WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

DEBORA WALDROND, *Applicant*

vs.

KING DREW MEDICAL CENTER, permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ4479518
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings, Award, and Orders (FA&O) issued on August 11, 2026, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part that while employed by defendant as an intermediate clerk during the period from May 30, 1999 through May 30, 2000, applicant sustained injury arising out of and occurring during the course of employment (AOE/COE) to the psyche; applicant is permanently and totally disabled as a result, as per the substantial opinions of psychiatric Agreed Medical Evaluator (AME), John Stalberg, M.D., and vocational expert, Antonio Reyes, Ph.D.; applicant is entitled to an unapportioned award as defendant failed to meet their burden of proof on apportionment; and applicant is precluded from competing in the open labor market. The WCJ awarded applicant, in relevant part, permanent disability of 100%, subject to adjustment pursuant to Labor Code[1] section 4659(c), less 15% for attorney fees. The WCJ ordered attorney fees and all other issues deferred.

Defendant contends that the opinions of Dr. Stalberg do not constitute substantial medical evidence on the issues of injury AOE/COE and permanent disability. Defendant further contends that opinions of applicant's vocational expert, Mr. Reyes, are similarly lacking in substantial

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

evidence as he relied upon the reporting of Dr. Stalberg and applied the incorrect permanent disability rating schedule and case law.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition for Reconsideration (Petition) be denied.

We have considered the allegations in the Petition and Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for the limited purpose of adding Finding of Fact 9 to reflect that applicant established good cause to reopen her claim. We otherwise affirm the FA&O.

FACTS

Applicant claimed that, while employed by defendant as an intermediate clerk during the period from May 30, 1999, through May 30, 2000, she sustained injury AOE/COE to the psyche.

The parties proceeded with discovery and retained Dr. Stalberg as the psychiatric AME, Steven Silbart as the orthopedic AME, and Timothy Reynolds, M.D. as the internal medicine AME. Applicant was evaluated by all three and corresponding reports were issued.

On February 8, 2005, the parties entered Stipulations with Request for Award based upon a 42% permanent disability to the psyche per the November 2, 2022 report of Dr. Stalberg. The Award was issued by the WCJ on the same date.

On April 25, 2005, applicant filed a Petition to Reopen alleging new and further injury. Thereafter, applicant was reevaluated by all three AMEs.

In a report dated December 22, 2003, orthopedic AME Dr. Silbert stated that:

> Notwithstanding this individual's description of her subjective complaints, at this point, I do not find any evidence that musculoskeletal injury has occurred in this case. There is no evidence of repeated (or single) injury to the neck, shoulders or back reported to her employment. There were no documented days missed from work secondary to her neck, shoulder or back comp1aints. This individual's termination from work was due to "stress" not due to musculoskeletal injury or decreased performance secondary to injury. Furthermore, a closer examination of this individual's work activities fails to disclose sufficiently repetitive or resistive activity which would predispose to cervical, lumbar or shoulder symptomatology. The position of Intermediate Clerk is predominantly sedentary, with only occasional lifting and carrying of over 4 to 5 pounds.
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> Lacking any history of injurious exposure and lacking any objective signs of musculoskeletal injury on serial examinations by different examiners, I do not find this individual's persistent subjective somatic complaint of neck, back and shoulder pain in any way indicative of continuous industrial trauma. To reiterate, I find no evidence that musculoskeletal injury has occurred in any case.

(Joint Exhibit 16, pp. 1-2.)

Dr. Silbart reiterated the above findings in his last evaluation and report dated March 21, 2006 (Joint Exhibit 14).

In a report dated June 8, 2006, psyche AME Dr. Stalberg indicated, in relevant part, that:

> I earlier described factors of disability on the 8 work functions apart from pain complaints; that was Slight on 1 and 2, Slight to moderate on 3 and 4, and Very slight on 5 through 8. She is precluded from excessive or extreme stress, a 10% standard add on.
>
> Now regarding pain, there is at least a Slight impairment on each of the 8 work functions caused by her pains which limit her. It is difficult to say how much they limit her without a functional capacity assessment. I believe they 1imit her at least slight on each of the 8 work functions and perhaps even more.
>
> In addition, because of the suicidal ideation sending her to the hospital she is now precluded from emotional stress, a 20% standard add on.
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> ***
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> Condition is work related. She is a qualified injured worker and probably will never be able to return to work, when one combines her psychiatric and physical condition.

