

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

DARRELL CARTER, *Applicant*

vs.

**PRECON PRODUCTS; TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA,¹ *Defendants***

**Adjudication Numbers: ADJ11324273; ADJ11728160
Oxnard District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant filed a Petition for Reconsideration (Petition) on March 16, 2026, of the workers' compensation administrative law judge (WCJ)'s February 17, 2026, Joint Findings, Award & Order (FA&O), in which, as relevant here, the WCJ found that applicant sustained 57% disability in ADJ11728160, the cumulative claim.

Applicant contends entitlement to 100% disability in the cumulative claim ADJ11728160 based on the presumption of total disability as stated in Labor Code section 4662(a)(2)² for loss of both hands or the use thereof or, alternatively, that applicant has rebutted the Permanent Disability Ratings Schedule (PDRS).

Defendant filed an Answer.

The WCJ filed a Report and Recommendation (Report) recommending the Petition be denied.

After our review of the record and for the reasons discussed below, we will deny the Petition for Reconsideration.

¹ The insurer is listed in the caption as stated in defendant's verified Answer to Petition for Reconsideration. Under WCAB Rule 10390 all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (Cal. Code Regs., tit. 8, §10390.)

² Unless otherwise stated, all further statutory references are to the Labor Code.

I.

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. (Former 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.

(Lab. Code, § 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 cases were transmitted to the Appeals Board on April 1, 2026, and 60 days from the date of transmission is Sunday, May 31, 2026. The time limit is also extended to the next business day if the last day for filing falls on a weekend or holiday. (Cal. Code Regs., tit. 8, § 10600(b).) Here, May 31, 2026, is a Sunday which by operation of law means this decision is due by the next business day, which is Monday, June 1, 2026. This decision issued by or on June 1, 2026, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that “[w]hen 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.” Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on April 1, 2026, and the case was transmitted to the Appeals Board on April 1, 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 April 1, 2026.

II.

As found by the WCJ in the February 17, 2026, Joint Findings, Award & Order, applicant, in ADJ11324273 (MF) while employed on September 20, 2016, as a truck driver/crane operator sustained injury arising out of and occurring in the course of employment to his bilateral wrists, bilateral hands, right knee, but not his gastrointestinal system, and in ADJ11728160 while employed during the period through September 20, 2016, sustained injury arising out of and occurring in the course of employment to his bilateral wrists, heart, bilateral knees, right shoulder, back, neck, lower gastrointestinal system, internal hernia, but not hearing loss.

We acknowledge the extensive record presented including treating records, vocational expert reporting, and the reports and depositions from Panel Qualified Medical Examiners (PQMEs). Instead of a chronological review, we present the following simplified and grouped summary as an aid in understanding our Opinion and Order.

There is a December 3, 2018, Job Description. (Exhibit 17.)

Treating records include service dates of October 10, 2018, and October 11, 2018, from Ventura County County Healthcare Agency, Health Care for Homeless. (Exhibit 20.)

There are records from treating physician David M. Auerbach, M.D., dated December 5, 2018, (Exhibit 11), May 9, 2019, (Exhibit 12), and September 23, 2020, (Exhibit A).

There are urology records dated December 9, 2020, (Exhibit 16), January 5, 2021, Michael Salehpour, M.D. (Exhibit 19, PDF pp. 2-3), February 2, 2021, from San Buenaventura Urology Center, Seyed Khoddami, M.D., (Exhibit 18, PDF pp. 2-3; duplicate at Exhibit 19, PDF pp. 4-6, including extra blank page), February 2, 2021, Seyed Khoddami. (Exhibit 18, PDF pp. 4-5; duplicate at Exhibit 19, PDF pp. 7-8), May 3, 2021, Operative Report, Seyed Khoddami, M.D., (Exhibit 18, PDF pp. 8-9), May 11, 2021, San Buenaventura Urology Center, Seyed Khoddami, M.D., (Exhibit 18, PDF pp. 6-7; duplicate at Exhibit 19, PDF pp. 9-11), and May 19, 2021, San Buenaventura Urology Center, Evan Allgood, M.D., (Exhibit 18, PDF pp. 10-11).

