

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

ALBERT SALERNO, *Applicant*

vs.

**CAL FIRE, legally uninsured, administered by
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11216841; ADJ11216670
Riverside District Office**

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

Defendant seeks reconsideration of the “Joint Findings and Award” (F&A) issued on February 10, 2026, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that in case number ADJ11216841, applicant sustained permanent total disability after adding applicant’s multiple disabilities and not combining them using the Combined Values Chart (CVC).

Defendant contends that substantial medical evidence does not establish rebuttal of the CVC.

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

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ’s Report. Based on our review of the record we will grant defendant’s Petition for Reconsideration and as our Decision After Reconsideration, we will rescind the February 10, 2026 F&A and return this matter to the trial level for further proceedings.

FACTS

Per the January 7, 2025 Opinion and Decision After Reconsideration (“Decision”):

Applicant worked as a firefighter when he sustained an admitted specific injury on August 7, 2012 to his right shoulder in ADJ11216670. (Minutes of Hearing and Summary of Evidence, September 9, 2020, p. 2, lines 9-11.) Applicant sustained a cumulative injury through the period ending on February 18, 2013, to his heart, cervical spine, thoracic spine, lumbar spine, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral knees, bilateral ankles, and in the form of hypertension, hernia, and hearing loss. (*Id.* at p. 2, line 23, through p. 3, line 2.) This matter proceeded to a consolidated trial primarily upon the issues of permanent disability and apportionment, with applicant raising rebuttal of the CVC. (*Id.* at p. 3, lines 10-16.)

(Opinion and Decision After Reconsideration, January 7, 2025, p. 2.)

In the prior decision, the Appeals Board detailed the reporting of both agreed medical evaluator (AME) Albert Simpkins, Jr., M.D., and internal medicine qualified medical evaluator (QME) Jonathan Green, M.D., and noted that neither doctor had appropriately conducted an analysis that justified rebuttal of the CVC. For example, Dr. Green had not even conducted an analysis of activities of daily living (ADLs) in any of his evaluations of applicant. (Decision, p. 5.)

The Appeals Board directed the parties to the recently issued en banc decision in *Vigil v. County of Kern*, (2024) 89 Cal.Comp.Cases 686, and returned the matter to the trial level for further development of the record. Upon return, the parties obtained the depositions of Drs. Simpkins and Green. (Joint Exhibits 12 and 13.)

Dr. Simpkins testified to CVC rebuttal, in pertinent part, as follows:

Well, first of all, any lifting, pushing, pulling activity is going to require the action of your upper extremities. And so if you have a level of impairment with those particular body parts, it's going to directly impact you in those particular activities whether it's the shoulder where the shoulder is the part that puts the hands and wrist in position to do work in space which would be pushing or pulling whether then you're actually performing the activity, you've got to tighten up your elbows and your wrists to perform, once again, pushing, pulling activities.

So that's why I started out with saying specifically, globally, the upper extremities is going to be impacted or necessary for most activities of daily living. I mean, that's why if you look at the charts in the guidelines, you know, if you have an amputation, there's a significant WPI associated with it when you're talking about with activities of daily living since it is primarily an impairment guide. So it's not just ability to perform in the open labor market, but it is also to perform activities of daily living. I mean, that's my understanding of impairment.

(Joint Exhibit 13, Deposition of Albert Simpkins, M.D., June 6, 2025, p. 11, lines 23, through p. 12, line 19.)

Well, I mean, I thought that I answered it, but in the perspective as at the beginning, the interplay between the systems as was outlined first, we had the hypertension, the hernia, and the arrhythmia, and I believe there was one other tiring, gastroesophageal reflux or something like that, but the impact, I mean, they are synergistic because the activities of daily living that we do whether it's pushing, pulling, that type of thing that would impact from an orthopedic perspective, those things would also impact someone's potential for developing an arrhythmia, impact elevation of their blood pressure, also that would also strain and aggravate a hernia. So that's why the synergy is, in my opinion, you know, appropriate.

(*Id.* at p. 18, lines 10-23.)

Well, I mean, once again, I don't think it takes, you know, a lot of experience to know that with a hernia, there's an obvious defect in the structural abilities -- I mean structure of the core or abdomen. And in any, you know, lifting activity requires, you know, core activity and strength and one would be -- you know, they are, in my opinion. That's why they're additive rather than CVC-worthy.

(*Id.* at p. 19, lines 15-22.)

Dr. Green testified to applicant's ADLs, in pertinent part, as follows:

Q. Was there specific activities of daily living that you wanted to name, something that he was doing in his everyday life?

A. I don't know. I don't recall questioning - this has been five years ago, so I don't recall. I -- he did fill out an ADL chart, but that was a combination of his internal and his orthopedic problems.

Q. I was just hoping to find a specific activity of daily living and ask how those two would affect that specific activity, but if we don't have a specific --

A. I don't know.

(Joint Exhibit 12, Deposition of Jonathan Green, M.D., April 9, 2025, p. 19, lines 1-11.)