(Joint Exhibit 6, pp. 2-3.)

In a subsequent report dated December 12, 2011, Dr. Stalberg updated his diagnosis to reflect that applicant has a continuous major depressive disorder, recurrent type; he indicated also that "[t]here is somewhat increased disability since her settlement in 2005," but "[t]here is no real impairment increased on the 8 work functions" only "a greater stress restriction[,]" potentially up to 30%, given that applicant had been hospitalized twice more since her settlement. (Joint Exhibit 3, pp. 4-5.)

In a report dated July 6, 2015, internal AME Dr. Reynolds, opined that "[a]bsent more information, I remain unable to conclude with any degree of reasonable medical probability that hypertension and diabetes mellitus were caused or aggravated by her distant employment at Martin Luther King Hospital." (Joint Exhibit 20, p. 6.)

In a report dated October 29, 2020, Dr. Stalberg opined that applicant remained permanent and stationary since 2003 with current GAF score of 55 per the *AMA Guides*, which reflects a 23% whole person impairment (WPI), in addition to the stress restriction of 25% WPI, for a total 48% WPI. (Joint Exhibit 1, p. 7.) He noted, however, that the DSM-V, which was published in May 2013, dropped the multiaxial system (GAF) and outlined the various reasons for this change. (*Ibid*.) He further confirmed that applicant "will never be returning to work[,]" but conceded that she required a vocational assessment "to see what jobs in the open labor market she can handle, keeping in mind all of her physical problems and internal medical problems and psychiatric problems." (*Id*. at p. 10.)

Applicant was then evaluated by vocational expert, Mr. Reyes, on February 24, 2022. In a report dated February 28, 2022, he concluded that:

> The evidence supports that Ms. Waldrond would not be able to persist in a job, maintain a regular work schedule, or interact appropriately with coworkers or supervisors. No employer would be able to accommodate Ms. Waldrond's work disabilities. Disability statistics also suggest that someone like Ms. Waldrond who has been found to be totally disabled by the Social Security Administration is highly unlikely to return to work. The known rate of return to work of Social Security recipients is under 0.5% and this has been constant for years.
>
> Medical, vocational, and statistical evidence support that Ms. Waldrond would not benefit from vocational rehabilitation services. Ms. Waldrond's impairments have synergistic, negative impact on her vocational functioning such that she would be unable to perform any type of work. As a result, she should be considered 100% permanently and totally disabled from the labor market.
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> Dr. Stalberg and Dr. Konstat found that Ms. Waldrond's significant psychological impairments are 100% apportioned to industrial causes. There is no evidence suggesting that Ms. Waldrond had pre-existing or non-industrial impairments that resulted in work disability. Ms. Waldrond was working without limitations prior to her industrial injuries. The medical and vocational evidence support that Ms. Waldrond is not working today and is unable to work in the future due to her industrial injuries alone. If not for her industrial injuries, Ms. Waldrond would have been able to continue working in her customary job without restrictions. Therefore, Ms. Waldrond's inability to work and loss of future earnings should be apportioned 100% to industrial factors on a vocational basis.
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> California's Supreme Court decision in *LeBoeuf* provided the following criteria for rebuttal of a scheduled rating:

> …the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating. Just as retraining may increase a worker's ability to compete in the labor market, a determination that he or she cannot be retrained for any suitable gainful employment may adversely affect a worker's overall ability to compete. Accordingly, that factor should be considered in any determination of a permanent disability rating.