On September 14, 2022, Gerald Weingarten, M.D., issued a Panel Qualified Medical Evaluation in the Specialty of internal medicine. “He states that he drove a truck and crane, and hauled and unloaded concrete blocks and pylons” from 2001 to 2016. He was a truck driver, heavy

crane operator, loader, driver, 1985 to 2001. (Exhibit 8, Gerald Weingarten, M.D., September 14, 2022, pp. 78-79.) For the lower gastrointestinal tract applicant was found to have an industrial AMA Guide Class I impairment with 5% whole person impairment (WPI). (Exhibit 8, Gerald Weingarten, M.D., September 14, 2022, p. 91.) “WORK RESTRICTIONS None indicated from an internal medicine basis.” (Exhibit 8, Gerald Weingarten, M.D., September 14, 2022, p. 92.)

The doctor did not change opinions in his January 18, 2023, Panel Qualified Medical Evaluator’s Supplemental Report. (Exhibit 9, Gerald Weingarten, M.D., January 18, 2023, p 15.)

There is reporting from PQME Arthur Schwartz, M.D., beginning with the March 12, 2018, Panel Qualified Medical Evaluation. “I believe that he will never regain [sic] satisfactory function of either hand. No surgery would help.” (Exhibit 4, Arthur Schwartz, M.D., March 12, 2018, p. 4.)

This report is followed by the November 5, 2018, deposition of doctor Schwartz, (Exhibit 3, deposition Arthur Schwartz, M.D., November 5, 2018), a December 7, 2020, Panel Qualified Medical Re-Evaluation, (Exhibit 6, Arthur Schwartz, M.D., December 7, 2020), and a February 22, 2021, Supplemental Report which includes: “I believe that the combined value chart should be used to rate the claimant.” “I believe that the claimant is amenable to vocational rehabilitation, although, it may be very difficult for him because of his age.” (Exhibit 5, Arthur Schwartz, M.D., February 22, 2021, p. 2.)

On May 24, 2021, a second remote deposition of Dr. Schwartz was taken, (Exhibit Z, deposition of Arthur Schwartz, M.D., May 24, 2021), followed by a September 23, 2021, supplemental report, in which he states: “I accept the above new evaluation of Darrell Carter by John Meyer.” (Exhibit 10, Arthur Schwartz, M.D., September 23, 2021, p. 3.) Then there is a March 23, 2023, supplemental report reviewing a vocational report from Kelly Winn & Associates, (Exhibit 14, Arthur Schwartz, M.D., March 23, 2023, pp. 1-2) followed by an August 2, 2023, supplemental report that includes: “08-21-23 Again, I accept the above evaluation of Darrell Carter by John Meyer.” (Exhibit 15, Arthur Schwartz, M.D., August 2, 2023, p. 2.)

Then there is the November 20, 2023, third remote deposition of Dr. Schwartz, in which there are the following exchanges:

Q. And so what I wanted to find out is what parts of the report do you accept, and are there any reports, parts of the reports that you do not accept?

A. Well the report I have here is from August 2nd, '23, that's -- no, that's my supplemental, and that was regarding the vocational evaluation report of John Meyers, but I don't have a date for it.

Q. I believe that was April of - - April 28th, 2023, I believe is the date of that report.

A. You better send them all to me dated and with a separate file for each evaluator.

Q. Okay. There's a couple discrepancies and I'm not sure to what extent you recall the reports.

A. I don't recall them.

(Exhibit Y, deposition of Arthur Schwartz, M.D., November 20, 2023, p. 8, ln 17; p. 9, ln 5.) And further:

Q. Well, do you believe that the AMA Guides impairment adequately addressed the applicant's bilateral hand disability?

A. I did.

Q. And you think that that level of disability is what you found originally without any add- on for pain?

A. I believe so. Didn't I add 3 percent for pain at one time? I can't remember now.

Q. No.

A. I did not, huh? Okay. Okay. Well send me that material and I'll review it, and you want me to dictate a report, or do you want to have another deposition, or what do you want to do?

