WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

BROCK WILSON, *Applicant*

vs.

OZARK TRUCKING; ZURICH NORTH AMERICA, *Defendants*

Adjudication Number: ADJ18946915
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Award of July 9, 2026 wherein it was found that while employed on November 20, 2023 as a truck driver, applicant sustained industrial injury to his right shoulder causing permanent disability of 22% and the need for further medical treatment. In finding permanent disability of 22%, the WCJ followed the permanent impairment opinion of qualified medical evaluator (QME) chiropractor Dennis J. Moore, D.C. who combined range of motion impairment, strength loss impairment, as well as impairment categorized as "other disorders." With regard to the impairment ascribed to other disorders, the QME determined that applicant's strength and loss of motion impairment did not adequately reflect applicant's permanent impairment and determined that applicant had additional impairment analogous to the impairment after having undergone distal clavicle resection, despite the fact that applicant had not had that procedure.

Defendant contends that the WCJ erred in finding permanent disability of 22%, arguing that it was improper to rate applicant's loss of strength impairment and arguing that the "alternative" clavicle resection rating was not supported by substantial medical evidence and that, even if it was, it should have been utilized instead of the other ratings rather than in addition to the ratings. We have not received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will deny the defendant's Petition for the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code section 5909, which states 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 Labor Code section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on August 18, 2026 and 60 days from the date of transmission is Saturday, October 17, 2026. The next business day that is 60 days from the date of transmission is Monday, October 19, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on Monday, October 19, 2026, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code section 5909(b)(2) provides that service of the Report shall be notice of transmission.

[1] 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.

Here, according to the proof of service for the Report, the Report was served on August 18, 2026, and the case was transmitted to the Appeals Board on August 18, 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 18. 2026.

II.

Turning to the merits, as the Court of Appeal wrote in *Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808, 822-824 [75 Cal.Comp.Cases 837]:

> 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. To "incorporate" is to "unite with or introduce into something already existent (Webster's 3d New Internat. Dict. (1993) p. 1145)," to "take in or include as a part or parts" (Random House Dict. of the English Language (2d ed. 1987) p. 968), or to "unite or combine so as to form one body." (American Heritage Dict. (3d ed. 1994) p. 588.) Section 4660, subdivision (b)(1), thus requires the physician to include the descriptions, measurements, and percentages in the applicable chapter of the Guides as part of the basis for determining impairment.
>
> We cannot expand the statutory mandate by changing the word "incorporate" to "apply exclusively." Nor can we read into the statute a conclusive presumption that the descriptions, measurements, and percentages set forth in each chapter are invariably accurate when applied to a particular case. By using the word "incorporation," the Legislature recognized that not every injury can be accurately described by the classifications designated for the particular body part involved. Had the Legislature wished to require every complex situation to be forced into preset measurement criteria, it would have used different terminology to compel strict adherence to those criteria for every condition. A narrower interpretation would be inconsistent with the clear provision that the Schedule—which itself incorporates the Guides (PDRS, p. 1-2)—is rebuttable (§ 4660, subd. (c)), and it would not comport with the legislative directive to construe the workers' compensation statutes liberally "with the purpose of extending their benefits for the protection of persons injured in the course of their employment." (§ 3202.)

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[Defendant] agrees with the statement by the authors of the Guides that its application "as intended" facilitates "an appropriate and reproducible assessment to be made of clinical impairment." (Guides, p. 11.) However, the District omits the rest of that paragraph, which makes a rather different point, an important one: "The physician's judgment, based upon experience, training, skill, thoroughness in clinical evaluation, and ability to apply the Guides criteria as intended, will enable an appropriate and reproducible assessment to be made of clinical impairment. Clinical judgment, combining both the 'art' and 'science' of medicine, constitutes the essence of medical practice." (Guides, § 1.5, p. 11.) The Guides itself recognizes that it cannot anticipate and describe every impairment that may be experienced by injured employees. The authors repeatedly caution that notwithstanding its "framework for evaluating new or complex conditions," the "range, evolution, and discovery of new medical conditions" preclude ratings for every possible impairment. (Guides, § 1.5, p. 11.) The Guides ratings do provide a standardized basis for reporting the degree of impairment, but those are "consensus-derived estimates," and some of the given percentages are supported by only limited research data. (Guides, pp. 4, 5.) The Guides also cannot rate syndromes that are "poorly understood and are manifested only by subjective symptoms." (*Ibid.*)