More recently, the California Appellate Court issued a decision in *Contra Costa County v. Workers' Compensation Appeals Board and Doreen Dahl (Dahl)*, indicated that if an injured worker has the ability to benefit from vocational rehabilitation, then a vocational expert's opinion that a worker's diminished future earning capacity has produced a rating that is higher than that produced by the *Schedule* is not applicable.[3]

In this case Ms. Waldrond cannot benefit from vocational rehabilitation services and is not competitive for work due to industrial factors; any non-industrial, pre-existing medical impairments are not what prevent Ms. Waldrond from being vocationally retrained or from working. Likewise, Ms. Waldrond's pre-morbid intellectual, academic, and vocational abilities are not what prevent her from working or being retrained. Her industrially related psychiatric impairments are what prevent her from benefitting from vocational rehabilitation services. I have addressed the issue of feasibility for vocational rehabilitation services in the Rehabilitation Plan section of this report. Therefore, Ms. Waldrond meets the requirements for rebutting the scheduled rating per *LeBoeuf* and *Dahl*.

The relatively recent court of appeals decision *Department of Corrections and Rehabilitation v. Workers' Compensation Appeals Board and Dean Fitzpatrick (Fitzpatrick)*, indicated that Labor Code Section 4662, subsection (b) does not provide "a second independent path to permanent and total disability findings separate from Section 4660. Section 4660 is *mandatory*."[4] In practical terms this means that a vocational rehabilitation assessment is required, even when high levels of permanent disability is suggesting total disability. *Fitzpatrick* notes, "The permanent and total disability finding and award must be supported by substantial evidence."[5]

Fitzpatrick establishes only one path (Section 4660) for injured workers to rebut the *Permanent Disability Rating Schedule (Schedule)* citing *Ogilvie* as the controlling manner in which an injured worker may rebut a rating that is expected to be higher than what is produced by the Schedule.[6] Citing the three ways in which the *Schedule* may be rebutted, *Fitzpatrick* reinforces *Ogilvie* noting that an inability

[3] http://www.courts.ca.gov/opinions/archive/A141046.PDF
[4] http://www.courts.ca.gov/opinions/archive/C085850.DOCX
[5] Ibid, p. 20
[6] Ibid, pp. 15-16

> to benefit from vocational rehabilitation services is one way to rebut the *Schedule*. Since Ms. Waldrond cannot benefit from vocational rehabilitation services and is not competitive for work due to industrial factors, she meets the burden for rebutting the scheduled rating under *Fitzpatrick* and *Ogilvie*.

(Applicant's Exhibit 1, pp. 2-3, 15-16.)

On April 12, 2022, applicant filed a Declaration of Readiness to Proceed to a Mandatory Settlement Conference. The matter proceeded to multiple hearings and was ultimately set for trial, to be held on September 28, 2022.

At trial, the parties stipulated, in relevant part, to injury AOE/COE to the psyche during the period from May 30, 1999, through May 30, 2000; payment of permanent disability indemnity at various rates during the period from June 1, 2000, through December 1, 2004; applicability of the 1997 Permanent Disability Rating Schedule (PDRS); and filing of a Petition to Reopen on April 20, 2005. Issues set for determination included temporary disability; permanent disability; apportionment; and attorney fees. The issue of liability for self-procured medical treatment was deferred. The parties submitted as joint exhibits, various reports from Dr. Stalberg issued between 2006 to 2020, as well as transcripts of Dr. Stalberg's depositions from 2010 and 2012. Applicant also submitted the vocational report of Mr. Reyes. The exhibits were admitted and the matter stood submitted.

On November 3, 2022, the WCJ issued an Order Vacating Submission as the Stipulated Award of February 8, 2005, and Petition to Reopen of April 20, 2005, were not located in the record. The parties submitted the requested items, and the matter was resubmitted with the WCJ issuing formal rating instructions. On February 27, 2023, a further Order Vacating Submission was issued as the rater required information from Dr. Stalberg on the eight work functions discussed in his December 12, 2011 and October 29, 2020 reports.

