WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

REBECCA MILLS, *Applicant*

vs.

STATE COMPENSATION INSURANCE FUND; permissibly self-insured, administered by AIMS, *Defendants*

Adjudication Number: ADJ10774716
San Francisco District Office

OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on June 2, 2025, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment in the form of a stroke and to the psyche; that applicant's injury has resulted in permanent total disability; and that defendant has not met its burden of proof with regard to non-industrial apportionment.

Defendant contends that Qualified Medical Evaluator (QME) Scott T. Anderson, M.D.'s apportionment analysis is substantial evidence and that the WCJ should have relied on the Dr. Anderson's opinion and the holding in Lindh to find valid apportionment.

We received an Answer from applicant.

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

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, for the reasons stated in the WCJ's Report, which is adopted and incorporated herein, and for the reasons discussed below, we will deny defendant's Petition.

DISCUSSION

I.

As a preliminary matter, former Labor Code section[1] 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 July 3, 2025, and 60 days from the date of transmission is Monday, September 1, 2025. The next business day that is 60 days from the date of transmission is Tuesday, September 2, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Tuesday, September 2, 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

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

[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.

act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on July 3, 2025, and the case was transmitted to the Appeals Board on July 3, 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 July 3, 2025.

II.

We considered apportionment of disability in *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc):

> 1) Section 4663(a)'s statement that the apportionment of permanent disability shall be based on "causation" refers to the causation of the permanent disability, not causation of the injury, and the analysis of the causal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself.
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> 2) Section 4663(c) not only prescribes what determinations a reporting physician must make with respect to apportionment, it also prescribes what standards the WCAB must use in deciding apportionment; that is, both a reporting physician and the WCAB must make determinations of what percentage of the permanent disability was directly caused by the industrial injury and what percentage was caused by other factors.
>
> 3) Under section 4663, the applicant has the burden of establishing the percentage of permanent disability directly caused by the industrial injury, and the defendant has the burden of establishing the percentage of disability caused by other factors.
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> ***
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> 5) Even where a medical report "addresses" the issue of causation of the permanent disability and makes an "apportionment determination" by finding the approximate relative percentages of industrial and non-industrial causation under section 4663(a), the report may not be relied upon unless it also constitutes substantial evidence.

(Escobedo v. Marshalls (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Board en banc).)

In order to comply with section 4663, a physician's report in which permanent disability is addressed must also address apportionment of that permanent disability. However, the mere fact

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

In the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Appeals Board can determine whether the physician is properly apportioning under correct legal principles. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 621.) Our decision in *Escobedo* summed up the minimum requirements for an apportionment analysis as follows:

> [T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.
>
> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain **how** and **why** the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and **how** and **why** the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.

(*Ibid.*, emphasis added.)

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

Accordingly, apportionment under section 4663 involves two separate but related analyses: (1) the identification of the factors causing permanent disability, and (2) a determination of the

extent to which each of those factors contributed to present permanent disability, expressed as an approximate percentage.

Here, the QME opined regarding apportionment as follows: "For the industrial conditions, I reviewed them as being 60% industrial, 20% non-industrial due to hypertension, 10% non-industrial due to diabetes and 10% non-industrial due to high cholesterol." (Exhibit 1, Dr. Anderson's September 14, 2023 QME report, p. 2; Exhibit 4, May 2, 2024 QME report, p. 2.) However, the QME did not explain how or why hypertension, diabetes, or high cholesterol were causing permanent disability at the time of the evaluation. Nor does the QME provide any substantive discussion of how each factor accounts for a percentage of present disability.

As the WCJ observed, apportionment under section 4663 requires an analysis of causation of permanent disability, rather than causation of the injury.