Q. I think a report would be the simplest way to do it; don't you, Jelani?

MR. TAYLOR: I agree.

(Exhibit Y, deposition of Arthur Schwartz, M.D., November 20, 2023, p. 11, ln 7-22.) And finally, when asked "do you believe the applicant can return to work?" the doctor answered "Oh, I do not -- no, I do not. I stated that I do not I think several times in the records." (Exhibit Y, deposition of Arthur Schwartz, M.D., November 20, 2023, p. 12, ln 18-21.)

In his May 3, 2024, supplemental report Dr. Schwartz provides: "Conclusion: (05-26-24) I recommend that the claimant have a repeat QME evaluation, by Dr. Schwartz, as soon as possible. During that evaluation, *he will be carefully quizzed and evaluated to see if he can return to work,*

exactly what his limitations would be, and see if he is truly ready & able to engage in some type of employment.” (Exhibit 13, Arthur Schwartz, M.D., May 3, 2024, p. 2, emphasis added.)

Then on August 19, 2024, Dr. Schwartz, issued a panel qualified medical evaluation which includes statements such as “I do not believe that the claimant is amenable to vocational rehabilitation.” “I believe that it is very unlikely that he will ever return to work. His hands are weak, numb & tingly so that he is unable to use them for work.” “[U]nable to do construction; Cognitive problems (seeing a neurologist now): possible Parkinson’s disease; Numbness both hands None of the hand surgeries helped! He has had two CT releases on the rt & one on the left: none helped, in fact, they made him worse. Both hands are still numb, tingly & painful and he has difficulty using them for anything.” (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 4.)

For “ADLs: Bathing, Dressing, grooming himself, Using the toilet all cause problems, Writing & Typing are difficult, Standing, Sitting, Walking, climbing stairs all cause problems, Feeling is decreased markedly, Holding anything, opening a window and lifting a child are all very difficult, Driving is uncomfortable, Sleep is difficult.” (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 22.)

The doctor then states: “I believe that it can be stated, with reasonable medical probability, that the impairment from the above injuries &/or problems is 100% AOE/COE and 0% from non-industrial causation. The claimant is getting along moderately well presently, not working. His primary problem and complaint is the bilateral hand problem of Carpal Tunnel syndrome residue. However, the left shoulder hurts a lot, and the low back and Left knee bother him a lot, also. He is frail, weak & feeble. He has trouble doing much of anything, is very feeble and is incapable of any strenuous activity. I do not believe that he is capable of any kind of employment.” (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF pp. 22-23.) “Total impairment. 20% WPI 100% AOE/COE.” (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF pp. 24-25.)

However, the doctor then states: “The claimant is eligible for ‘Supplemental Job Displacement Benefits.’” (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 25.) The doctor completed a Physician’s Return-to-Work & Voucher Report, for a September 20, 2016, date of injury finding: 1-2 hours can work standing, walking, forward bending, twisting, keyboarding, grasping and pushing/pulling. May not lift/carry at waist height more than 10 lbs.,

for more than 1-2 hours per day. No strenuous activity. No lifting over 10 lbs. (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 27.)

Vocational opinions begin with the July 27, 2021, Myers Vocational Consulting Services, LLC, Vocational Evaluation Report. (Exhibit 21, Myers Vocational, July 27, 2021.) Applicant “is not amenable to vocational rehabilitation and is totally and permanently disabled due to his industrially caused work restrictions referable to his hands and wrists. Vocational apportionment is 100% to industrial causation to both wrists and hands.” (Exhibit 21, Myers Vocational, July 27, 2021, PDF p. 40.)