To accommodate those complex or extraordinary cases, the Guides calls for the physician's exercise of clinical judgment to assess the impairment most accurately. Indeed, throughout the Guides the authors emphasize the necessity of "considerable medical expertise and judgment," as well as an understanding of the physical demands placed on the particular patient. (Guides, p. 18.) "The physician must use the entire range of clinical skill and judgment when assessing whether or not the measurements or tests results are plausible and consistent with the impairment being evaluated. If, in spite of an observation or test result, the medical evidence appears insufficient to verify that an impairment of a certain magnitude exists, the physician may modify the impairment rating accordingly and then describe and explain the reason for the modification in writing." (Guides, p. 19.) The PDRS itself instructs physicians that if a particular impairment is not addressed by the AMA Guides, they "should use clinical judgment, comparing measurable impairment resulting from the unlisted objective medical condition to measurable impairment resulting from similar objective medical conditions with similar impairment of function in performing activities of daily living." (PDRS, p. 1-4.)

Accordingly, while we agree with the District that the Guides should be applied "as intended" by its authors, such application must take into account the instructions on its use, which clearly prescribe the exercise of clinical judgment in the impairment evaluation, even beyond the descriptions, tables, and percentages provided for each of the listed conditions. The Board aptly observed

> that the descriptions, measurements, and percentages cannot be dissociated from the balance of the Guides, particularly chapters 1 and 2, which contain the instructions on the appropriate use of the ensuing chapters to perform an accurate and reliable impairment evaluation. "Thus, the AMA Guides is an integrated document and its statements in Chapters 1 and 2 regarding physicians using their clinical judgment, training, experience and skill cannot be divorced from the balance of the Guides."

As explained by the WCJ in the Report, in which the QME report is quoted at length, here the QME adequately explained why he went beyond the standardized range of motion rating. The Guides explained that the impairment percentages are consensus-derived estimates of the severity of which a condition impairs activities of daily living (ADLs). (AMA Guides at p. 4.) Here, the QME adequately explained how applicant's impairment with regard to his ADLs was not adequately reflected only by the standardized range of motion rating. *Guzman* makes clear that an evaluating physician is not tied to only the standardized ratings and may resort to other impairment ratings in the Guides either instead of or in addition to the standardized rating (if such a rating even exists) so long as it is explained how this so-called "alternate" rating better describes the applicant's impairment. While the *Guzman* case and the WCJ's report speak in terms of "strict" impairment ratings, it is more accurate to categorize these ratings as consensus-driven "standardized" ratings which may not capture the nuance of each individual case, as explained by the QME and WCJ here.

We note that with regard to defendant's argument that the "other disorders" rating was duplicative of the standardized rating, the AMA Guides make clear that a resection arthroplasty rating may be combined with a loss of motion rating (AMA Guides, p. 505). Thus, these impairments appear to capture different ADL impairments.

We thus deny reconsideration for the reasons stated in the Report, which we quote below:

INTRODUCTION

> Defendant seeks reconsiderations of my Findings and Award dated July 9, 2026. On reconsideration, defendant contends that the evidence does not justify the findings of fact, namely that the QME report of Dennis Moore, D.C. is not substantial evidence. The petition is timely and verified. Applicant has not filed an answer.

FACTS

1. Procedural background.

Applicant sustained an admitted injury to his right shoulder. The matter proceeded to trial on the issues of permanent disability and attorney fees. I issued an Opinion and Findings and Award on July 9, 2026.

2. *Contentions on reconsideration.*

Defendant contends:

a. My rating instructions were incorrect because they combined a strict rating under the *AMA Guides* with an Almaraz/Guzman rating. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman III)* (2010) 75 Cal. Comp. Cases 837)

b. That the findings of Dr. Moore do not constitute substantial medical evidence. Defendant contends that Dr. Moore provided an impairment rating for a procedure applicant did not undergo and that activities of daily living were not accurately addressed.

