WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ERNESTO GUZMAN, *Applicant*

vs.

ADCO ROOFING & WATERPROOFING, insured by REDWOOD FIRE & CASUALTY, adjusted by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Number: ADJ12792074
Sacramento District Office

OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on January 23, 2026, wherein the WCJ found in pertinent part that applicant sustained 57% permanent disability, after apportionment, for injuries to his right arm, right wrist, left wrist, left hip, and psyche. The WCJ also found that the "violent act" exception applied under Labor Code section[1] 4660.1 and that applicant did not rebut the Permanent Disability Rating Schedule (PDRS) with vocational evidence.

Applicant contends that vocational expert, Enrique Vega, opined that applicant has lost 100% of his earning capacity as a result of the work injury and is thus 100% permanently totally disabled on a vocational basis. Applicant also contends that due to his inability to compete in the open labor market or to be retrained to find and sustain suitable meaningful employment, he has rebutted the scheduled rating pursuant to section 4660.1(g) and the *LeBoeuf*/*Ogilvie*/*Dahl* line of cases, as well as the en banc decisions in *Nunes v. State of California*, *Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (Appeals Bd. en banc) (*Nunes I*) and *Nunes v. State of California*, *Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894 (Appeals Bd. en banc) (*Nunes II*).

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

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[1] All statutory references are to the Labor Code unless otherwise stated.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will grant applicant's Petition for Reconsideration, rescind the Findings and Award, and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

Applicant claimed injury to his right arm, right wrist, left wrist, left hip, and psyche while employed by defendant as a roofer on June 7, 2019.

On December 15, 2025, the matter proceeded to trial on the following issues:

> 1. Permanent disability including whether applicant is entitled to permanent disability for the psyche and if the schedule is rebutted by vocational rehabilitation evidence. Applicant contends that the Violent Act Exception applies.
>
> 2. Apportionment.
>
> 3. Attorney fees.

(Ex. LL, applicant's trial testimony, pp. 7-8; Minutes of Hearing and Summary of Evidence, December 15, 2025 trial (MOH/SOE), p. 3.)

Applicant was the only witness called to testify. He testified in relevant part as follows:

> A. Uh, I got injured by falling off a roof. It was -- I remember walking around the roof, and there was an extension cord that was cut off to like a pipe. And I remember just tripping over that and falling back; trying to grab ahold of anything on my way down. There was nothing to grab.
>
> Q. Okay. And then, did you fall directly on to the ground below?
>
> A. Yes, I fell from -- I'd say 23, 24 feet down to the ground. And the first thing I remember was trying to get up, but my legs and my arm weren't cooperating.
>
> Q. Do you recall what the ground was made out of when you fell?
>
> A. It was like compact dirt. Really hard dirt that -- yeah, I'm lucky I didn't hit the concrete, but it was still pretty hard dirt.
>
> Q. Did you suffer any fractures in connection with this injury?

A. Yes, I did. I remember really fracturing my whole right wrist. That was -- that was pretty bad. I also broke my left femur. I still have a metal rod in that leg because of that. And somehow, I sustained an injury to my -- I believe my right eye.

Q. Were you hospitalized after the event?

A. Yes, I was. Um, I remember standing in there, ripping off my clothes and taking me down to the hospital.

Q. Okay. And how long did you stay in the hospital?

A. I'd say about -- I was there for about two weeks. I remember, uh -- they transferred me after about a week or so --

...

Q. And sorry, I actually want to go back to the fall that you had at work and just ask you one follow-up question. Do you know if you lost consciousness as a result of that injury?

A. I did not. I remember being awake the whole time. Yeah, kind of just witnessing everything.

(Ex. LL, applicant's trial testimony, pp. 12-14.)

The WCJ admitted the following medical reporting into evidence: treatment report by primary treating physician David Chow, M.D., dated August 26, 2025 (Ex. 1); treatment report by primary treating psychologist David Green, Ph.D., dated July 24, 2025 (Ex. 2); reports by qualified medical evaluator (QME) in pain medicine Behzad Emad, M.D., dated May 26, 2020 through May 30, 2023 (Ex. AA to Ex. KK) and his deposition transcript of October 8, 2021 (Ex. LL); and supplemental QME report by psychologist Kamal Freiha, Psy.D., dated October 22, 2024 (Ex. MM). Dr. Chow's initial report and Dr. Freiha's initial QME report are not in evidence.