> Section 4663(a) states that "[a]pportionment of permanent disability shall be based on causation." The plain reading of "causation" in this context is causation of the permanent disability. This reading is consistent with other provisions of section 4663 and 4664. That is: (1) section 4663(b) provides that a physician's report on permanent disability shall address "the issue of causation of the permanent disability;" (2) section 4663(c) provides that a physician's report shall find "what approximate percentage of the permanent disability was caused by the direct result of injury . . . and what approximate percentage of the permanent disability was caused by other factors;" and (3) section 4664(a) provides that an employer "shall only be liable for the percentage of permanent disability directly caused by the injury. . . . " (Emphases added.) The issue of the causation of permanent disability, for purposes of apportionment, is distinct from the issue of the causation of an injury. (See *Reyes v. Hart Plastering* (2005) 70 Cal.Comp.Cases 223 (Significant Panel Decision).) Thus, the percentage to which an applicant's injury is causally related to his or her employment is not necessarily the same as the percentage to which an applicant's permanent disability is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions might be different.

(*Escobedo, supra*, 70 Cal.Comp.Cases at p. 611.)

At his deposition, QME Dr. Anderson testified that applicant's hypertension, hyperlipidemia (high cholesterol), and diabetes are risk factors for a stroke. (Exhibit 5, Dr. Anderson's October 7, 2024 deposition, pp. 7-8.) However, Dr. Anderson testified that while these conditions increase the likelihood of a stroke, they do not increase the severity of a stroke. (*Id*., citing October 7, 2024 deposition, pp. 8-9.) We agree with the WCJ that Dr. Anderson is confusing causation of injury with causation of disability.

Based on the record before us, we concur with the WCJ's determination that applicant is 100% permanently and totally disabled. Because the QME offers no explanation of how he identified the extent to which each of the factors - other than the industrially-cause stroke - contributed to present permanent disability, expressed as an approximate percentage, the apportionment analysis does not constitute substantial evidence and an award of 100% disability is appropriate.

Accordingly, we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 2, 2025

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

REBECCA MILLS
GOLDMAN, MAGDALIN & KRIKES, LLP
BROWN & DELZELL, LLP
BOEHM & ASSOCIATES

JB/*pm*

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant was a claims adjuster who suffered a stroke. She filed an application alleging that work stress caused her injury. The employer denied the claim. At a prior trial, the WCJ found injury arising out of and in the course of employment to psyche and in the form of a stroke. This case proceeded to trial on the issues of permanent disability and apportionment. The panel QME apportioned to the risk factors: diabetes, hypertension and high cholesterol. After trial, I issued a Findings and Award, finding permanent total disability without apportionment. Defendant employer filed the instant petition for reconsideration challenging my finding of no apportionment.

FACTS

1. *Procedural background*.

Applicant Rebecca Mills filed an application for adjudication of claim alleging that she sustained a cumulative injury during the period February 4, 2002 to December 30, 2016 while employed as a claims adjuster for employer State Compensation Insurance Fund. The case proceeded to trial on the issue of AOE/COE on November 14, 2022 before WCJ Colleen Casey. At trial there was documentary evidence and applicant's testimony. Most of the documentary evidence was medical reports from the psyche QME, the internal medicine QME and the primary treating physician. Judge Casey issued a Findings and Award on November 22, 2022 in which she found that applicant sustained a cumulative injury in the form of a stroke and a psychological injury.

On December 12, 2022 Defendant filed a Petition for Reconsideration from the Findings and Award. On February 10, 2023 the WCAB denied Reconsideration. On April 23, 2025, this case proceeded to trial on the issues of permanent disability, apportionment and attorney's fees.

2. *Evidence at trial and decision*.

a. *Evidence at trial*

At trial the parties offered additional medical evidence, primarily newer medical reports and the deposition transcript of the internal medicine PQME, Scott Anderson, M.D. Applicant testified. Joint exhibits 1 through 5 address apportionment. Joint exhibits 1 to 4 are Dr. Anderson's

reports. Joint exhibit 5 is his deposition transcript. In my opinion on decision, I summarized these exhibits as follows:

Joint exhibit 1 is Dr. Anderson's September 14, 2023 re-evaluation report. Dr. Anderson noted that applicant is a seventy-year-old woman who suffered a cerebrovascular accident with left- sided paralysis. He first saw her in 2017 and issued multiple supplemental reports. He had reported that the stroke was non-industrial. After a trial, the stroke was determined to be industrial. This was an evaluation for permanent disability and apportionment.

