dated May 30, 2024, at p. 28.)

In deposition testimony, Dr. Friedman was asked what he meant in reference to applicant's "earlier psychiatric history." (Ex. X15, Transcript of the Deposition of David Friedman, M.D., dated February 26, 2025, at p. 14:18.) Dr. Friedman responded that applicant's history reflected a

"difficult childhood," and prior instances of psychiatric treatment and alcohol abuse. (*Id.* at p. 14:20.) Dr. Friedman explained his apportionment analysis as follows:

> A. The best way I have of understanding the apportionment was that this left him with a significant vulnerability to emotional distress from subsequent stressors, and according to Almaraz-Guzman, you could say that these earlier problems left him perhaps with a pre-injury need or a restriction from significant emotional stress, which by the old rating schedule was a 20 percent standard. That's how I understand these things, but the fundamental notion is that a significant pre-injury psychiatric history does leave a person more vulnerable to an intense and severe psychiatric reaction to subsequent stressors. So that's what I meant to indicate when I offered a 20 percent pre-injury apportionment. I hope that's clear.
>
> Q That was very clear. So the -- I think what you're saying too, just to clarify the alcoholism where it picks up, that's just part of the pre-existing because they kind of come together as a condition?
>
> A It was all together. The depression, the alcohol abuse and it went on for quite some time. And again, even though those conditions went into remission, that doesn't mean that it has no effect. It's the same way as if you have a back problem, right, you can recover significantly, but it can lead to a fragile spine and offer, you know, create a basis for apportionment orthopedically. It's the same notion in psychiatry.
>
> Q Do you think that the CT scan that Dr. Corrato (sic) looked at with some showing of cognitive decline yet -- I'm sorry, Dr. Corrato's report dated from the December 19, 2023 report on Page 28 where he discussed the CT scan findings that showed some deterioration, do you think that there's any apportionment that would apply in your analysis or is that part of the 20 percent you were discussing?
>
> A It's part of the 20 percent. I think any time you see anything in a scan, it can be orthopedic, it could be psychiatric, it could be anything. You have to have a clinical correlation, so the presence of this abnormality in the [scan] doesn't necessarily -- they said it was mild -- doesn't necessarily correlate to some quantifiable pre-injury apportionment.
>
> Q And I also saw through the records that there was pre-existing use of antidepressants in 2014, 2015. Is that also part of the 20 percent that you were discussing, that the pre-existing depression that was being managed or do you want me to point those out directly?
>
> A Right. I mean, that was part of the treatment that he was having for the pre-injury depression.

(*Id.* at p. 15:7.)

Under Dr. Friedman's analysis, applicant's earlier psychiatric history rendered him more susceptible to injury. The AME then quantifies the percentage of apportionment by comparing applicant's susceptibility to the percentage of permanent disability arising out of a retroactive work restriction in the form of "no significant emotional stress" applicable to pre-2005 injuries.

We observe, however, that this analysis conflates causation of injury with causation of permanent disability. In *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (*Escobedo*) (Appeals Bd. en banc), we held:

> 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 p. 611.)

Here, Dr. Friedman improperly equates a susceptibility to *injury* with a factor of *permanent disability*. Pursuant to our analysis in *Escobedo*, the inquiries may overlap, but legally sufficient apportionment must be grounded in an analysis of causation of permanent disability. Here, Dr. Friedman does not substantively explain how the identified factors of apportionment are presently manifesting in permanent disability.

In addition, we observe that Dr. Friedman's analysis improperly aggregates multiple independent factors of apportionment, including a "difficult childhood," a history of alcoholism in remission, and prior use of anti-depressants. The AME has assessed 20 percent causation to a single amalgamated factor of apportionment using a discontinued retroactive work restriction without substantive discussion of how and why each factor is resulting in present permanent disability. (*Escobedo*, *supra*, at p. 621.) There is no discussion of how each of the identified factors of applicant's "earlier psychiatric history" resulted in applicant's present levels of disability, or how and why specific percentages assessed *as to each factor* were determined. While Dr. Friedman has appropriately surveyed applicant's medical and vocational history, the final apportionment analysis fails to identify or parse individual factors of apportionment or explain how and why each factor or condition is causing applicant's present levels of permanent disability. Because the

apportionment analysis conflates causation of injury with causation of permanent disability, and because the opinion improperly aggregates multiple factors of apportionment, we conclude that the apportionment opinions of Dr. Friedman do not constitute substantial medical evidence. In the absence of valid apportionment, the reporting of Dr. Friedman rates to 14.01.00.00 – 26 – [1.4]36 – 480E – 33 – 33.

