WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CAROL McPHAUL, *Applicant*

vs.

STATE OF CALIFORNIA, legally uninsured, *Defendant*

Adjudication Number: ADJ15295325
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Award of March 12, 2026, wherein it was found that while employed as a correctional officer during a cumulative period ending on June 19, 2021, applicant sustained industrial injury to the neck causing permanent disability of 40% after apportionment. In finding permanent disability of 40%, it was determined that applicant did not prove that she was not amenable to vocational rehabilitation and did not prove that she was unable to compete in the open labor market. Additionally, it was found that, pursuant to the apportionment determination of qualified medical evaluator, physical medicine specialist Brian Karvelas, M.D., that 20 percent of applicant's permanent disability was caused by factors other than the industrial injury. Therefore, applicant's overall 48% permanent disability was apportioned, and it was found that applicant was entitled to an award of 40% compensable permanent disability.

Applicant contends that the WCJ erred (1) in finding permanent disability of only 40%, arguing that it rebutted the scheduled rating by showing that she was not amenable to vocational rehabilitation and that she was unable to compete in the open labor market and in (2) finding that defendant met its burden in showing that 20 percent of applicant's permanent disability was caused by factors other than the industrial injury. We have received an Answer from the defendant and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As explained below, for the reasons stated in the Report which we quote below, we agree that applicant did not rebut the scheduled permanent disability rating. However, we agree with

applicant that Dr. Karvelas's reporting and testimony did not constitute substantial medical evidence on the issue of apportionment. Accordingly, we grant reconsideration and amend the WCJ's decision to reflect that applicant's injury caused compensable permanent disability of 48%.

Preliminarily, we note that former Labor Code 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, Labor Code 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 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 April 15, 2026 and 60 days from the date of transmission is Sunday, June 14, 2026. The next business day that is 60 days from the date of transmission is Monday, June 15, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[1] This decision is issued by or on June 15, 2026, so 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

[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.

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 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 was served on April 15, 2026, and the case was transmitted to the Appeals Board on April 15, 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 April 15, 2026.

Turning to the merits, applicant sustained cumulative injury to her neck as a result of spending hours looking at surveillance video above eye level. She was evaluated by qualified medical evaluator, physical medicine specialist Brian Karvelas, M.D. In his November 19, 2022, Dr. Karvelas wrote as follows with regard to the issues of permanent disability and apportionment:

> There is **permanent disability** relative to the cervical spine. The following impairment assessment is based on the clinical presentation, the medical record currently available to review, and reported findings on diagnostic tests. *For the most comprehensive assessment I would request the opportunity to review the complete medical workup on this applicant. To date, I have not received the medical reports pertaining to the diagnostic study results with regard to a number of the diagnostic studies undertaken including the radiology reports regarding the recent MRI examination and x-ray examination of her cervical spine reportedly obtained on October 7, 2022, and the MRI examination of her cervical spine reportedly obtained in July 2021, not to mention previous imaging studies from 2012. Neither have I received the electrodiagnostic study report regarding the electrodiagnostic study of her upper extremities reportedly performed by Dr. Tolentino on August 8, 2022.* Following below is therefore a provisional assessment of impairment.
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> **Cervical Spine:**
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> Under the standard fifth edition AMA Guides impairment rating schedule the range-of motion method is recommended for rating impairment due to multilevel and bilateral radiculopathy.
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> Under Table 15-7 on page 404 Criteria for Rating Whole Person Impairment Percent Due To Specific Spine Disorders, either section II or III applies. The most significant (impairing) diagnosis is found under section II. C/F. given that there is moderate to severe degenerative changes

on structural tests with associated intervertebral disc lesions. Under section II. C/F. There is *8% impairment of the whole person* for involvement of three intervertebral levels (C4-7).

Abnormal Motion Impairment:

Under Table 15-12 on page 418 there is 4% impairment whole person due to loss of normal flexion (2%) and extension (2%).

Under Table 15-13 on page 420 there is 2% impairment of the whole person due to loss of normal right (1 %) and left (1 %) lateral bending.

Under Table 15-14 on page 421 there is 2% impairment of the whole person due to loss of normal right (1%) and left (1%) rotation.

The above impairments for abnormal motion in the cervical region add together for a total *8% impairment of the whole person*.

Neurologic Impairment:

Under Table 15-15 on page 424 there is sensory deficit in the C6 and C7 dermatomes meeting the criteria for Classification Grade 4. Within Grade 4 I would recommend a 25% sensory deficit considering activity interference with intact two-point discrimination.