Dr. Anderson noted that applicant is living in an assisted living facility. Due to her left-sided paralysis, she is largely confined to a wheelchair. She requires care for bathing and other activities of daily living. Her condition is worse than it was when he last evaluated her. Dr. Anderson performed a physical examination while applicant sat in her wheelchair because it was not feasible to get her out of the wheelchair. Dr. Anderson diagnosed: 1. Cerebrovascular accident with left-sided hemiplegia; 2. Left central cranial nerve VII palsy, secondary to cerebrovascular accident; 3. Post concussion syndrome secondary to fall associated with diagnosis #1; 4. Wheelchair-bound status; 5. Hypertension; 6. Diabetes mellitus type 2; 7. Hyperlipidemia; 8 Asthma. Applicant's condition was permanent and stationary. The industrial injury caused the stroke, cranial nerve palsy, post concussion syndrome and the need for a wheelchair. The other conditions were non-industrial.

Dr. Anderson stated (at page 12):

> At this point, she has a permanent total disability. I think this is based on the facts of the case and her wheelchair bound status and need to reside in assisted living with care by multiple other providers as well as associated cognitive issues related to her condition…This individual is completely unemployable based on the factors outlined above. Even a sedentary job such as looking at a computer would be too difficult for her. [T]his individual appears to be completely disabled due to the sequalae of her stroke… (page 14).

Dr. Anderson provided AMA Guides Ratings:

- Cerebrovascular accident with left-sided hemiplegia. Table 13-15. Class IV. 60% whole person impairment.
- Left central cranial nerve VII palsy. Table 13-12. 12% whole person impairment.
- Post concussion syndrome. Table 13-2. 8% whole person impairment.
- Wheelchair-bound status. Subsumed under rating for cerebrovascular accident.

The impairments should be combined using the combined values chart; not added. There is a need for further medical care. Applicant is a qualified injured worker. However, she would not be a good candidate for retraining.

Joint exhibit 2 is Dr. Anderson's November 27, 2023 supplemental report written in response to a written request from defense counsel. In the report, Dr. Anderson stated, he has no basis to change any of his opinions. *Joint exhibit 3* is Dr. Anderson's [February] 6, 2024 supplemental report written at the request of applicant counsel. In this report, Dr. Anderson stated:

> If one considers only the stroke, absent the hypertension, diabetes, and non-industrial high cholesterol, she would still be permanently totally disabled and unable to work. Therefore, we could attribute the permanent disability and inability to participate in the job retraining 100% to the stroke and resulting sequelae.

Joint exhibit 4 is another supplemental report from Dr. Anderson dated May 2, 2024, written in response to a defense request. He is asked to clarify whether or not applicant is 100% impaired due the stroke or due to the stroke combined with other conditions. Dr. Anderson stated:

> All of the conditions listed in your letter would contribute to her 100% impairment rating. These would include the cerebrovascular accident with the left-sided hemiplegia, the cranial nerve VII palsy, the post-concussion syndrome, which collectively contributes to rendering her non-competitive in the work market.

Joint exhibit 5 is the 26 page transcript of Dr. Anderson's deposition taken October 7, 2024. Applicant's current disability level is unable to return to work; effectively 100% disabled (7:13-18). She is 100% disabled overall, including her other conditions. (7:19-23). Hypertension, hyperlipidemia and diabetes are risk factors for a stroke. (pages 7-8). These conditions increase the likelihood of a stroke but do not increase the severity of a stroke. (pages 8-9). The stroke caused 60% impairment. However, looking at her overall condition, including her hypertension, diabetes, and asthma combined with the stroke and wheelchair-bound status, there is no likelihood that she could reintegrate into the workplace. She is 100% disabled just based on her overall clinical status (14:7- 18). Hypertension is part of the reason applicant is unable to return to the work force. It is severe enough to have caused a stroke. Stress increases her blood pressure. That is one more obstacle to employment that could be added to the stroke (page 14-15).