3. *Evidence presented at trial.*

The joint exhibits consist of two QME reports authored by Dennis Moore, D.C. (Joint exhibit 1) is a report dated February 26, 2025. This is an initial comprehensive report. Dr. Moore performed a physical examination, history of the injury, and a review of records and recommendations for treatment.

Joint exhibit 2 is a report dated October 6, 2025 (it appears the date of the report on page 1 is incorrect, while the signature date appears correct). Dr. Moore reviewed the interim treatment and current symptoms. He noted that applicant's primary treating physician, Adam Brooks, M.D. returned applicant to full duties and found his disability to be permanent and stationary on May 13, 2025. Dr. Moore agreed. Dr. Moore performed a physical examination and gave factors of impairment which included a loss of range of motion (5% WPI) and loss of grip strength (8% WPI). Dr. Moore opined that he needed to consult other chapters and tables to provide an accurate impairment. Dr. Moore consulted Table 16-7, which is an arthroscopic resection of the distal clavicle which provided a 10% WPI impairment.

Defendant's exhibits A through E are treatment reports of Adam Brooks, M.D. Exhibit A is an operative report dated August 15, 2024. The injury is described as a massive, retracted rotator cuff repair requiring additional time, releases, and surgical techniques that were beyond the typical rotator cuff repair. Dr. Brooks final report is an August 5, 2025, PR-4 report (exhibit E). Range of motion testing of the right shoulder showed a decrease in flexion, abduction, internal rotation and external rotation. Dr. Brooks provided an impairment rating based on the range of motion testing. This resulted in a 3% upper extremity impairment

which converted to a 2% WPI. This report did not contain a discussion of activities of daily living.

Applicant credibly testified on his own behalf. His testimony is summarized on pages three and four of my opinion. Of particular relevance here, he testified that despite having sustained a serious injury, surgery was a success. He rarely experiences pain. He does, however, have many restrictions in his activities of daily living, both in his personal life and at home

DISCUSSION

1. My rating instructions were correct.

Applicant's level of disability was properly based on the most probative substantial medical evidence in the record. The impairment report of surgeon Adam Brooks, M.D. provides a rating based on range of motion only. The report did not discuss applicant's loss of activities of daily living. I relied on the QME report of Dr. Moore for my rating instructions, which was the most thorough and probative report in the record.

2. The impairment report of QME Moore does constitute substantial medical evidence.

Defendant argues that QME Moore improperly assigned impairment for loss of strength, and that loss of strength should only be used in rare cases. Defendant's own trial brief concedes that applicant had, "a significant injury to his shoulder."

QME Moore did note that applicant had a "loss of his ability to pursue such ADL's as avocational interests such as disc golfing and difficulty with some personal hygiene daily activities and household chores." (Joint exhibit 2, QME report of Dennis Moore, D.C. page 9). The ADL discussion provided by Dr. Moore may have been brief but is the only discussion of ADLs in the record. Dr. Moore's discussion of ADLs is consistent with applicant's credible and unrebutted testimony regarding difficulties with personal hygiene, hobbies such as working on his vehicles, a detailed description of the household chores, and limitations at work. Applicant testified that he is working full duties. However, tasks take him longer, which is problematical, as he is limited by law as to how many hours he can work in a day. An example was putting snow chains on his truck's wheels. This takes considerably longer since his injury and surgery.