Thereafter, Dr. Stalberg issued a report dated June 22, 2023, wherein he diagnosed applicant with somatic symptom disorder per the DSM-V and Diagnostic and Statistical Manual TR. (Joint Exhibit 9, p. 5.) He accepted applicant's pain complaints as valid based upon credibility and genuineness of responding. (*Id*. at p. 6.) He also indicated the following with respect to the eight work functions and applicant's current impairment:

> Moderate to severe on work functions 1 and 2, which is the ability to perform complex or varied tasks; moderate to severe on work function 3, the ability to perform complex or varied tasks; moderate to severe on work function 4, which is

the ability to perform complex or varied tasks; and work functions 5 through 8, overall moderate plus very slight on each, which is moderate to moderate to severe.

That is combining her depression with her pain. Added to that would be an overall stress restriction even above 20%, the old 20% standard, meaning she can only tolerate less than usual stress.

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[T]here is substantially more disability extant [sic] than in 2011 and 2020. She should be rated on her present level of disability, which I believe, unfortunately, when one combines everything, is close to if not, 100%.

Applicant has had no non-industrial stressors such as injuries subsequent to her visit with me in 2020 such as no surgeries, no accidents, etc. The only change is that a move from a home to an apartment for financial reasons. Applicant has no friends that she associates with, no family and basically is living day to day wanting to make, she says, her final years pleasant.

These opinions are provided with a reasonable medical probability

(*Id*. at pp. 6-7, 12.)

Following the above report, Dr. Stalberg was deposed by the parties on March 20, 2024, and testified in relevant part, as follows:

Q: Doctor, you believe that she got worse, based upon your prior testimony, as it relates to her overall depression, correct, sir?

A: It's a -- it's in a cyclical fashion. Depression makes the pain -- subjective pain worse; pain makes the depression worse; and it keeps going.

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Q: All right. So just so we're clear, she got worse from 2011 to the present because of a combination of her pain and depression, correct, sir?

A: Right, each one, correct.

Q: And -- and as you pointed out, it is cyclical. And it's really hard to differentiate between them because it is cyclical, correct, sir?

A: Correct.

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Q: So do you believe your whole-person impairment, as set forth in your June 2023 report, and as you testified in your deposition, accurately reflects her overall whole-person impairment on an industrial basis?
A: Yes.

Q: And you had previously rendered an opinion that you felt that there was no indus -- nonindustrial apportionment, correct, sir?

MR. TRIPLETT: Objection. Again, it exceeds the scope allowed by the trial judge.

A: I did -- I did say my bottom-line opinion throughout the years has been there was no nonindustrial reason for causation of her disability; that's correct.

Q: All right. And, again, just so I'm clear, even though Dr. Silbart says there's no orthopedic basis for the pain, she still believes that she has pain that's either a result of the depression or the depression is a result of the pain. But, arguably, it's hard to say which came first, the chicken or the egg, correct?

A: Right. Well, the depression came -- well, that's right. They both occurred simultaneous, around the same time. You're right. I'm having trouble right now. You're right. Which came first? Hard to tell.

Q: And in that regard you have the opinion, relative to the eight work-function impairments, we have your current opinion. But it's really -- and correct me if I'm wrong, it's damn near impossible to sort out what's caused -- what her -- on her eight work-function impairments, what's caused by the depression and what's caused by the pain without, I don't know, dissecting her brain? Is that possible?

A: I don't even know. Even brainwave testing was not going to show it, I don't think.

(Joint Exhibit 11, pp. 19:22-20:12, 22:7-23:16.)

Following Dr. Stalberg's deposition, the parties attempted to resubmit the matter. However, on July 29, 2024, the WCJ issued an Amended Order Vacating wherein the parties were ordered to further develop the record and obtain reporting from Dr. Stalberg addressing "what applicant's permanent disability would be without consideration of the pain mentioned in his report of 6/22/2023." The WCJ also requested that Dr. Stalberg comment upon "what is causing the pain referred to in his 6/22/2023 report."