In addition to the orthopedic disability described by Dr. Wilson and the psychiatric disability described by Dr. Friedman, we also observe that applicant's ratable disability includes neurologically mediated headaches. Neurosurgery QME Dr. Edelman has observed that applicant suffers from daily headaches related in part to "direct trauma to the head," and to "cervicogenic pain radiating into the back of the head." (Ex. X18, Report of Fredric Edelman, M.D., dated October 4, 2022, at p. 12.) Dr. Edelman diagnosed a "post-traumatic head syndrome which includes a traumatic brain injury." (*Id.* at p. 13; Ex. X21, Transcript of the Deposition of Fredric Edelman, M.D., dated July 27, 2023, at p. 17:1.) However, the QME has also observed, "the AMA Guides do not address post-traumatic head syndrome or post-traumatic headache." (*Ibid*.) Accordingly, the QME has rated applicant's condition by analogy to "a DRE Cervical Category II, 8 percent Impairment of the Whole Person. (Table 15-5, Page 392 of the AMA Guides 5th Edition.)" (*Ibid.*)

The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman III*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) As the Court of Appeal stated in *Guzman III*:

> Section 4660, subdivision (b)(1), recognizes the variety and unpredictability of medical situations by requiring incorporation of the descriptions, measurements, and corresponding percentages in the Guides for each impairment, not their mechanical application without regard to how accurately and completely they reflect the actual impairment sustained by the patient.
>
> …
>
> If the physician expresses the opinion that the chapter applicable to a particular kind of injury does not describe the employee's injury, but all other chapters address completely different biological systems or body parts, it would likely be difficult to demonstrate that that alternative chapter supplies substantial, relevant evidence of an alternative WPI rating. In order to support the case for rebuttal, the physician must be permitted to explain why departure from the impairment percentages is necessary and how he or she arrived at a different rating. That explanation necessarily takes into account the physician's skill, knowledge, and

> experience, as well as other considerations unique to the injury at issue. In our view, a physician's explanation of the basis for deviating from the percentages provided in the applicable Guides chapter should not a priori be deemed insufficient merely because his or her opinion is derived from, or at least supported by, extrinsic resources. The physician should be free to acknowledge his or her reliance on standard texts or recent research data as a basis for his or her medical conclusions, and the WCJ should be permitted to hear that evidence. If the explanation fails to convince the WCJ or WCAB that departure from strict application of the applicable tables and measurements in the Guides is warranted in the current situation, the physician's opinion will properly be rejected. Without a complete presentation of the supporting evidence on which the physician has based his or her clinical judgment, the trier of fact may not be able to determine whether a party has successfully rebutted the scheduled rating or, instead, has manipulated the Guides to achieve a more favorable impairment assessment.

(*Guzman III*, *supra*, 187 Cal.App.4th at pp. 822, 828–829.)

Thus, in order to rebut a strict application of the AMA Guides, 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 comers of the AMA Guides; and (4) explain why that alternative rating most accurately reflects applicant's level of disability. (*Id.* at pp. 828–829.)

Here, Dr. Edelman has evaluated applicant and identified a condition that is not directly addressed in the AMA Guides but has further opined that applicant's headache condition may be rated by analogy to cervical spine impairment. (Ex. X18, Report of Fredric Edelman, M.D., dated October 4, 2022, at p. 13.) Moreover, the QME confirmed these conclusions in his deposition testimony, which we accept as reflecting "the physician's skill, knowledge, and experience, as well as other considerations unique to the injury at issue." (*Guzman III, supra*, 187 Cal.App.4th at pp. 829.) As rated by analogy, applicant's post-traumatic headache syndrome rates to 15.01.01.99 - 8 - [1.4]11 - 480I - 16 – 16.

In sum, applicant's orthopedic, psychiatric, and neurologic disability rate as follows:

Right Shoulder: 16.02.02.00 – 9 – [1.4]13 – 480G – 15 – 15%

Cervical Spine: 90% (15.01.01.00 - 8 - 11 - 480I - 16 - 16%) 14%

Lumbar Spine: 90% (15.03.01.00 - 16 - 22 - 480I - 29 - 29%) 26%

Psyche: 14.01.00.00 – 26 – [1.4]36 – 480E – 33 – 33%

Headaches (rated by analogy to DRE II): 15.01.01.99 - 8 - [1.4]11 - 480I - 16 – 16%

IV.