Then there is a January 31, 2022, Kelly Winn & Associates, Vocational Evaluation Report, which includes:

In terms of [applicant]’s amenability to rehabilitation, none of the physicians who have evaluated his indicate that he is precluded from retraining or working within his opined limitations. Dr. Schwartz says as much in his report dated February 22, 2021, “I believe that the claimant is amenable to vocational rehabilitation ...”. However, the doctors cautions regarding his advanced age. Likewise, [applicant] is receiving regular Social Security Retirement and retains no residual worklife, statistically. [Applicant] also cites his age as the #1 reason he does not think anyone would hire him. Therefore, as [applicant] is past regular retirement age and is not seeking to retraining or return to work, while his work limitations enable Light Work, he is unlikely to engage in rehabilitation in the future.

(Exhibit B, Winn & Associates, January 31, 2022, p. 18)

In an August 28, 2023, Myers Vocational Consulting Services, LLC, Supplemental Report is stated: “None of the jobs recommended by Ms. Winn fit the Applicant’s vocational profile and/or residual functional capacity. [Applicant] is not reasonably placeable or employable in the occupations recommended by Ms. Winn.” (Exhibit 2, Myers Vocational, August 28, 2023, p. 5.)

Then in the February 21, 2024, Myers Vocational Consulting Services, LLC, Supplemental Report #2 it is stated: “[Applicant] is not amenable to rehabilitation based on this Consultant’s opinion as well as the opinion of Dr. Schwartz.” “[Applicant]’s internal medicine impairment with non-industrial factors, does not cause him to be unemployable.” “[Applicant]’s bilateral upper wrist impairment does cause him to be unemployable, with or without apportionment.” (Exhibit 1, Myers Vocational, February 21, 2024, p. 11.)

On July 18, 2025, the parties proceeded to trial, and applicant testified in part “[h]e would return to work if he could.” (Minutes of Hearing and Summary of Evidence and Order of Consolidation (MOH), July 18, 2025, p. 7, Ins 2-3.) “Dr. Schwartz gave him workers’

compensation restrictions of no lifting over 10 to 15 pounds. Those restrictions were for his hands and wrists. He had a restriction for his shoulder of no reaching with any weight away from his body. After he stopped working, his other physical complaints resolved. He currently is unable to raise his shoulder above his head.” (MOH SOE, July 18, 2025, p. 7, lns 8-13.) “He has no feeling at all in either hand.” “He has motor strength in his hands and is able to do small jobs with his fingers and hands.” (MOH SOE, July 18, 2025, p. 7, lns 16-17, 19-20.)

Submission of the case was twice vacated to clarify exhibits and on February 4, 2026, rating instructions with a formal rating were served providing for 57% disability and with: “Notice is hereby given that the above instructions and reports have been received in evidence and that the case will be submitted for decision seven days from the date of service as shown hereon unless good cause be shown to the contrary in writing.”

The WCJ issued the FA&O on February 17, 2025, finding in relevant part 57% disability.

Applicant then filed the Petition for Reconsideration that is the subject of this Opinion and Decision.

III.

1.

Applicant asserts that he is 100% permanently totally disabled based on the conclusive presumption of section 4662(a) for “loss of both hands or use thereof” or, alternatively, that he has successfully rebutted the PDRS. (Petition, p. 3, lns 49-51; p. 5, lns 134-137.) There are no other challenges to the FA&O. We will first address the claim of PDRS rebuttal.

The State Legislature has set the foundation for establishing disability as the Permanent Disability Ratings Schedule (PDRS), which is prima facie evidence of applicant’s level of permanent disability. (Lab. Code, §§ 4660(c), 4660.1(d).) Further, the Legislature has incorporated the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides) into the PDRS for evaluating physical injury or disfigurement. Section 4660.1 states in the relevant part:

(a) In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee’s age at the time of injury.

(b) For purposes of this section, the “*nature of the physical injury or disfigurement*” shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee’s whole person impairment, as provided in the Guides, multiplied by an adjustment factor of 1.4.

(Lab. Code, § 4660.1(a) and (b), emphasis added.)

The use and incorporation of the AMA Guides is acknowledged in the PDRS itself, with exception for claims of psychiatric impairment. (PDRS, p. 1-2; 1-12.)