Thereafter, Dr. Stalberg issued a report dated November 24, 2024, wherein he indicated that:

> In the earlier framework of the eight work functions, the terms were clearly defined as follows: *Very slight* referred to impairments that were merely detectable, *slight* described impairments that were noticeable, and *moderate* referred to impairments that were marked.
>
> In Judge Owensby's original order, she indicated that I could address the causes of increased pain, should I choose to do so. However, this provision was excluded from her subsequent order dated July 29,2024. As referenced in my report of June 22, 2023, the primary cause of the reported pain, as noted in the *DSM*, was attributable to the previously recognized psychiatric condition of pain disorder.
>
> While prior AMEs did not attribute Applicant's condition to a workplace injury, it follows logically that the reported subjective pain would originate from psychological factors. That said, the process of assigning an accurate rating to such a condition remains highly challenging.

(Joint Exhibit 12, p. 3.)

Following the November 24, 2024 report, Dr. Stalberg was deposed by the parties on July 17, 2025, and testified, in relevant part, as follows:

> Q: Okay. And you previously testified, and I want to make sure it's still your opinion, there is no nonindustrial apportionment. The apportionment's a hundred percent industrial for this applicant for her psychiatric condition. Correct, sir?
>
> A: Correct. I know of nothing else to apportion it to. That's right.
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> Q: But you can't separate the pain disorder form the psychiatric injury because the pain disorder is caused by the psychiatric injury. Correct, sir?
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> A: Right. You -- right. And the pain affects many of the psychiatric functionings. That's right.

(Joint Exhibit 13, pp. 15:11-17, 16:8-12.)

On July 18, 2025, applicant filed a Declaration of Readiness to Proceed to a Mandatory Settlement Conference. The matter was ultimately set for trial, to be held on January 12, 2026.

At trial, the WCJ noted that the stipulations, issues, and exhibits set forth during the original trial held on September 28, 2022, would be incorporated, in addition to new joint exhibits, including updated reports from Dr. Stalberg and transcripts of his recent depositions, applicant's consultative rating, and the vocational report of Mr. Reyes. Thereafter, the matter stood submitted.

On August 11, 2026, the WCJ issued an FA&O wherein she held, in relevant part, that while employed by defendant as an intermediate clerk during the period from May 30, 1999 through May 30, 2000, applicant sustained injury AOE/COE to the psyche; applicant is permanently and totally disabled as a result, as per the substantial opinions of psychiatric AME, Dr. Stalberg, and vocational expert, Mr. Reyes; applicant is entitled to an unapportioned award as defendant failed to meet their burden of proof on apportionment; and applicant is precluded from competing in the open labor market. The WCJ awarded applicant, in relevant part, permanent disability of 100%, subject to adjustment pursuant to section 4659(c), less 15% for attorney fees. The WCJ ordered attorney fees and all other issues deferred.

It is from this FA&O that defendant seeks reconsideration.

DISCUSSION

I.

Preliminarily, petitions for reconsideration filed on or after July 14, 2026 are subject to 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 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 September 15, 2026 and 60 days from the date of transmission is November 14, 2026, which is a Saturday. The next business day that is 60 days from the date of transmission is Monday, November 16,

2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on November 16, 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 shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on September 15, 2026, and the case was transmitted to the Appeals Board on September 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 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 September 15, 2026.

II.

Turning now to the merits of the Petition, defendant contends that the opinions of Dr. Stalberg, upon which the FA&O is based, do not constitute substantial medical evidence on the issues of injury AOE/COE and permanent disability.

It is well established that the burden of proof rests upon the party holding the affirmative of the issue. (Lab. Code, § 5705.) As such, when an employee claims injury AOE/COE, it is the employee, or the lien claimant who steps in the shoes of the employee, who carries the burden of proof in establishing industrial causation and they must show that the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297- 298, 302; Lab Code, §§ 5705; 3600.) Pursuant to section 3202.5, the evidentiary burden of proof is to be met by a preponderance of the evidence. However, "[t]hat burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Further, substantial medical evidence is used to establish industrial causation and permanent disability. "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, the parties previously stipulated to injury AOE/COE to the psyche via the February 8, 2005 Stipulations with Request for Award, which was approved by the WCJ on the same date. Notwithstanding the prior Stipulations, based upon our review of Dr. Stalberg's reports and transcripts of his numerous depositions, Dr. Stalberg completed a full assessment of applicant, reviewed extensive medical records, took a detailed history, and provided evidence and reasoning in support of his conclusions. We therefore conclude that the opinions of Dr. Stalberg constitute substantial medical evidence on the issues of injury AOE/COE to the psyche and permanent disability.