The parties contest the correct methodology by which applicant's percentages of disability corresponding to various body parts/systems should be combined. Pursuant to section 4660.1, the PDRS is prima facie evidence of an injured employee's permanent disability. (Lab. Code, § 4660; cf. *Ogilvie*, *supra*, at pp. 1274–1277.) The PDRS provides that the ratings for multiple body parts arising out of the same injury are "generally" combined using the CVC, which is appended to the PDRS. (2005 PDRS, at p. 1-10.) Yet, because it is part of the PDRS, the CVC is rebuttable and a reporting physician is not precluded from utilizing a method other than the CVC to determine an employee's whole person impairment so long as the physician's opinion remains within the four comers of the AMA Guides. (Lab. Code, § 4660; *Guzman*, supra, at pp. 818-829.)

Accordingly, the use of the multiple disabilities table is discretionary depending upon whether it produces a rating that fully compensates an applicant for the effects of his or her injury. (*Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 Cal.App.3d 720, 728 [41 Cal.Comp.Cases 81, 87].)

In *Kite v. East Bay Municipality Util. Dist.* (December 5, 2012, ADJ6719136) [2012 Cal. Wrk. Comp. P.D. LEXIS 640) (writ den. sub nom. *Athens Administrators v. Workers' Comp. Appeals Bd.* (*Kite*) (2013) 78 Cal.Comp.Cases 213 [2013 Cal. Wrk. Comp. LEXIS 34] (*Kite*), applicant underwent industrial bilateral hip replacement surgeries. The evaluating orthopedic QME opined that "there is a synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," and that "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 determined that the most accurate rating of applicant's permanent disability would be achieved by adding the impairment for each hip, rather than by combining the respective impairment percentages under the CVC. Following defendant's petition for reconsideration, we affirmed the WCJ's decision that the "QME has appropriately determined that the impairment resulting from applicant's left and right hip injuries is most accurately combined using simple addition than by use of the combined-values formula." (*Id.* at p. 10.)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc), we discussed the two primary ways in which the *Kite* analysis had been applied to permanent disability disputes:

In the first approach, the CVC has been rebutted where there was evidence showing no actual overlap between the effects on ADLs as between the body parts rated. In the second approach, the CVC has also been rebutted where there is overlap, but the overlap creates a synergistic effect upon the ADLs.

a. No overlap of ADLs.

The first method for rebuttal of the CVC is to show that the multiple impairments, in fact, have no overlap upon the effects of the ADLs. (See e.g., *Devereux v. State Comp. Ins. Fund*, 2018 Cal.Wrk.Comp. P.D. LEXIS 592; *Guandique v. State of California*, 2019 Cal.Wrk.Comp. P.D. LEXIS 53.) We believe that one significant point of confusion on the issue of overlap is that the analysis should focus on overlapping ADLs, not body parts. Although the formula for the CVC is from the AMA Guides, the chart used to calculate the CVC is from the PDRS.

In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the medical evidence demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

…

b. Overlapping ADLs with a Synergistic Effect

The next method for rebutting the CVC was first discussed in *Kite*, where applicant was awarded permanent disability by adding the impairment to each hip and not by combining the impairments as ordinarily required by the PDRS under the CVC. (*Kite, supra*, 78 Cal.Comp.Cases 213.) In *Kite*, the CVC was rebutted by substantial medical evidence showing the synergistic effect of the two impairments on applicant.

'Synergy' is "(1) the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects; or (2) Cooperative interaction among groups. . . that creates an enhanced combined effect." (American Heritage Dict. (Fifth Edition, 2022).) In some cases, two impairments overlap with one another in their effect on ADLs to the extent that they amplify one another to cause further impairment than what is anticipated in the AMA Guides. Thus, it is permissible to add impairments where a synergistic amplification of ADLs is shown. For example, if applicant had an impairment in the dominant hand, an evaluator might find that the impairment impacts the ADL of non-specialized hand activities, such as being able to button a shirt. If applicant's impairment was to both hands, one might expect the ability to

> button a shirt to be even more difficult. The purpose of the CVC, avoiding duplication, does not apply in such cases as the impairments are not duplicative, because the two impairments together are worse than having a single impairment.
>
> We cannot emphasize enough that to constitute substantial evidence "…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**." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc), (emphasis added).) The term 'synergy' is not a "magic word" that immediately rebuts the use of the CVC. Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in Escobedo to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of ADLs and how those ADLs interact.