Applicant has impairment for her left upper extremity. He stated that she was unable to use her left arm. He did not provide an impairment rating for the left upper extremity because at page 306 of the AMA Guides he believed he was supposed to only provide an impairment rating for the most severe manifestation (stroke). If permitted by law, he would provide a 45% whole person impairment rating using table 13-16 of the AMA Guides, for the left upper extremity, with 40% apportioned to non-industrial factors. Dr. Anderson noted the contradiction in the AMA Guides between the statement on page 306 and examples 13-41 and 13-42. (pages 15-18).

Applicant needs to live in an assisted living facility as a result of her stroke. (pages 19-20).

Dr. Anderson explained his apportionment to risk factors. Hypertension damages the interior of arteries and creates a greater likelihood of an occlusion occurring, which, in turn deprives the brain of oxygen causing a stroke. This was, or could have been, a factor regarding applicant's stroke (page 20). Diabetes causes calcification of the artery which makes it more rigid and accelerates atherosclerosis. It alters the anatomy of the artery making it more prone to occlusion (page 21). Hyperlipidemia results in cholesterol building up in the vessels. That narrows the vessels and makes them more likely to occlude (page 21).

The 60% station and gait impairment for the stroke and the 45% impairment for the left upper extremity should be added rather than combined using the combined values chart, given the impact on ADLs. For example, your left arm is paralyzed, you can't brace yourself when you try to walk, and, therefore, you are more inclined to have a catastrophic result if you try to walk. If you can't walk because your left leg is paralyzed, that makes the disability of the left arm worse because you have to rely more on the arm to brace yourself for bathing, toileting, transferring, etc. So, it would be more accurate to add those disabilities because there is a component of synergy in which having each of those conditions results in a clinical status that is worse than just the sum of the individual disabilities. The other two ratings for cognitive defect and facial droop should be combined.

b. *Decision*

On April 23, 2025 I took the matter under submission. On June 2, 2025 I issued a Findings of Fact and Award, finding permanent total disability without apportionment. I reasoned that Dr. Anderson's apportionment was not valid because he confused cause of injury with cause of disability.

I stated:

Is there valid apportionment?

This is the biggest issue in this case. Dr. Anderson apportioned 40% of applicant's permanent disability to risk factors: stress, hypertension, high cholesterol and diabetes. Applicant contended that Dr. Anderson's opinions on apportionment are not substantial evidence because he conflated causation of injury with causation of disability. Dr. Anderson reported that the three risk factors caused the stroke.

A stroke is an injury. It is not a disability. The disability in this case is that applicant is wheelchair-bound, unable to perform most activities of daily living, unable to live independently, her left arm is paralyzed and she has cognitive deficits.

Dr. Anderson testified at his deposition (Joint exhibit 5 pages 8-9) that the risk factors made applicant more susceptible to a stroke. However, he testified that the risk factors did not contribute to the severity of the stroke. The severity of a stroke is the disability. In this case applicant suffered a severe stroke with catastrophic effects. She is: unable to ambulate; cannot perform most activities of daily living; unable to live independently, unable to use her left arm; cognitively impaired. Dr. Anderson's deposition testimony reflects his confusion about causation of injury with causation of disability. He stated that the risk factors made the injury more likely; however the risk factors did not contribute to the disability. In this case, the injury and disability are not the same.

Defendant asserted that *City of Petaluma v. WCAB (Lindh)* (2018) 83 Cal.Comp.Cases 1869 is controlling because the *Lindh* court ruled that it was permissible for a physician to apportion to risk factors. In *Lindh*, applicant suffered an injury with loss of vision in the left eye. Mr. Lindh had an asymptomatic pre-existing disease which made him more susceptible to an eye injury. The *Lindh* court upheld the physician's apportionment of disability to a risk factor because the physician in *Lindh* stated that the injury and the disability were the same: loss of vision. Mr. Lindh had a condition which made him susceptible to loss of vision.