Under Table 15-17 on page 424 for the C6 spinal nerve root multiplying 25% by 8% yields a *2% upper extremity impairment*.

Under Table 15-17 on page 424 for the C7 spinal nerve root multiplying 25% by 5% yields a *1 % upper extremity impairment.*

Under Table 15-15 on page 424 there is sensory deficit in the ca dermatome meeting the criteria for Classification Grade 4. Within Grade 4 I would recommend a 10% sensory deficit.

Under Table 15-17 on page 424 for the ca spinal nerve root multiplying 10% by 5% rounds up to a *1% upper extremity impairment.*

Under Table 15-16 on page 424 there is motor deficit involving the C5 and C6 myotomes meeting the criteria for Classification Grade 4. Within Grade 4 I would recommend a 10% motor deficit.

Under Table 15-17 on page 424 for the C5 spinal nerve root multiplying 10% by 30% yields a *3% upper extremity impairment.*

Under Table 15-17 on page 424 for the C6 spinal nerve root multiplying 10% by 35% rounds up to a *4% upper extremity impairment.*

Under table 15-16 on page 424 there is motor deficit involving the C8 myotome meeting the criteria for Classification Grade 4. Within Grade 4 I would recommend a 20% motor deficit.

Under Table 15-17 on page 424 for the C8 spinal nerve root multiplying 20% by 45% yields a *9% upper extremity impairment.*

Combining the C6 sensory (2%) and motor (4%) deficits under the combined values chart on page 604 yields a total *6% upper extremity impairment* for the C6 nerve root.

Combining the C8 sensory (1%) and motor (9%) deficits under the combined values chart on page 604 yields a total *10% upper extremity impairment* for the C8 nerve root.

Combining the C5 motor (3%), C6 sensory and motor (6%), C7 sensory (1%) and C8 sensory and motor (10%) upper extremity neurologic impairments yields a total 19% upper extremity *neurologic* impairment.

Multiplying the 19% upper extremity neurologic impairment by 0.6 rounds down to an *11% impairment of the whole person* for *neurologic deficit*.

Finally, combining the 8% diagnosis-based (Table 15-7) WPI with the 8% mobility WPI and the 11% neurologic WPI yields a total ***25% impairment of the whole person.***

The above outlined impairment rating is medically accurate, particularly from a functional perspective, encompasses pain-related impairment, and further analysis under *Almaraz-Guzman* is not warranted.

Regarding **apportionment of disability to causation**, there is no medical evidence for a pre-existing clinical condition, injury or disability, including a prior PDR, relative to the cervical spine or upper extremities of which I am presently aware. Neither is there evidence for a specific subsequent injury to the involved body parts. There is evidence on pre-existing imaging studies from 2012 for cervical spondylosis reported in the medical record as discussed above (see review of Dr. Neubuerger's February 8, 2022 consultation report); although, the applicant states that these studies were obtained in regard to a mass on the back of her neck that was later excised and did not involve her cervical spine. Nevertheless, based on the medical record it appears that there were significant pre-existing degenerative spondylotic changes in the cervical spine that likely

> contributed to the onset of symptomatic disease and ultimately the disability relative to her cervical spine that was precipitated by the industrial cumulative trauma injury.
>
> Although apportionment of disability to causation is indicated to the pre-existing spinal disease, considering that pre-existing disease was apparently asymptomatic and nondisabling (as there is no medical evidence for a related clinical condition or disability), the industrial exposure resulting in cumulative trauma injury is more likely than not the predominant cause of present disability. Certainly, absent the industrial exposure, there is no medical certainty that the present disability would exist.
>
> Given the above considerations with regard to the issue of apportionment of disability to causation I would recommend apportioning 20% of present disability to pre-existing degenerative spinal disease and apportioning 80% of present disability to cumulative trauma injury arising out of and resulting directly from the industrial exposure as a Correctional Officer for the Department of Corrections as outlined above.

(November 19, 2022 report at pp. 15-18.)

Asked to explain his apportionment determination at his November 8, 2023 deposition, Dr. Karvelas testified that his review of records showed "findings of degenerative changes that were localized to the same areas of her spine that were involved with her present injury and disability. And so it was pretty clearly discussed [in] the records, in other doctors' reports, consulting physicians. I think a couple neurosurgical consultations she had, plus her other treating physicians. So that was the basis for the apportionment recommendation." (November 8, 2023 deposition at p. 7.)