On July 24, 2025, treating psychologist Dr. Green examined applicant, took applicant's history, and reviewed medical records from treating physician Dr. Chow. (Ex. 2, Green PTP report dated July 24, 2025, pp. 2-5.) Dr. Green also conducted diagnostic testing, and diagnosed applicant with a major depressive disorder, a generalized anxiety disorder, a pain disorder, and alcohol dependance, in remission. Under his previous diagnoses, PTSD is also listed. (*Id*. at pp. 5-7.) Dr. Green assigned a GAF score of 57, according to DSM-IV, and opined that applicant had a whole

person impairment (WPI) of 20%. (*Id.* at p. 8.) With respect to apportionment, Dr. Green opined that 85% of applicant's permanent psychiatric disability is industrial. (*Id*.)

On October 22, 2024, in her supplemental psychology QME report (Ex. MM), Dr. Freiha provides a cursory discussion and history and did not diagnose any psychological conditions. She merely stated that applicant's mental health complaints stem from "his chronic pain condition, his reduced capacity for physical exertion and activity, financial stress, and the stress of the ongoing worker compensation case." (Ex. MM, Freiha supplemental report dated October 22, 2024, p. 2.) Dr. Freiha makes no reference to any medical records or to any vocational reports.

It appears that the supplemental psychology QME report was issued in response to a request by applicant's attorney, based on the following excerpt:

> Because this case has been in litigation for over five (5) years, the applicant, does not feel that psychological counseling is going to improve his overall condition and he respectfully requests that you reconsider your Maximum Medical Improvement finding and issue a final report in this case (i.e. regarding MMI status, GAF/WPI, apportionment, etc.) so that he can move forward with his wife.[2]

(Ex. MM, p. 2.)

As to causation, Dr. Freiha opined that "It appears clear that the injury in question was industrially based. It happened while he was on the clock, at the job site, performing the duties of the job. It does not appear that there are any other causes to the injury." (Ex. MM, p. 2.) Dr. Freiha states that applicant has reached a permanent and stationary status "secondary to his decision to not seek mental health treatment." (*Id*.) Regarding apportionment, Dr. Freiha apportions 80% of his condition to his work injury and resulting chronic condition, and 20% to non-industrial factors. (*Id*.) Dr. Freiha concludes as follows:

> [Applicant] has decided that he prefers to not prolong this case by seeking mental health treatment. I understand and support this decision. As such, he is now determined to be permanent and stationary, and the aforementioned apportionment and rating is provided.

(Ex. MM, p. 2.)

QME in pain medicine Dr. Emad initially evaluated applicant on April 8, 2020, and reevaluated him on January 4, 2021, February 4, 2022, and March 14, 2023. (Ex. BB, Emad

[2] Based on context, we presume that this is a typo and applicant's attorney meant "life" instead of "wife," i.e., "... so that he can move forward with his life."

supplemental report dated March 14, 2023, p. 46.) Following the March 14, 2023 evaluation, Dr. Emad opined that the applicant was at maximum medical improvement, although "[u]nfortunately, he continues to decompensate." (Ex. BB, p. 48.)

Using the Combined Values Chart (CVC) in the PDRS, Dr. Emad opined that applicant has 15% WPI of the right upper extremity, 16% WPI due to his left femur, and 2% WPI due to a scar (as agreed to by the parties), which, when combined, result in total of 30% WPI. (Ex. BB, pp. 50-51.) Dr. Emad apportioned 100% to applicant's industrial injury. (*Id*. pp. 51-52.) After review of additional scans and a sub-rosa video of applicant, Dr. Emad's WPI opinions did not change. (Ex. AA, Emad supplemental report dated May 30, 2023, pp. 5-6.) We note that the video surveillance was not admitted into evidence.

On August 26, 2025, treating physician Dr. Chow issued a progress report. He examined applicant, provided a history, and reviewed diagnostic scans. (Ex. 1, Chow PTP report dated August 26, 2025, pp. 1-4.) With respect to work status, Dr. Chow opined that applicant should be on modified duty "per QME" and if unable to accommodate the restrictions, then applicant was temporarily totally disabled. (Ex. 1, p. 4.) Applicant's work restrictions were as follows: no lifting, carrying, pushing/pulling more than 20 pounds, no repetitive bending/twisting of right wrist and left leg. No climbing. No standing or walking for more than 30 minutes. (*Id*.)