In the instant case, the injury (stroke) and disability (loss of mobility, loss of use of left arm, inability to live independently) are distinct, as discussed above. Dr. Anderson did not state that the risk factors caused the disability. To the contrary, he stated the risk factors made a stroke (the injury) more likely. He could not say that the risk factors contributed to the severity (the disability) of the stroke. Accordingly, the *Lindh* case is distinguishable.

Dr. Anderson apportioned to cause of injury. The apportionment is invalid. Defendant did not carry its burden of proof on apportionment. I find that applicant suffered permanent total disability without apportionment.

On June 23, 2023, defendant filed the instant Petition for Reconsideration from my finding that Dr. Anderson's apportionment was invalid. The petition is verified and timely. Applicant filed a response on June 24, 2025.

3. *Contentions on reconsideration*.

Defendant contends that I erred in finding that Dr. Anderson's apportionment to risk factors was invalid. Defendant contends that *Lindh v. City of Petaluma* (2018) 83 Cal.Comp.Cases 1869 is controlling and that I erred in distinguishing it. I disagree. Dr. Anderson's opinions on apportionment do not constitute substantial evidence.

DISCUSSION

[T]o constitute substantial evidence on apportionment under Labor Code § 4663, a medical opinion must, in addition to explaining how and why certain factors contributed to the assigned PD, differentiate between causation of injury and causation of disability:

> In order to constitute substantial evidence as to the issue of apportionment, the medical opinion must disclose the reporting physician's familiarity with the concepts of apportionment and must delineate the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors. (*Acme Steel v. Workers' Comp. Appeals Bd. (Borman)* (2013) 218 Cal. App. 4th 1137 [160 Cal. Rptr. 3d 712, 78 Cal. Comp. Cases 751]; *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc).) Also, the physician must explain the nature of the other factors, how and why those factors are causing permanent disability at the time of the evaluation, and how and why those factors are responsible for the percentage of disability assigned by the physician. (*Escobedo, supra*.) It is also important to note that "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." (*Escobedo, supra* at 611.) "Section 4663(a)'s statement that the apportionment of permanent disability shall be based on 'causation' refers to the causation of the permanent disability, not causation of the injury, and the analysis of the causal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself" (*Escobedo, supra* at 607.) *State of California/Department of Hospitals-Vacaville v. Workers' Comp. Appeals Bd. (Ham)*, 84 Cal. Comp. Cases 1006, 1008

In *Lindh*, the court specifically stated, the reporting physician "in fact, understood the distinction between the causes of an injury and the cause of a disability. What he said was that in this case they were the same, which the Board has recognized can be the case." *Lindh*, supra, 83 Cal.Comp.Cases 1869. In the instant case, the injury is a stroke. The physical disability which renders applicant permanently totally disabled is distinct. The following testimony from Dr. Anderson's deposition (Joint exhibit 5, pages 7-9) demonstrates that he apportioned to cause of injury:

Q And her other conditions, were you aware that the applicant had suffered from hypertension?
A Yes, I was aware.
Q Were you aware that the applicant suffered from diabetes?
A Yes, Counsel.
Q I am probably going to mispronounce this, but were you aware applicant suffered from hyperlipidemia?
A Yes, sir.
Q In terms of stroke, how can hypertension contribute to or cause a stroke?
A It's a major risk factor for strokes according to epidemiological studies. It's an observed phenomenon, and the mechanism probably involves damage to the vascular structures in the brain.
Q I want to ask you a similar question about diabetes, sir. How does diabetes cause a stroke?
A It's a risk factor, although not as great a risk factor as hypertension, and the mechanism also involves damage to blood vessels.
Q Sometimes attorneys can be very unoriginal. Turning to hyperlipidemia, how can hyperlipidemia cause a stroke?
A Hyperlipidemia does not directly cause a

stroke, but it predisposes to vasculopathy to some extent, meaning to narrowing of the blood vessels.