As to rebuttal of the CVC, Dr. Green testified:

Medically, impairments are added because again, as I testified earlier, with an arrhythmia, if you have -- if the arrhythmia is out of control that makes the hypertensive heart disease worse, and if the hypertensive heart disease is worse, that makes the arrhythmia worse, so they have therefore a synergistic effect.

(*Id.* at p. 22, lines 7-13.)

DISCUSSION

I.

Former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

(2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

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 March 23, 2026, and 60 days from the date of transmission is Friday, May 22, 2026. This decision is issued by or on May 22, 2026, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

¹ All future references are to the Labor Code unless noted.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on March 23, 2026, and the case was transmitted to the Appeals Board on March 23, 2026. 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 March 23, 2026.

II.

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).) “When the foundation of an expert’s testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions.” (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to “ensure substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

As stated in our prior Decision:

One element of the PDRS is the Combined Values Chart (CVC). The purpose of the CVC is described within the PDRS, which cites to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (2001) (AMA Guides), which is adopted and incorporated for purposes of rating permanent disability under the 2005 PDRS. (Lab. Code, §§ 4660, 4660.1; Hoch, Andrea, Schedule for Rating Permanent Disabilities, (2005), p. 1-11; AMA Guides, pp. 9-10.) In sum, impairment under the AMA Guides is designed to reflect how a disability affects a person’s activities of daily living (“ADLs”) (self-care, communication, physical activity, sensory function, non-specialized hand

activities, travel, sex, and sleep). (AMA Guides, pp. 2-9.) CVC “values are derived from the formula $A + B(1-A)$ = combined value of A and B, where A and B are the decimal equivalents of the impairment ratings.” (AMA Guides, p. 604.)⁵

Impairments to two or more body parts are usually expected to have an overlapping effect upon the activities of daily living, so that generally, under the AMA Guides and the PDRS, the two impairments are combined to eliminate this overlap.

(*Vigil v. County of Kern*, 2024 Cal. Wrk. Comp. LEXIS 23 at *7-8, (Appeals Board en banc).)

The Combined Values Chart (CVC) in the Permanent Disability Ratings Schedule (PDRS) may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and 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 *13.)

(Decision at p. 10.)

First and foremost, Dr. Green’s opinion is not substantial evidence as he has not conducted any first-hand analysis of applicant’s ADLs in this matter. Upon direct questioning of applicant’s ADLs, Dr. Green testified that he did not know the ADLs and suggested that applicant’s evaluation was over five years past. Dr. Green further noted that the ADJ chart, which applicant completed, combined impacts from both his orthopedic and internal injuries.

Next, in deposition, applicant’s attorney suggested via questioning that synergy exists when two impairments both impact the same ADL. (Joint Exhibit 12, *supra* at p. 13, lines 14-23.) This is the analysis conducted by the evaluators. However, this is not the correct legal analysis. As explained in *Vigil*:

Impairments to two or more body parts are usually expected to have an overlapping effect upon the activities of daily living, so that generally, under the AMA Guides and the PDRS, the two impairments are combined to eliminate this overlap. For example, impairments to the low back and the knee would likely both affect a person’s physical activity, ability to travel, and potentially other ADLs. In this example, the two impairments would then be combined in a way to eliminate this overlap.

(*Vigil, supra* 89 Cal.Comp.Cases at 691.)

For example, the fact that applicant had difficulty lifting due to both his orthopedic and internal injuries does not establish synergy. The evaluator must first establish the impact on the ADLs from the orthopedic system, then separately establish the impact on ADLs from the internal system. Finally, the evaluator determines whether the ADL impacts worsen when the two systems combine.

Orthopedically, applicant could not lift 10 pounds and had some difficulty lifting 5 pounds. (Joint Exhibit 1, p. 6.) This is a particularly stringent restriction. Dr. Green never assigned a heavier preclusion from lifting when combining the impacts of the two body systems. No lifting restriction was assigned by Dr. Green. He simply testifies that the two body systems combine to impact applicant's lifting; however, as explained in *Vigil*, that is expected and would justify use of the CVC.

Upon return, the parties may wish to consider whether the current evaluations, conducted over five years ago, are now stale. It also appears that the reporting of Dr. Green failed to discuss the impacts on ADLs in assigning impairment under the AMA Guides. For these reasons, further development of the record appears appropriate.

Accordingly, we grant defendant's Petition for Reconsideration and as our Decision After Reconsideration, we rescind the February 10, 2026 F&A and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Joint Findings and Award issued on February 10, 2026, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings and Award issued on February 10, 2026, by the WCJ is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 22, 2026

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

**ALBERT SALERNO
SLATER ASSOCIATES
STATE COMPENSATION INSURANCE FUND**

EDL/mt

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