With respect to the vocational evidence, applicant retained vocational expert, Enrique Vega. Mr. Vega issued reports dated April 4, 2025 (Ex. 3), September 7, 2023 (Ex. 4), May 15, 2023 (Ex. 5), September 22, 2022 (Ex. 6), April 29, 2022 (Ex. 7), and March 27, 2021 (Ex. 8). It does not appear that Mr. Vega reviewed records or reports from QME in psychology Dr. Freiha or treating psychologist Dr. Green.

In his initial report, Vega opined as follows:

> The medical evidence and the results of vocational testing support that [applicant] has poor vocational aptitudes and significant work disabilities such that he has no access to the labor market. He would not be successful in a work environment. As a result, he should be considered 100% permanently and totally disabled.
>
> Dr. Emad found that Mr. Guzman's right elbow, right wrist, right hand, and left femur impairments are all 100% apportioned to industrially related factors. There is no evidence suggesting that Mr. Guzman had any pre-existing or non-industrial impairments that resulted in a work disabling condition. Therefore, Mr. Guzman's inability to work and loss of future earnings is apportioned 100% to his industrial injuries on a vocational basis.

(Ex. 8, Vega report dated March 27, 2021, pp. 2-3).

With respect to apportionment, Mr. Vega opined:

> Dr. Emad found that Mr. Guzman's right elbow, right wrist, right hand, and left femur impairments are all 100% apportioned to industrially related factors. There is no evidence suggesting that Mr. Guzman had any pre-existing or non-industrial impairments that resulted in a work disabling condition. Therefore, Mr. Guzman's inability to work and loss of future earnings is apportioned 100% to his industrial injuries on a vocational basis.

(E. 8, p. 14.)

In his supplemental reports, Mr. Vega's conclusions did not change and he continued to opine that applicant is 100% permanently and totally disabled on a vocational basis. (Ex. 3, Vega supplemental report dated April 4, 2025, p. 2; Ex. 5, Vega supplemental report dated May 15, 2023, p. 4; Ex. 6, Vega supplemental report dated September 22, 2022, p. 6; and Ex. 7, Vega supplemental report dated April 29, 2022, p. 4.)

Defendant retained vocational expert Scott Simon. Mr. Simon issued vocational rehabilitation reports dated June 10, 2022 (Ex. C), December 18, 2023 (Ex. B), and May 26, 2025 (Ex. A).) At the time of his initial report, it does not appear that Mr. Simon had reviewed records or reports from QME in psychology Dr. Freiha or treating psychologist Dr. Green. In pertinent part, Mr. Simon opined as follows:

> [A]pplicant is amenable for rehabilitation and if he were to return to work, has sustained a 7% loss of his future earning capacity (DFEC), prior to applicable apportionment.

(Ex. C, Simon report dated June 10, 2022, p. 30.)

With respect to apportionment, Mr. Simon opined that:

> there was or was (*sic*) no clear evidence in the record indicating that there would have been any labor disabling component to the currently assigned disability for the non-industrial issues.

(Ex. C, p. 29.)

In his May 26, 2025, supplemental report Mr. Simon notes that "At this late stage in the process, I have now been provided with a July 2, 2024 report by Kamal Freiha, Psy.D." (Ex. A, Simon supplemental report dated May 26, 2025, p. 2.) However, Mr. Simon's conclusions did not change. (*Id*.)

DISCUSSION

I.

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

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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 February 24, 2026, and 60 days from the date of transmission is Saturday, April 25, 2026. The next business day that is 60 days from the date of transmission is Monday, April 27, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, April 27, 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

[3] 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.

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 by the WCJ, the Report was served on February 24, 2026, and the case was transmitted to the Appeals Board on February 24, 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 February 24, 2026.

II.

A WCJ's decision must be based on admitted evidence (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc)), and must be supported by substantial evidence (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton*, *supra*, at p. 476.) The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton*, *supra*, 66 Cal.Comp.Cases at p. 476, citing *Evans v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].) A medical report must also set forth the reasoning behind the physician's opinion and not merely their conclusions in order to be substantial evidence. (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workmen's Comp. Appeals Bd*. (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo*, *supra*, 70 Cal.Comp.Cases 604.)

It is important to recognize that documents "that are in the adjudication file but have not been received or offered in evidence are not part of the record of proceedings." (Cal. Code Regs., tit. 8, § 10803.) That is, while we may consider allegations in the pleadings, our review is of the admitted evidence, and our decision must be supported by substantial evidence.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on a threshold issue. (Lab. Code, §§ 5701, 5906; *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924].) The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].)