3. Dr. Moore correctly applied the Almaraz/Guzman rationale.

Petitioner's reliance on *Rodriguez v. Workers' Comp. Appeals Bd.*, 2013, 78 Cal. Comp. Cases 502 is misplaced. In *Rodriguez*, an AME provided a 5% WPI for a wrist/hand injury. The AME went on to say that grip loss was the most accurate measure of impairment. Rodriguez is distinguishable because while the AME

stayed within the four corners of the AMA Guides, he did not provide an adequate explanation as to why grip loss provided the more accurate rating. Similarly, *Minniefield v. State of California — Department of Corrections Inmate Claims*, 2021 Cal. Wrk. Comp. P.D. LEXIS 347. is distinguishable. In that case, QME Nicole Chitnis, M.D. assigned impairment based on loss of strength and reduced range of motion which is inconsistent with a "strict interpretation" of the AMA Guides. At deposition, Dr. Chitnis essentially testified that she added range of motion with grip strength because she had always done it that way, without much else in the way of explanation. The Board stated:

> To properly rate an injured worker's disability by applying an Almaraz/Guzman analysis, the doctor is expected to: 1) provide a strict rating per the AMA Guides, 2) explain why the strict rating does not accurately reflect the applicant's disability, 3) provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that alternative rating more accurately reflects applicant's level of disability.

It is my opinion that Dr. Moore's report satisfies these four requirements. Dr. Moore stated:

> My opinion regarding Applicant Wilson's impairment rating not being adequately addressed by the conventional impairment rating I had given him in the Initial QME report except for the range of motion changes and loss of muscle strength changes which were both improved. Therefore, I have reduced his impairment rating for range of motion and muscle strength accordingly. However, it continues to be my opinion that Applicant Wilson's severe right shoulder rotator cuff repair and surgery and subsequent physical surgery and continued loss of range of motion in flexion and abduction and muscle strength inflexion, and external rotation is not adequately addressed by my conventional impairment rating. I did find it necessary to consult other tables and chapters of The Guides Fifth Edition page 506, Table 16-7 resection arthroplasty of the distal clavicle to accurately address this impairment and the deleterious effect it has on Applicant Wilson's Activities of Daily Living now and in the future. This qualifies Mr. Wilson for a 10% Upper Extremity Impairment.
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> I have adjusted down Applicant Wilson's impairment rating findings regarding the loss of range of motion and muscle strength loss because of his improvement in those areas after post-op physical therapy. Right shoulder Flexion is now 6%, Right shoulder extension 0%, Right Shoulder abduction 0%, Right shoulder Adduction 0%, right shoulder internal rotation 0%, right shoulder external rotation is now 2% for a total of 8% upper extremity impairment. The Guides Fifth Edition emphasizes choosing the most clinically accurate method for impairment evaluation. Combining muscle loss with range of motion loss provides a more

> accurate representation of Applicant Wilson's impact on his functional abilities, activities of daily living, and quality of life. Because of the severity of the 1.62 inch rotator cuff tear it has been over 12 months since his surgery of 08/14/2024. While Applicant Wilson has undergone several months of physical therapy and has strengthened some previous areas of weakness he continues to have weakness in right flexion and right external rotation of his right shoulder I still believe that given his strenuous job requirements working as much as 56 hours a week with lifting required up to 100 pounds as well as pushing, pulling and several hours of overhead work the Guides 5th edition allows for combining muscle strength loss and range of motion loss under special circumstances. This case represents special circumstances, especially because of the severity of the rotator cuff tear, necessity for surgery, and extensive physical therapy and ongoing need for physical therapy prescription medication, possible future imaging and surgical consultation to prevent deterioration of his right shoulder condition. Applicant Wilson will be prone to episodes of exacerbation of his complaints, so I believe combining loss of strength with range of motion loss is entirely justified in order that he be fairly compensated for his loss of quality of life as evidenced by his loss of his ability to pursue such ADL's as avocational interests such as disc golfing and difficulty with some personal hygiene daily activities and household chores.

Dr. Moore provided a [standardized] impairment rating. He explained why that was not accurate. He then provided an alternate rating within the four corners of the AMA guides. He also explained why the alternate rating was the most accurate. As such, I am of the opinion Dr. Moore's report constitutes substantial medical evidence.

RECOMMENDATION

For the foregoing reasons, I recommend that Defendant's Petition for Reconsideration, filed herein on August 3, 2026, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings of Fact and Award of July 9, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

PAUL F. KELLY, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 19, 2026

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

BROCK WILSON
BUZZELL LAW GROUP
YOUNG, COHEN & DURRETT

DW/bp

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