(*Id.* at pp. 691-693.)

We thus held in *Vigil* that where an applicant seeks to rebut the CVC, they must establish the following:

> 1. The ADLs impacted by each impairment to be added, and
> 2. Either:
> a. The ADLs do not overlap, or
> b. The ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs.

(*Id.* at pp. 688-689.)

Our en banc decision in *Vigil* issued on June 10, 2024, and is mandatory authority on all WCJ's and WCAB panels. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd.* (*Garcia*) (2005) 126 Cal.App.4th 298, 313, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Board* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236]; see also Govt. Code, § 11425.60(b).)

Here, the parties discussed the question of how to combine applicant's percentages of disability at the deposition of Dr. Friedman. Therein, Dr. Friedman reviewed the ADL questionnaire that applicant completed prior to his in-person evaluation with the AME. (Ex. X15, Transcript of the Deposition of David Friedman, M.D., dated February 26, 2025, at p. 33:4.) The

AME reviewed the extent to which each ADL was affected by applicant's injuries, as self-reported by applicant. (*Id.* at p. 34:7.) Thereafter, the AME was asked to "determine if there's overlap between impairment for separate body parts that are injured and how that affects the ADLs." (*Id.* at p. 35:21.) In response, the AME reviewed each ADL detailed in the questionnaire and whether it overlapped with other ADLs, and whether the overlap resulted in increased or amplified impact on the overlapping ADLs. (*Id.* at p. 36:23.) Following this analysis, the AME was asked to summarize his conclusions as follows:

> Q. And now today, you have outlined those limitations and loss of function of ADLs; is that correct?
>
> A Correct.
>
> Q So when you discuss pain and limitations now today, you've added in the limitations of Activities of Daily Living; is that correct?
>
> A As a result of that synergy, that's correct.
>
> Q And then the same page, second-to-last paragraph, you stated, "The impact of all three aspects are synergistic in nature. Pain from the orthopedic and neurological injuries intensified the depression. The depression, in turn, intensifies, worsens the experience of the pain from a neurologic, from an orthopedic injury creating a vicious cycle that is chronic in nature." Do you recall saying that?
>
> A Yes, sir, I see it.
>
> Q And today, you've outlined this synergistic of the Activities of Daily Living that have an impact on Mr. Leiva; is that correct?
>
> A Correct.
>
> Q And then finally, in the last paragraph, you said, "According, in my opinion, the most appropriate method of assessing the overall disability is by adding the Whole Person Impairment as opposed to utilizing of the Combined Values Chart of the AMA Guides."
>
> A Yes.
>
> Q When you say "adding up the disability pursuant to *Vigil*,'' are you saying the Activities of Daily Living have caused an impairment which is unfair to do the Combined Values Chart and that you would need to add up the disability?

A Pursuant to *Kite* and *Vigil*, yes.

Q Do you believe that by going over the Activities of Daily Living, that you have, in fact, complied with the Vigil case?

A Yes.

Q So this means that all the disability neurologically, orthopedically and psychiatrically should be added pursuant to both Kite and Vigil?

A In my opinion based on my understanding of those two cases, yes.

(Ex. X15, Transcript of the Deposition of David Friedman, M.D., dated February 26, 2025, at p. 40:6.)

Defendant challenges Dr. Friedman's conclusions, contending his opinions are not "substantial evidence for purposes of rebutting the use of the CVC because he did not do a personal assessment of each ADL … Dr. Friedman had an interpreter go over the list of ADLs with applicant and mark boxes based on the applicant's responses." (Defendant's Petition, at p. 8:3.) Defendant asserts that "[t]he physician needs to have direct knowledge of the ADLs and how they are impacted in order to understand the synergistic effect. Absent a detailed review of these factors, the analysis provided by Dr. Friedman is inadequate to rebut the CVC." (*Id.* at p. 8:24.)

The WCJ's Report observes, however, that "[t]he combined reports and deposition of AME Dr. Friedman are considered substantial medical evidence when reviewed as a unit." (Report on Defendant's Petition, at p. 4.) Consequently, "AME Freeman's review of Activities of Daily Living is adequate to make determinations per the KITE and VIGIL cases." (Finding of Fact No. 13.)