III.

An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.)

With respect to compensability of psychiatric injuries, section 3208.3(b) provides:

> (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
>
> (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.
>
> (3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(Lab. Code, § 3208.3(b).)

"Predominant as to all causes" for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd.* (*Garcia*) (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].) However, the predominant causation threshold applies to psychiatric injuries pled as a compensable consequence of a physical injury. (*Lockheed Martin Corp. v.*

Workers' Comp. Appeals Bd. (*McCullough*) (2002) 96 Cal.App.4th 1237, 1249 [67 Cal.Comp.Cases 245].) The Court in *McCullough* opined that for a compensable consequence psychiatric injury, "the precipitating physical injury constitutes an 'actual event[] of employment' within the meaning of [section 3208.3(b)(1)]." (*Id.*)

For injuries occurring on or after January 1, 2013, an injured worker is not entitled to an increased impairment rating for psychiatric disorder unless the compensable psychiatric injury resulted from either a significant violent act or a catastrophic injury. Section 4660.1(c) states:

> (c)
> (1) Except as provided in paragraph (2), the impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.
>
> (2) An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:
>
> (A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.
>
> (B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.

(Lab. Code, § 4660.1(c).)

Section 4660.1(c) thus bars an increase in an injured worker's permanent impairment rating for a psychiatric injury that is a compensable consequence of a physical injury occurring on or after January 1, 2013. However, an injured worker may receive an increased impairment rating for a compensable consequence psychiatric injury if: (1) they were a victim of a violent act or had a direct exposure to a significant violent act, or (2) the injury was catastrophic.

In our en banc opinion in *Wilson v. State of CA Cal Fire*, we defined "compensable consequence" and explained the interplay between that concept and the prohibition against increased ratings for psychiatric injuries in section 4660.1(c):

> An injury must be proximately caused by the employment in order to be compensable. (Lab. Code, § 3600(a)(3); see also *Clark*, *supra*, 61 Cal. 4th at pp. 297-298.) Proximate cause in workers' compensation requires the employment be a contributing cause of the injury. (*Clark*, *supra*, 61 Cal. 4th at

> pp. 297-298 [outlining this standard and analyzing the difference between causation in tort law and causation in workers' compensation].) Causation of an injury may be either direct or as a compensable consequence of a prior injury. More precisely, an injury may be directly caused by the employment. Alternatively, a subsequent injury is a compensable consequence of the first injury where it "is not a new and independent injury but rather the direct and natural consequence of the" first injury. (*Carter v. County of Los Angeles* (1986) 51 Cal. Comp. Cases 255, 258 (Appeals Board en banc).) The "first injury need not be the exclusive cause of the second but only a contributing factor to it … So long as the original injury operates even in part as a contributing factor it establishes liability." (*State Compensation Ins. Fund v. Industrial Acc. Com*. (*Wallin*) (1959) 176 Cal. App. 2d 10, 17 [24 Cal.Comp.Cases 302].) In other words, if the first injury is a contributing cause of the second injury, the second injury is a compensable consequence of the first injury. Whereas the first injury is directly caused by the employment, a compensable consequence injury is indirectly caused by the employment via the first injury.
>
> As discussed above, the proscription against an increased rating for psychiatric injuries in section 4660.1(c) does not apply to psychiatric injuries directly caused by events of employment.

(*Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393, 403-404 (Appeals Bd. en banc).)

Thus, a multi-step analysis is required to determine if any of the exceptions apply to the prohibition on increased impairment ratings in section 4660.1(c) for sleep dysfunction, sexual dysfunction, and/or psychiatric disorder. The first step in this analysis is determining if the injury was directly caused by the employment or is a compensable consequence of the employment. Substantial medical evidence is required for this determination. (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 414, citing *Rolda v. Pitney Bowes*, *Inc*. (2001) 66 Cal.Comp.Cases 241, 245 (Appeals Bd. en banc) [Determination of causation of a psychiatric injury requires competent medical evidence. The evaluating physicians must render an opinion as to whether the psychiatric injury was predominantly caused by actual events of employment].)