The AMA Guides provide that “[a]n impairment evaluation is a medical evaluation performed by a physician, using a standard method as outlined in the Guides to determine permanent impairment associated with a medical condition. An impairment evaluation may include a numerical impairment percentage or rating, as defined in the Guides.” (AMA Guides, p. 18, sect. 2.1.) When determining whole person impairment, “the physician should begin with an estimate of the individual’s most significant (primary) impairment and evaluate other impairments in relation to it. It may be necessary for the physician to refer to the criteria and estimates in several chapters if the impairing condition involves several organ conditions.” (AMA Guides, p. 19, sect. 2.5b.)

The use of the AMA Guides, however, is rebuttable. (*Milpitas Unified School Dist. v. Workers’ Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) Because the AMA Guides’ incorporation into the PDRS is rebuttable, the first step in the assessment of disability, is to determine the impairment for the injured body part(s) under the AMA Guides. This allows a physician to determine if rebuttal of a standard rating AMA Guide impairment is necessary. If the physician finds the standard AMA Guides impairment to be lacking:

[t]he physician should be free to acknowledge his or her reliance on standard texts or recent research data as a basis for his or her medical conclusions, and the WCJ should be permitted to hear that evidence. If the explanation fails to convince the WCJ or WCAB that departure from strict application of the applicable tables and measurements in the Guides is warranted in the current situation, the physician’s opinion will properly be rejected.

(*Id.* at 829.) When approaching rebuttal the First District stated:

Another way the cases have long recognized that a scheduled rating has been effectively rebutted is when the injury to the employee impairs his or her

rehabilitation, and for that reason, the employee's diminished future earning capacity is greater than reflected in the employee's scheduled rating. This is the rule expressed in *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [193 Cal. Rptr. 547, 666 P.2d 989].

(*Ogilvie v. Workers' Comp. Appeals Bd.*, (2011) 197 Cal.App.4th 1262, 1274, [76 Cal.Comp.Cases 624].) The Court further explained that *LeBouf* is limited "to cases where the employee's diminished future earnings are directly attributable to the employee's work-related injury, and not due to nonindustrial factors such as general economic conditions, illiteracy, proficiency in speaking English, or an employee's lack of education." (*Id.* at p. 1275.)

Here, for the lower gastrointestinal tract applicant was found to have an AMA Guide Class I impairment with 5% impairment of the whole person. (Exhibit 8, Gerald Weingarten, M.D., September 14, 2022, p. 91.)

Although Dr. Schwartz issued many reports, orthopedic impairment was not finalized until the most recent report in which he found: "Total impairment. 20% WPI 100% AOE/COE." (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF pp. 24-25.) The foundational individual impairments were provided by Dr. Schwartz using the AMA Guides for the right hand, left hand, right thumb, left thumb, right ring finger, and knees. (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF pp. 23-24.) The individual impairments provided by Dr. Weingarten and Dr. Schwartz were itemized in the WCJ's rating request to the Disability Evaluation Unit (DEU) resulting in formal rating of 57% issued January 29, 2026. The rating request and DEU rating were served on the parties on February 4, 2026, and the record reflects no motion to strike or request to cross-examine the DEU disability evaluator.

Neither Dr. Weingarten nor Dr. Schwartz provide alternate ratings "within the four corners" of the AMA Guides. More importantly, *neither doctor states that the straight ratings provided were in any way inadequate.* Such considerations are a predicate to considering rebuttal of the AMA Guides. Here, it appears there is no medical basis to rebut the AMA Guides.

To the extent that Dr. Schwartz states "I do not believe that he is capable of any kind of employment," such statement is conclusory and lacks the connective reasoning to be substantial evidence. (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 23.) Dr. Schwartz does not describe how any industrial impairments exclusive of "nonindustrial factors such as general economic conditions, illiteracy, proficiency in speaking English, or an employee's lack of

education” results in applicant being incapable of any kind of employment. (*Ogilvie, supra*, at p. 1275.)