While it is now well established that one may properly apportion to pathology and asymptomatic prior conditions (see, e.g. *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 617 [Appeals Bd. en banc]), an apportionment opinion must still constitute substantial medical evidence. As we explained in *Escobedo*:

> [A] medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. [Citations.]
>
> Moreover, 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 Board can determine whether the physician is properly apportioning under correct legal principles. [Citations.]

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> 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.

(*Escobedo*, 70 Cal.Comp.Cases at p. 621.)

The permanent disability to be apportioned is measured by the impairment rating. Dr. Karvelas does not explain how the nonindustrial pathology is contributing to applicant's impairment rating. It is insufficient to mention that pathology affects the same area of the body of the industrial injury or that a certain percentage of a generalized condition is attributable to non-industrial factors. In order to constitute valid apportionment, a reporting physician must explain how these factors are contributing to permanent disability. Dr. Karvelas does not do so here. Additionally, while we acknowledge that determining the level of apportionment is not an exact science and "[a]rriving at a decision on the exact degree of disability is a difficult task under the most favorable circumstances. It necessarily involves some measure of conjecture and compromise …." (*Liberty Mutual Ins. Co. v. Industrial Acc. Com. (Serafin)* (1948) 33 Cal.2d 89, 93 [13 Cal.Comp.Cases 267]), there must be some attempt at explaining the percentages of apportionment decided upon, not just the existence of non-industrial factors. Here, Dr. Karvelas does not explain how he arrived at 20% non-industrial apportionment. For these reasons we find that Dr. Karvelas's apportionment discussion did not constitute substantial medical evidence, and that defendant did not carry its burden of proving apportionment. We therefore find applicant entitled to an unapportioned award of 48% permanent disability.

However, we affirm the WCJ's finding that applicant was not precluded from vocational rehabilitation and that she was not completely shut out of the labor market for the reasons stated in the Report, which we quote below:

> In *Ogilvie v. WCAB* (2011), 197 Cal. App. 4th 1262, 1271 the Court of Appeal held that despite the amendments to LC 4660 by SB 899, it was permissible to depart from a scheduled rating on the basis of vocational expert opinion that an

employee has a greater loss of future earning capacity than reflected in a scheduled rating.

The Court has held that "permanent disability rating should reflect as accurately as possible an injured employee's diminished ability to compete in the open labor market." *LeBoeuf v. WCAB* (1983) 48 CCC 587, 597. Further, "The fact that a worker has been precluded from vocational retraining is a significant factor to be taken into account in evaluating his or her potential employability. A prior permanent disability rating and award which fails to reflect that fact is inequitable." *Id.* at 597

Finally, the Court noted that "the applicant's ability to participate in vocational retraining was an important factor that should be known before permanent disability could be properly assessed, because it could affect the ability to compete in open labor market." *State of California Department of Health, Fairview State Hospital v. WCAB (McDonald)* (1982) 47 CCC 1204.

Applicant argues that due to the fact that it has been over four years since the work injury and the Applicant has not been able to return to gainful employment and the fact that the Applicant was found to be unable to return to her previous employment, the Court should agree with Applicant's vocational expert, Enrique Vega, that the Applicant has lost 100% of her earning capacity as a result of the work injury and is 100% permanently totally disabled on a vocational basis. Applicant further argues that due to her inability to compete in the open labor market or to be retrained to find and sustain suitable meaningful employment, she has rebutted the AMA Guides rating in this case.

In addition to Mr. Vega, the Applicant was also evaluated by Defendant's Vocational Expert Scott Simon in conjunction with the case. Based upon the Applicant's work history of being a Correction Officer, Electronics Tester, Teacher Aide I and Computer Operator (*EXHIBIT A, PAGE 14, EAMS DOC ID # 61616416*), Mr. Simon found a number of occupational matches under security guards, dispatcher, credit authorizers, checkers and clerks, customer service representatives, and billing and posting clerks. Mr. Simon also found extensive work from home employment opportunities, and Gig Economy opportunities. There were presently no medical indicators that the Applicant would be unable to return to the workforce. (*EXHIBIT A, PAGE 23, EAMS DOC ID # 61616416*).

Equally as important in assessing vocational rehabilitation with what the Applicant was not able to perform (forceful use of either upper extremity, repetitive use of the left upper extremity, repetitive neck motions and neck extension) is what the Applicant was able to perform (use the right upper extremity repetitively, reach at/above shoulder level, and perform neck flexion). It makes sense that the Applicant would be able to perform the tasks of security guards, dispatcher, credit authorizers, checkers and clerks, customer service representatives, and billing and posting clerks, which do not require forceful use

of either upper extremity, repetitive use of the left upper extremity, repetitive neck motions and neck extension.