The prohibition on an increased impairment rating in section 4660.1(c), "does not apply to psychiatric injuries directly caused by events of employment." (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 403; *City of Los Angeles v. Workers' Comp. Appeals Bd*. (*Montenegro*) (2016) 81 Cal.Comp.Cases 611 (writ den.); Lab. Code § 4660.1(c)(1).) Consequently, if the psyche injury or sexual disfunction injury is directly caused by employment, no further steps are required; the increased impairment rating is applicable.

If, on the other hand, a psychiatric injury is found not to be directly caused by the events of employment, then the second step of the analysis requires the fact finder to determine if the injury is a compensable consequence of the first injury. If so, then the third step applies: determining if the psychiatric injury resulted from the injured worker being a victim of a violent act, or if the injury was a catastrophic injury. (Lab. Code, § 4660.1(c)(2)(A)-(B).) If either exception applies, the prohibition on increased ratings is overcome.

As discussed in *Wilson*, panel decisions evaluating whether an injury may receive an increased impairment rating under section 4660.1(c)(2) have defined a violent act as an act characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 405.[4]) The determination of whether a physical injury is the result of a violent act requires an evaluation of the mechanism of injury in light of the event causing the injury. This focus on the mechanism of injury comports with the statute's language, which emphasizes the event causing the injury, rather than the injury itself: the statute expressly refers to being a victim of or direct exposure to a violent "act." The word "injury" is not in this subsection. The focus in evaluating whether an injury qualifies for the exception in section 4660.1(c)(2)(A) is therefore on the mechanism of injury, not on the injury itself. (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 406, emphasis in original.)

In *Larsen v. Securitas Security Services* (2016) 81 Cal.Comp.Cases 770, a security guard was struck by a car from behind while on a walking patrol causing her to fall, hit her head and lose consciousness. The panel defined "violent act" as "an act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening and concluded that being hit by a car under these circumstances constitutes a violent act" and applicant was thus entitled to additional permanent disability for her psyche injury as an exception to section 4660.1(c). (*Id*. at p. 775, emphasis added.)

While applicant's description of the mechanism of his injury is compelling, based on the evidence currently in the record, a determination that applicant is entitled to the violent act exception of 4660.1(c)(1) is not supported by substantial medical evidence. Unfortunately, the

[4] Although panel decisions are not binding precedent on other Appeals Board panels and WCJs (see *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236]), panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Bd. en banc); *Griffith v. Workers' Comp. Appeals Bd*. (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

initial report by Dr. Freiha, the QME in psychology, is not in evidence, and our review is limited to the supplemental report.

Dr. Freiha's supplemental report does not contain information regarding what history was taken nor information regarding an examination. Dr. Freiha states that applicant is now determined to be permanent and stationary because applicant "has decided that he prefers to not prolong this case by seeking mental health treatment. I understand and support this decision." (Ex. MM, Freiha supplemental report dated October 22, 2024, p. 2.) Not only is this cursory, but it lacks foundation because it is based on an allegation by applicant's attorney and not on a medical evaluation of applicant and not on a review of the medical and vocational evidence, and it is not an opinion framed in terms of reasonable medical probability. As to causation, Dr. Freiha's opinions are speculative: "It appears clear that the injury in question was industrially based." and "It does not appear that there are any other causes to the injury." (Ex. MM, Freiha supplemental report dated October 22, 2024, p. 2.) Again, the opinions are not based on a medical evaluation of applicant and are not based on a review of the medical and vocational evidence. Dr. Freiha apportions 80% to applicant's work injury and resulting chronic condition, and 20% to non-industrial factors, and yet, Dr. Freiha does not provide any diagnoses. We also note that although applicant's attorney requested a finding regarding GAF and WPI, Dr. Freiha did not provide any such opinion. Thus, Dr. Freiha's supplemental report is not substantial medical evidence upon which the WCJ may rely.

Primary treating psychologist Dr. Green took applicant's history, examined applicant, and conducted diagnostic testing, and thus his permanent and stationary report has a solid foundation. However, he does not provide an opinion regarding whether applicant's injury arose from a violent act. (Ex. 2, Green PTP report dated July 24, 2025, pp. 2-5.)

Therefore, the record requires further development by way of medical evidence so as to determine whether or how section 4660.1 and the exceptions under subdivision (c) apply.

IV.

Permanent disability in workers' compensation cases is determined using the PDRS. (Lab. Code, §§ 4660(c), 4660.1(d).) Impairments to two or more body parts are usually expected to have an overlapping effect upon the activities of daily living, so that generally, under the AMA Guides and the PDRS, the two impairments are combined to eliminate this overlap. (*Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 691 (Appeals Bd. en banc).)