We agree. Dr. Friedman has substantively engaged in the inquiry required under *Vigil* and has reviewed applicant's activities of daily living in detail, providing his reasoning as to why he believes the overlapping impact of various activities of daily living serve to amplify the effects of the underlying impairments. (*Vigil, supra*, 89 Cal.Comp.Cases at p. 689.) To the extent that defendant challenges the veracity of applicant's self-reported ADLs, defendant did not raise these issues with the AME at deposition, or in subsequent requests for supplemental reporting. Moreover, defendant offers no citation to evidence in the record that would substantially conflict with the AME's understanding of applicant's ADLs. The AME has further found applicant to be "a credible, candid historian." (Ex. X12, Report of David Friedman, M.D., dated May 30, 2024, at p. 23; Ex. X15, Transcript of the Deposition of David Friedman, M.D., dated February 26, 2025,

at p. 22:8.) Accordingly, and following our independent review of the record, we agree with the WCJ's assessment that AME Dr. Friedman appropriately analyzed the appropriate methodology as set forth in *Vigil*, *supra*, 89 Cal.Comp.Cases 686. We therefore conclude that applicant's impairments are appropriately added based on Dr. Friedman's analysis of the impact of each impairment on the activities of daily living and his determination that either "(a) there is no overlap between the effects on ADLs as between the body parts rated; or (b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs." (*Id.* at p. 694.)

Applicant's final permanent disability is thus the sum of his right shoulder disability of 15 percent, cervical spine disability of 14 percent after apportionment, lumbar spine disability of 26 percent after apportionment, psychiatric disability of 33 percent, and headaches disability (rated by analogy) of 16 percent, yielding 104 percent aggregate disability, equivalent to a finding of permanent and total disability.

In summary, we agree with the WCJ that the record does not establish that applicant is entitled to a presumption of permanent and total disability based on mental incapacity under section 4662(a)(4). We further agree with the WCJ's determination that the apportionment analysis of orthopedic AME Dr. Wilson is substantial evidence. However, we conclude that the apportionment analysis of AME Dr. Friedman is not substantial evidence because it conflates causation of injury with causation of disability. We also concur with the WCJ's determination that applicant has successfully rebutted the PDRS by establishing that his disabilities should be added rather than combined pursuant to the deposition testimony of Dr. Friedman. When applicant's disabilities are added, his percentage of permanent disability exceeds the 100 percent threshold for a finding of permanent and total disability.

Accordingly, we will grant applicant's petition and rescind the F&A. We will restate the WCJ's Findings of Fact, except that we will amend them to find that the apportionment analysis of Dr. Wilson constitutes substantial evidence, while the apportionment of Dr. Friedman does not. We will amend Finding of Fact No. 16 to reflect that applicant has sustained 100 percent permanent and total disability as a result of his March 28, 2018 injury. We will further amend the Award to reflect applicant's entitlement to lifetime permanent disability benefits at the initial rate of $1,199.11 per week, subject to SAWW adjustments under section 4659(c), less reasonable attorney's fees in an amount be adjusted by the parties, with jurisdiction reserved to the WCJ in case of further dispute.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of August 28, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of August 28, 2025 is **RESCINDED** and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. In Case No. ADJ11372081, applicant, while employed on March 28, 2018 as a day laborer, Occupational Group Number 480, at Los Angeles, California by Webcor Construction, sustained injury arising out of and in the course of employment to head, headaches, right shoulder, neck, low back, TMJ, left ear tinnitus, both eyes, loss of consciousness, and psyche. Further, it was found by the AMEs and the regular physician that applicant sustained injury arising out of and in the course of employment resulting in a "violent" injury. Applicant did suffer a traumatic brain injury.
2. In ADJ15621674, applicant, while employed during the period March 1, 2017 through May 18, 2018 as a laborer, Occupational Group Number 480, at Los Angeles, California by Webcor Construction, sustained injury arising out of and in the course of employment in the form of bilateral hearing loss.
3. In ADJ11645081, applicant, while employed on or about June 20, 2017 as a laborer, Occupational Group Number 480, at Los Angeles, California by Webcor Construction, sustained injury arising out of and in the course of employment to left wrist, left index finger and left hand.
4. At the time of injuries, the employer's workers' compensation carrier was Property and Casualty Insurance Company of Hartford, administered by The Hartford.
5. At the time of injury, the employee's earnings were $1,798.67 per week, warranting an indemnity rate of $1,199.11 for temporary disability and maximum for permanent disability.
6. The injuries resulted in temporary disability for the period commencing March 28, 2018 for 104 weeks payable at the rate of $1,199.11 per week, allowing for credit for periods worked through May 18, 2018, or other dates thereafter, according to proof.