We note further that the opinions of an AME are entitled to substantial weight absent a showing that they are based on an incorrect factual history or legal theory or are otherwise unpersuasive in light of the entire record. (See *Powers v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775 [51 Cal.Comp.Cases 114]; *Siqueiros v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 150 (writ den.).) No such showing was made by defendant here.

Defendant further contends that opinions of applicant's vocational expert, Mr. Reyes, are similarly lacking in substantial evidence as he relied upon the reporting of Dr. Stalberg, applied the wrong permanent disability rating schedule, and the wrong case law.

We disagree. It is well established that vocational evidence may be used to address issues relevant to the determination of permanent disability. While the Permanent Disability Rating Schedule (PDRS) is presumptively correct (see *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 808, 826 [75 Cal.Comp.Cases 837]), it is not absolute (*Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (*Fitzpatrick*) (2018) 27 Cal.App.5th 607, 619-620 [83 Cal.Comp.Cases 1680]), and a rating obtained pursuant to the PDRS may be rebutted by showing an applicant's diminished future earning capacity is greater than that reflected in the PDRS. (*Nunes v. State of California, Dept. of Motor Vehicles* (*Nunes I*) (2023) 88 Cal.Comp.Cases 741, 749 (Appeals Bd. en banc); *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624]; *Contra Costa County v. Workers' Comp. Appeals Bd.* (*Dahl*) (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 1119].) Ultimately, the goal in rating impairments is accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Almaraz-Guzman III*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].)

This was the rule expressed in the case of *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [193 Cal.Rptr. 547, 666 P.2d 989], wherein an injured worker sought to demonstrate that, due to the residual effects of his work-related injuries, he could not be retrained for suitable meaningful employment. (*Id*. at pp. 237-238.) The California Supreme Court concluded that it was error to preclude the injured worker from making such a showing and held that "the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating." (*Id*. at p. 1274.)

In *Ogilvie*, the Court further explained that "an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating." (*Ogilvie*, *supra*, at p. 1277.) As clarified by the Court in *Dahl*, the non-amenability to vocational rehabilitation must be due to industrial factors. (*Dahl*, *supra*, at p. 758.)

Our opinion in *Nunes I* made clear that "[t]he same considerations used to evaluate whether a medical expert's opinion constitutes substantial evidence are equally applicable to vocational

reporting … [i]n order to constitute substantial evidence, a vocational expert's opinion must detail the history and evidence in support of its conclusions, as well as 'how and why' any specific condition or factor is causing permanent disability." (*Nunes I*, *supra*, at p. 751.)

As outlined above, vocational expert, Mr. Reyes, established that applicant's work-related impairments preclude her from rehabilitation into another career field and from competing in the open labor market. As outlined in his February 28, 2022 report:

> The evidence supports that Ms. Waldrond would not be able to persist in a job, maintain a regular work schedule, or interact appropriately with coworkers or supervisors. No employer would be able to accommodate Ms. Waldrond's work disabilities. Disability statistics also suggest that someone like Ms. Waldrond who has been found to be totally disabled by the Social Security Administration is highly unlikely to return to work. The known rate of return to work of Social Security recipients is under 0.5% and this has been constant for years.
>
> Medical, vocational, and statistical evidence support that Ms. Waldrond would not benefit from vocational rehabilitation services. Ms. Waldrond's impairments have synergistic, negative impact on her vocational functioning such that she would be unable to perform any type of work. As a result, she should be considered 100% permanently and totally disabled from the labor market.
>
> Dr. Stalberg and Dr. Konstat found that Ms. Waldrond's significant psychological impairments are 100% apportioned to industrial causes. There is no evidence suggesting that Ms. Waldrond had pre-existing or non-industrial impairments that resulted in work disability. Ms. Waldrond was working without limitations prior to her industrial injuries. The medical and vocational evidence support that Ms. Waldrond is not working today and is unable to work in the future due to her industrial injuries alone. If not for her industrial injuries, Ms. Waldrond would have been able to continue working in her customary job without restrictions. Therefore, Ms. Waldrond's inability to work and loss of future earnings should be apportioned 100% to industrial factors on a vocational basis.