Further, Dr. Schwartz’s statement about applicant’s capacity for employment if meant to be attributed to industrial causes is undermined by Dr. Schwartz himself. Shortly after the statement about work capacity is provided, Dr. Schwartz lists specific industrial impairments under the AMA Guides without any further clarification as to how they result in applicant not being “capable of any kind of employment.” While Dr. Schwartz may indeed believe the applicant is not “capable of any kind of employment,” it also appears that Dr. Schwartz believes the industrial injuries only result in the impairment he describes pursuant to the AMA Guides.

The doctor states in part that applicant is “unable to do construction; Cognitive problems (seeing a neurologist now): possible Parkinson’s disease.” (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 4.) It is unclear from Dr. Schwartz’s statements how cognitive problems and possible Parkinson’s interact, if at all, with applicant’s industrial injuries to produce disability. In Dr. Schwartz’s reporting the only meaningful limitations are described as arising solely from the industrial injuries. They are the AMA Guides impairments provided in his last report. (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF pp. 24-25.)

A medical opinion must explain the facts relied on and the reasoning resulting in its conclusions. This is important because it allows the lay trier of fact to evaluate the substantial nature of medical evidence.

Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.

(*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].

Indeed:

Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [citations] Expert testimony is necessary “where the truth is occult and can be found only by resorting to the sciences.” [citation].

(*Peter Kiewit Sons v. I.A.C.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Generalized statements about applicant's inability to perform work made by Dr. Schwartz over the years, and most importantly the statements made in his most recent report, do not provide the basic reasoning required to link such inability solely to his industrial injuries. It appears such inability may also be linked to other factors such as cognitive problems or possible Parkinson's. In reaching an ultimate opinion on inability to perform work, expert testimony is necessary and it must be substantial evidence. (*Hegglin*, supra, at p. 169; and see *Peter Kiewit Sons*, supra, at p. 838.) Here, there is no substantial medical evidence linking applicant's industrial injuries as a sole reason for his inability to perform work. Perhaps more importantly, we discern no indication from the evaluating physician's that the straight AMA Guides rating is inadequate such that rebuttal of the AMA Guides is warranted on a medical basis.

Although there are vocational expert opinions in the record, none of them can be considered substantial evidence given that they were offered before the orthopedic impairment was finalized. As a matter of common sense and logic, *it is not possible to rebut an AMA Guides impairment before the AMA Guides impairment is finalized*. The reporting and deposition testimony of Dr. Schwartz before his last report issued does not provide a complete assessment of applicant's AMA Guides impairment. Simply stated, as the vocational experts did not review the most recent and comprehensive orthopedic reporting from Dr. Schwartz, they are not based on correct history and are therefore not substantial. (*Hegglin*, supra, at p. 169.)

For the foregoing reasons, we find that the AMA Guides impairments described by Dr. Weingarten and Dr. Schwartz are not rebutted, and therefore the impairment described by the WCJ in the request for rating and the resulting DEU rating, which were not challenged, are prima facie correct and unrebutted. Therefore, we will deny applicant's request for reconsideration based on applicant's failure to rebut the PDRS.

2.

Section 4662 provides that "(a) Any of the following permanent disabilities shall be conclusively presumed to be total in character:" "(2) Loss of both hands or the use thereof." (Lab. Code § 4662(a)(2).) To be afforded the presumption an applicant must lose both hands or lose the use of both hands.

Here, applicant cites as supporting authority to apply section 4662(a)(2) the cases of *Kaiser Found Hosps. v. WCAB*, (2006) 71 Cal.Comp.Cases 538, and *Richardson v. Checkmate Transp.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 597.³

Also provided are quotes from Dr. Schwartz's 2018 reporting. Some of the most limiting quotes, and thus most beneficial to applicant's position, are: "I believe that he will never regain satisfactory function of either hand" and "there is too much impairment for him to ever regain anything like normal use of either wrist or hand. There is no possibility of his returning to his old work."⁴ (Exhibit 4, Arthur Schwartz, M.D., March 12, 2018, p. 4.) Applicant also quotes from a Dr. Schwartz 2020 Physician's Return-to-Work & Voucher Report that states the applicant has "difficulty using both hands-for all activity, anything that requires fine motor coordination." (Exhibit 6, Arthur Schwartz, M.D., December 7, 2020, PDF p. 9.)