7. The injuries of ADJ11372081 (specific - 03/28/2018) and ADJ15621674 (CT to 05/18/2018) are inextricably intertwined as to the left ear.
8. The report of Laura Wilson is not substantial medial evidence to the extent of not applying medical apportionment.
9. The report of Amy Koellner is not substantial evidence due to inability to meet with the Applicant.
10. The reports of Dr. Safi, Lamm, Haronian and Angerman are reviewed by the Agreed Medical Evaluators, Qualified Medical Evaluators, and/or regular physician, who are found to have greater reliability.
11. The combined reports and deposition of AME Dr. Friedman are considered substantial medical evidence when reviewed as a unit.
12. AME Friedman's review of Activities of Daily Living is adequate to make determinations per the decisions in *Kite v. East Bay Municipality Util. Dist.* (December 5, 2012, ADJ6719136) [2012 Cal. Wrk. Comp. P.D. LEXIS 640) and *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc).
13. Applicant has permanent impairment of 100 percent.
14. The apportionment opinions of Agreed Medical Evaluator Robert Wilson, M.D., constitute substantial evidence, while the apportionment opinions of Agreed Medical Evaluator David Friedman, M.D., do not constitute substantial evidence.
15. Applicant has sustained 100 percent permanent and total disability as a result of the specific injury of March 28, 2018, ADJ11372081.
16. Applicant has a separate injury based on the findings of Dr. Wilson as to the specific of June 1, 2017, ADJ11645081, with a rating as to left wrist, left index finger of permanent disability of 5 percent PD to the left wrist and 5 percent to the left index finger, with no apportionment. This is a CVC of 10 percent.
17. Applicant has a separate cumulative trauma injury from 03/01/2017 through 05/18/2018 resulting in hearing loss per PQME Roven, MD with a permanent disability of 0 percent.
18. Applicant will require further medical treatment to cure or relieve from the effects of each injury.

19. Applicant is entitled to reimbursement of self-procured medical treatment payable by defendant pursuant to the Official Medical Fee Schedule in an exact amount to be adjusted by and between the parties, with the WCAB retaining jurisdiction in the event of a dispute.
20. Applicant is entitled to reimbursement of medical-legal costs payable by defendant pursuant to the Title 8, Cal. Code of Regs, 8, § 9795 and/or § 9795.3 in an exact amount to be adjusted by and between the parties with the WCAB retaining jurisdiction in the event of a dispute.
21. If the Employment Development Department (EDD) has paid applicant Unemployment Compensation Disability Benefits, EDD is entitled to recover its lien in full plus interest as allowed by Unemployment Insurance code§ 2629.1.

AWARD

AWARD IS MADE in favor of PEDRO LEIVA against WEBCOR CONSTRUCTION LP of:

a. Temporary disability for the period commencing March 28, 2018, for 104 weeks payable at the rate of $1,199.11 per week, less credit for time worked, less credit for sums previously advanced on account thereof;
b. In ADJ11372081, permanent and total disability at the initial weekly rate of $1,199.11, subject to annual adjustment per Labor Code section 4659(c), payable for the remainder of applicant's lifetime, commencing on the day following the last date of entitlement to temporary total disability, less any less credit for sums heretofore paid on account thereof, less reasonable attorney's fees of 15 percent to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of further dispute;
c. In ADJ11645081 permanent disability indemnity of 14 percent at the rate of $290 per week for 60.25 weeks for a value of $13,412.50, commencing from the last payment of TTD, less credit for any sums heretofore paid on account thereof, less 15 percent applicant attorney's fees from the far end of the award as necessary;
d. In ADJ15621674 Permanent Disability indemnity of 0 percent as to the de minimus hearing loss;
e. Reimbursement of self-procured medical treatment in an amount to be adjusted by the parties;

f. Reimbursement of medical-legal costs in an amount to be adjusted by the parties; and

g. Future medical treatment reasonably required to cure or relieve from the effects of the injury herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 17, 2025

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

PEDRO LEIVA
LAW OFFICE OF DENNIS J. HERSHEWE
WAI, CONNOR & HAMIDZADEH

SAR/abs

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