In assessing the applicant's *ability to participate in vocational retraining* prior to a finding of permanent disability, the Applicant's testimony at trial was clear. The Applicant was *in the process* of utilizing the voucher when she was asked about doing any vocational training (*MINUTES OF HEARING, PAGE 5, LINES 15-16*). The Applicant was also clearly able to work following the injury. The Applicant testified that she worked light duty for a year. After a year, she was told she could not do light duty anymore by the employer (*MINUTES OF HEARING, PAGE 6, LINE 3*). The difference between light duty and her usual and customary duties was at her light duty job, the Applicant was "working on the control group with cameras at eye level, which differed from her original job in which the cameras were not eye level. She was able to fulfill the functions of her light-duty job adequately" (*MINUTES OF HEARING, PAGE 6, LINES 4-6)*.

Applicant argues that the work provided by the Defendant could be considered a "sheltered workshop" and as such, the Applicant could still be 100% permanently disabled. In support of this. Applicant cites *Escobedo v. San Luis Coastal Unified Sch. Dist.* (2021), 2021 Cal. Wrk. Comp. P.D. LEXIS 213. In this case, the Court ruled that "Applicant's limited ability to work at home, at her own pace, for up to 4 hours per day, is akin to a sheltered workplace, and not the open labor market". *Id.* at 28. The Court affirmed that "An injured worker may be totally permanently disabled even if she may be able to perform some limited work in a sheltered and protected work environment, citing *The Limited v. Workers' Comp. Appeals Bd.* (2012) 77 Cal.Comp.Cases 1003 (writ den.); *Garden Grove Unified School Dist. v. Workers' Comp. Appeals Bd.* (2010) 75 Cal. Comp. Cases 521 (writ den.); *Sparteck Plastics v. Workers' Comp. Appeals Bd.* (1998) 64 Cal. Comp. Cases 124 (writ den.); *Pacific Greyhound Lines v. Workers' Comp. Appeals Bd.* (1973) 38 Cal. Comp. Cases 359 (writ den.)." *Id.* at 28-29.

Specifically, in *Escobedo*, "…the record establishes that applicant is not capable of returning to regular work, either full-time or part-time work." *Id.* at 27-28. The Applicant was able to work but only less than 20 hours per week, i.e. less than 4 hours per day. *Id.* at 28. Moreover, "there would be days where she would not be able to work either because of her medications or because of pain. Thus, Dr. Schaffzin found that applicant would have some days where she could work less than 4 hours per day, and some days where she could not work at all." *Id.*

In contrast to the facts of Escobedo, the case at hand presents a much different picture. In this case, the "Applicant recalled she worked on light duty full time prior. She does not exactly recall when she returned back to work, but believes it was in September. After a year, she was told she could not do light duty anymore by the employer." (*MINUTES OF HEARING, PAGE 6, LINES 2-4*).

> It seems that the main difference between this light duty and her full time job was that "Her job duties on light duty included working on the control group with cameras at eye level, which differed from her original job in which the cameras were not eye level." *MINUTES OF HEARING, PAGE 6, LINES 4-5*). The Applicant also "was able to fulfill the functions of her light-duty job adequately." (*MINUTES OF HEARING, PAGE 6, LINES 5-6*). Most importantly, her "Light duty ended because it was a limited term, and she was told she could not do light duty anymore and was given a list of options she could do." (*MINUTES OF HEARING, PAGE 6, LINES 6-7*).
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> In *Escobedo*, Applicant had "participated in, but did not complete, a vocational rehabilitation program in medical billing and coding in 2018. Applicant completed only 2 out of 4 classes when she underwent surgery to remove the pain stimulator implanted in her back due to infection. After that, her condition deteriorated, with consequential injuries to her bilateral feet and left knee." *Escobedo v. San Luis Coastal Unified Sch. Dist.* (2021), 2021 Cal. Wrk. Comp. P.D. LEXIS 213 at 25.
>
> In this case, while the injury certainly affected the Applicant's activities of daily living, no evidence was presented that the Applicant was ever not able to perform modified work, or that her condition had deteriorated, with consequential injuries to her cervical spine. The Applicant was also in "the process of utilizing the voucher, and she had applied for interior decorating classes online, which was self-paced. Her goal was not to do that full time but to do that part time because she could not do full-time work." (*MINUTES OF HEARING, PAGE 5, LINES 16-17*). The facts presented in this case do not resemble a "sheltered workshop". The Court does not feel that the Applicant has rebutted the Permanent Disability Rating Schedule.