The cases cited do not support invoking the presumption. In the writ denied case, *Kaiser*, a panel found that based on both medical evaluators "[a]pplicant was unable to grip, grasp, handle, write, type, or drive, her injuries caused her to lose the use of both hands, and she was entitled to the Labor Code § 4662(b) conclusive presumption." (*Kaiser, supra*, at p. 540.) Here, the quotes proffered by applicant concerning the wrists and hands such as "never regain satisfactory function," he would never have "normal use of either wrist or hand," and he has "difficulty using both hands-for all activity, anything that requires fine motor coordination," do not rise to the level required by the WCAB panel of "unable to grip, grasp, handle, write, type, or drive." Indeed, far from precluding these activities, in his last report Dr. Schwartz found for ADLs only that "[w]riting & [t]yping are difficult," holding anything is "very difficult" and "[d]riving is uncomfortable." (Exhibit 7, Arthur Schwartz, M.D., August 19, 2024, PDF p. 22.) Neither the quotations from 2018 nor the ADLs from the most current reporting supports that applicant has lost "both hands or the use thereof" as required. (Lab. Code § 4662(a)(2).)

Even more removed from supporting applicant's petition is the cited panel decision. In *Richardson* the panel accepted the WCJ's finding of 100% disability in the Report before moving on to a substantive discussion of apportionment of disability in the cases presented. A panel

³ While WCAB panel decisions are not binding, the WCAB will consider these decisions to the extent that it finds their reasoning persuasive. (*Guitron v. Santa Fe Extruders* (2011) 76 Cal. Comp. Cases 228, fn. 7 (WCAB en banc).)

⁴ Although applicant also quotes objective findings from treating physician David Auerbach, we do not find this helpful as Dr. Auerbach ultimately found that applicant could return to his usual occupation with a right wrist WPI of 7%. (Exhibit A, David Auerbach, M.D., September 23, 2020, PDF pp. 4-5.)

discussion on apportionment is not relevant to the cases before us here. Although the panel referred to the WCJ's report with approval as to the finding of disability, we decline to parse the WCJ's report beyond that, noting that in *Richardson* the AME found in part "quadriplegia associated with [applicant's] cervical spine injury" in addition to "profound weakness in both upper extremities, including bilateral grip loss and inability to fully move either shoulder." (*Richardson v. Checkmate Transp.*, 2012 Cal. Wrk. Comp. P.D. LEXIS 597, 29.) It is impossible to analogize a legal conclusion from such foundational facts so profoundly different from applicant's claims here. The evidence before us confirms applicant has some use of both hands.

Although applicant testified that he "has no feeling at all in either hand," he also testified he "has motor strength in his hands and is able to do small jobs with his fingers and hands." (MOH SOE, July 18, 2025, p. 7, lns 16-17, 19-20.) Clearly the ability to "do small jobs with his fingers and hands" is at odds with requirement of losing "both hands or the use thereof." There is no doubt that applicant has a significant and very real disability as a result of his industrial injury. The record does not, however, contain substantial evidence supporting application of section 4066(a)(2)'s presumption.

It is axiomatic that decisions of the Appeals Board must be supported by substantial evidence. (California Labor Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].) The substantial evidence of record supports the finding of 57% disability based on the prima facie correct AMA Guides impairments.

We see no reason on this record to disturb the WCJ's FA&O and therefore will deny applicant's Petition.

IV.

Following our independent review of the record, and for the reasons stated above, we deny applicant's March 16, 2026, Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the applicant's March 16, 2026, Petition for Reconsideration of the Joint Findings, Award and Order issued by the Workers' Compensation Judge on February 17, 2026, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 1, 2026

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

**DARRELL CARTER
GLASS LAW GROUP
DIMACULANGAN & ASSOCIATES**

PS/oo

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