(Applicant's Exhibit 1, pp. 2-3.)

Based upon our review of the February 23, 2022 vocational report, Mr. Reyes completed a full assessment, took a detailed history, and provided evidence and reasoning in support of his conclusions. As such, we conclude that Mr. Reyes's opinions are substantial evidence and that applicant successfully rebutted the PDRS.

Lastly, the Appeals Board maintains jurisdiction over all its awards and may issue appropriate orders modifying said awards upon a showing of good cause. (Lab. Code, § 5803.) Section 5803 provides that:

> The appeals board has continuing jurisdiction over all its orders, decisions, and awards made and entered under the provisions of this division, and the decisions and orders of the rehabilitation unit established under Section 139.5. At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor. This power includes the right to review, grant or regrant, diminish, increase, or terminate, within the limits prescribed by this division, any compensation awarded, upon the grounds that the disability of the person in whose favor the award was made has either recurred, increased, diminished, or terminated.

The Court of Appeal has noted that "[t]he process of the reopening of the case is not identical with the process of reconsideration," and that the exercise of the Board's authority under section 5803 requires that "[t]he interested party [be] given notice and opportunity to be heard, and one of the issues upon which he is to be heard is whether or not 'good cause' justifies the reopening." (*United States Pipe & Foundry Co. v. Indus. Acc. Comm.* (*Hinojoza*) (1962) 201 Cal.App.2d 545 [27 Cal.Comp.Cases 73].)

Further, in *Leboeuf*, the California Supreme Court underscored the fact that cases construing section 5803 have recognized a variety of factors and circumstances may constitute the requisite good cause:

> For example, "good cause" may be established by newly discovered evidence which could not have been produced at the original hearing and which indicates a more extensive disability than that recognized by the original findings. (*Nicky Blair's Restaurant v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941, 956-959 [167 Cal.Rptr. 516]; Ryan v. Workmen's Comp. App. Bd. (1968) 265 Cal.App.2d 654, 661-662 [72 Cal.Rptr. 140].) Similarly, a subsequent clarification of the applicable law by a reviewing court which indicates that an employee was originally entitled to a different award than that given is "good cause" to reopen a case and amend an award. (*Knowles v. Workmen's Comp. App. Bd.* (1970) 10 Cal.App.3d 1027, 1030 [89 Cal.Rptr. 356]; *State Comp. Ins. Fund v. Ind. Acc. Com.* (1946) 73 Cal.App.2d 248, 257-259 [166 P.2d 310].)

(*LeBoeuf*, *supra*, at p. 242.)

Here, based upon the February 23, 2022 vocational report of Mr. Reyes and the updated opinions of Dr. Stalberg, as outlined in the transcripts of his depositions and reports following applicant's Petition to Reopen, we find good cause to reopen the February 8, 2005 Award.

In light of the foregoing, we grant defendant's Petition for the limited purpose of amending the FA&O to reflect that there is good cause to reopen applicant's February 8, 2005 Award. We otherwise affirm the FA&O.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings, Award, and Orders issued on August 11, 2026, is **GRANTED.**

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings Award, and Orders issued on August 11, 2026, is **AFFIRMED**, **EXCEPT** as **AMENDED** below.

FINDINGS OF FACT

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9. Applicant has established good cause to reopen her February 8, 2005 Award.

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WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 16, 2026

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

DEBORA WALDROND
GRAIWER, KAPLAN, VERNIK & EVANS, LLP
LAW OFFICE OF DENNIS TRIPLETT

RL/cm

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