(Report at pp. 3-7.)

Accordingly, we will grant reconsideration and amend the WCJ's decision to reflect that applicant's injury caused permanent disability of 48%.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings of Fact and Award of March 12, 2026 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board the Findings of Fact and Award of March 12, 2026 is **AMENDED** as follows:

FINDINGS OF FACT

1. The following stipulations of the parties are herein adopted as Findings of Fact:

a. Carol McPhaul, age 56, while employed at the time of injury, while as a corrections officer, Occupational Group No. 490, at Folsom, California, by the State of California, sustained injury arising out of and in the course of employment to the neck; and claims to have sustained injury arising out of and in the course of employment to the arms.

b. At the time of injury, the employer was legally uninsured, adjusted by State Compensation Insurance Fund.

c At the time of injury, the employee's earnings were $1,727.89 per week, warranting indemnity rates of $1,151.93 for temporary disability and $290.00 for permanent disability.

d. The employer has paid compensation as follows:

1. Industrial Disability Leave for the period of July 31, 2022, through December 5, 2022.

2. Permanent disability at the weekly rate of $290.00 for the period of November 16, 2022, and ongoing.

e. The employer has furnished all medical treatment. The primary treating physician is Dr. Paul Nkadi.

f. No attorney fees have been paid, and no attorney fee arrangements have been made.

2. The Applicant was permanent and stationary on November 16, 2022.

3. The injury caused permanent disability of 48%.

4. Defendant has not met its burden in proving apportionment to non-industrial factors.

5. Applicant is in need of further medical treatment to cure or relieve from the effects of this injury.

6. The reasonable value of services rendered by applicant's attorney is 15% of the present value of the permanent disability award, to be commuted from the "far end" of this Award.

AWARD

AWARD IS MADE in favor of CAROL MCPHAUL against STATE OF CALIFORNIA, of:

a. Permanent Disability of 48%, entitling Applicant to 257.00 weeks of disability indemnity at the rate of $290.00, in the total sum of $74,530.00, less credit to Defendant for all sums heretofore paid on account thereof, is any, less $11,118.23 payable to EASON TAMBORNINI SACRAMENTO as attorney's fees to be commuted from the far end of the award.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

I DISSENT,

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 15, 2026

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

CAROL McPHAUL
EASON & TAMBORINI
STATE COMPENSATION INSURANCE FUND

DW/oo

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

DISSENTING OPINION OF COMMISSIONER JOSÉ H. RAZO

I respectfully dissent. While I agree with my colleagues that applicant did not rebut the scheduled permanent disability rating, I disagree with the decision to find applicant entitled to an unapportioned award of permanent disability. I would have upheld Dr. Karvelas's apportionment determination.

Dr. Karvelas's discussion of apportionment meets the standard set by the Court of Appeal in *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687]. In *Gatten*, the Court of Appeal reversed a WCAB finding of no apportionment, and found, in accordance with an independent medical examiner's report, that 20 percent of the injured worker's permanent disability was caused by non-industrial factors. The medical evidence supporting apportionment in *Gatten* was the physician's review of an MRI showing degenerative disc disease. The *Gatten* court held that apportionment was proper even though the applicant was asymptomatic prior to the industrial injury, writing that, "[t]he doctor made a determination based on his medical expertise of the approximate percentage of permanent disability caused by [the] degenerative condition [in] applicant's back. [Labor Code] [s]ection 4663, subdivision (c), requires no more." (*Gatten*, 145 Cal.App.4th at p. 930.)

Similarly, here, Dr. Karvelas made a determination based on his medical expertise after an adequate examination and after review of the relevant medical record. Dr. Karvelas noted degenerative changes that pre-existed the industrial injury on imaging studies and applied his clinical knowledge and experience in determining how the mechanism of injury could have contributed to a certain level of disability. "His conclusion cannot be disregarded as being speculative when it was based on his expertise in evaluating the significance of these facts." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 930 [71 Cal.Comp.Cases 1687].)

Accordingly, I would have denied applicant's Petition completely for the reasons stated in the WCJ's Report. I therefore respectfully dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 15, 2026

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

CAROL McPHAUL
EASON & TAMBORINI
STATE COMPENSATION INSURANCE FUND

DW/oo

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