However, the CVC in the PDRS may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either:

(a) there is no overlap between the effects on ADLs as between the body parts rated; or

(b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs.

(*Vigil*, *supra*, 89 Cal. Comp. Cases at p. 694.)

In the en banc decision in *Nunes I*, *supra*, 88 Cal.Comp.Cases 741, we held that section 4663 requires a reporting physician to make an apportionment determination and prescribes the standard for apportionment, but that the Labor Code makes no statutory provision for "vocational apportionment."

However, we further held that vocational evidence may be used to address issues relevant to the determination of permanent disability. While the 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]), "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 I*, *supra*, 88 Cal.Comp.Cases at p. 749.) Among the methods described for challenging a rating obtained under the PDRS was establishing that "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." (*Ogilvie v. Workers' Comp. Appeals Bd*. (2011) 197 Cal.App.4th 1262, 1274 [76 Cal.Comp.Cases 624].) 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." (*Id*. at p. 751.)

We also observed that while vocational evidence may be used to rebut the PDRS, such vocational evidence must nonetheless address apportionment and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment. (*Ogilvie*, *supra*, 197 Cal.App.4th at pp. 743-744.) Examples of impermissible vocational evidence included assertions that applicant's disability is solely attributable to the current industrial injury because

applicant had no prior work restrictions, or was able to adequately perform their job, or suffered no wage loss prior to the current industrial injury. (*Id*. at p. 754.) Accordingly, we concluded:

> Therefore, an analysis of whether there are valid sources of apportionment is still required even when applicant is deemed not feasible for vocational retraining and is permanently and totally disabled as a result. In such cases, the WCJ must determine whether the cause of the permanent and total disability includes nonindustrial or prior industrial factors, or whether the permanent disability reflected in applicant's inability to meaningfully participate in vocational retraining arises solely out of the current industrial injury.

(*Id*.)

The applicant in *Nunes* sought reconsideration of our en banc decision, and on August 29, 2023, we issued our decision *Nunes v. State of California*, *Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894 (Appeals Bd. en banc) (*Nunes II*). Therein, we held that the validity of an apportionment analysis described by an evaluating physician is "not assumed and must be carefully weighed and determined by the WCJ." (*Id*. at p. 897.) We provided various examples of when an applicant might be entitled to an unapportioned award based on vocational evidence, such as when "the WCJ determines that no evaluating physician has identified valid legal apportionment," or when "the evaluating physician has carefully considered factors of apportionment, but has nonetheless determined that it is not possible to approximate the percentages of each factor contributing to the employee's overall permanent disability to a reasonable medical probability." (*Id*. at p. 898.) However, "when an evaluating physician identifies a valid basis for apportionment, such apportionment must be considered as part of any determination of permanent disability, including a vocational expert's evaluation of an injured worker's feasibility for vocational retraining." (*Id*. at p. 899.)

Here, applicant produced scant medical evidence addressing rebuttal of the CVC. More importantly, it does not appear that the QMEs were provided with the reports by the vocational experts. Just as significantly, other than Mr. Simon receiving one of Dr. Freiha's reports, it does not appear that the vocational experts were provided with the QME reports.

As explained above, we are unable to determine whether section 4660.1 applies. As such, we cannot make a determination on the subsequent issue of the applicability of the violent act exception to section 4660.1. The parties stipulated at trial that applicant sustained injury AOE/COE to his psyche, as well as other body parts. However, based on the evidence, it is unclear whether

applicant's psychiatric injuries are a compensable consequence of his physical injuries, if they arose directly from the fall from the roof, or both.

Following our review of the record occasioned by applicant's Petition, we conclude that development of the record is consistent with principles of due process, and that allowing the evaluating physicians and/or vocational experts to supplement the record will provide the parties and the WCJ with a full and complete basis upon which to adjudicate the issues of permanent disability.

Accordingly, we grant applicant's Petition, rescind the Findings and Award issued on January 23, 2026, and return the matter to the trial level for further proceedings consistent with this opinion. Upon return to the trial level, we recommend that the WCJ consider what further development of the record is appropriate with respect to supplemental medical and/or vocational reporting.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on January 23, 2026 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 27, 2026

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

ERNESTO GUZMAN
EASON & TAMBORNINI
RTGR LAW
OD LEGAL
SIBTF

JB/*pm*

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