Q My next question is: In terms of the effects of a stroke, not necessarily the cause but the severity of the stroke, would hypertension be something that would cause a stroke in an individual who had hypertension to be more catastrophic or of greater significance?

A I think the effect is limited to just increasing the likelihood of a stroke. I am not aware that, with the same anatomical disruption, that hypertension worsens the severity of the stroke.

Q And a similar question with diabetes. Somebody suffering from diabetes, would that be a factor for whether the stroke would be of greater significance or more catastrophic?

A No, it would not be.

Q And in terms of the hyperlipidemia, same question. Would someone suffering from hyperlipidemia who had a stroke be more inclined to have a more severe or catastrophic stroke?

A Once a stroke had occurred, there is no indication that it would be a worse stroke, no.

These passages from Dr. Anderson's deposition show that he apportioned to causation of injury (stroke) not disability. Dr. Anderson conceded that the risk factors have no effect on the disabling effects of a stroke.

Two cases cited by applicant in her response to the petition for reconsideration further illustrate the issue of apportionment risk factors. Both cases involved improper apportionment to diabetes.

In *State of California/Department of Hospitals-Vacaville v. Workers' Comp. Appeals Bd. (Ham)* (2019) 84 Cal.Comp.Cases 1006 (writ denied), the physician apportioned 50 percent of

applicant's permanent disability to non-industrial diabetes. The WCJ found the apportionment not substantial evidence because the physician apportioned to cause of injury rather than cause of disability. In *Ham*, applicant had diabetes which the doctor stated was a risk factor for him acquiring a MRSA infection. It was undisputed that the diabetes was a contributing factor in the development of the MRSA which led to a left foot amputation. The WCJ stated in the report on reconsideration, that the doctor incorrectly apportioned disability by attempting to apportion to the non-industrial diabetes, which did not cause the permanent disability, since the permanent disability was caused by the industrial MRSA and resulting amputation. The amputation was distinct from the orthopedic disability resulting therefrom. The WCAB denied reconsideration. The WCAB noted that the doctors did not explain how and why applicant's diabetes was causing permanent disability or how and why it was responsible for the percentage of disability they assigned.

Similarly, in the instant case, Dr. Anderson did not explain how and why the three risk factors (diabetes, high blood pressure and high cholesterol) caused the disability. To the contrary, at his deposition he stated that these were merely risk factors for a stroke and there was no correlation between each risk factor and the severity of a stroke. I correctly found that Dr. Anderson's opinion on apportionment was not substantial evidence. He apportioned to causation of injury. He did not explain how and why the risk factors caused the disability.

In *Wiest (Scott) v. Cal. Dep't of Corr.* (2021) 86 Cal.Comp.Cases 856, the WCAB upheld the WCJ who followed a physician who rejected apportionment to the risk factor of diabetes. *Wiest* had pre-existing diabetes which led to disability of bilateral below the knee amputations and inability to walk. In *Wiest*, the reporting physician did not apportion to diabetes. The physician reported that the amputations, not the diabetes caused the disability. Defendant maintained that apportionment is required because the underlying diabetes led to the need for the amputations. The *Wiest* court stated that, "applicant's permanent disability rating is not based on any diabetic impairment, but on the orthopedic impairments from his amputations and gait derangement." The court distinguished *Lindh*, because in *Lindh*, the reporting physician identified the underlying condition "as a contributing cause of the disability." (emphasis added). In the instant case, Dr. Anderson failed to explain how and why diabetes, high blood pressure and high cholesterol caused applicant's *disability*. His explanation of how these risk factors led to a stroke is not sufficient. Defendant did not carry its burden of proof on apportionment.

RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on June 23, 2025, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

Barry Gorelick
Workers' Compensation Judge

The Report and Recommendation on Petition for Reconsideration was filed and served on all parties listed in the Official Address Record and the case was transmitted to the Appeals Board on this date. ON: July 3, 2025 By: ATang