WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GINA DAVIS, *Applicant*

vs.

ORACLE AMERICA, INC. and SAFETY NATIONAL CASUALTY CORPORATION, administered by TRISTAR RISK MANAGEMENT, *Defendants*

Adjudication Number: ADJ11167605
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the "Findings of Fact and Award" (F&A) issued on April 17, 2026, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant successfully rebutted application of the Combined Values Chart (CVC) and awarded applicant permanent total disability. The WCJ further found applicant's condition became permanent and stationary on November 8, 2017.

Defendant contends, in pertinent part, that the WCJ incorrectly found applicant to be permanent and stationary on November 8, 2017, and that the reporting of the qualified medical evaluator does not constitute substantial medical evidence.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate, we will deny defendant's Petition for Reconsideration.

DISCUSSION

I.

Former Labor Code[1] 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.

(§ 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 case was transmitted to the Appeals Board on May 21, 2026, and 60 days from the date of transmission is Monday, July 20, 2026. This decision is issued by or on July 20, 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 and Recommendation shall be notice of transmission.

[1] All future references are to the Labor Code unless noted.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on May 21, 2026, and the case was transmitted to the Appeals Board on May 21, 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 May 21, 2026.

Here, and for the reasons stated in the WCJ's well-drafted report, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings of Fact and Award issued on April 17, 2026, by the WCJ is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 20, 2026

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

GINA DAVIS
GALINE FRYE FITTING & FRANGOS
RTGR LAW

EDL/oo

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION
AND NOTICE OF TRANSMISSION TO WCAB

Lawrence Keller, Workers' Compensation Judge, hereby submits his report and recommendation on the Petition for Reconsideration filed herein.

I. INTRODUCTION

Defendant seeks reconsideration of my Findings of Fact and Award, dated April 27, 2026, that the applicant is permanently totally disabled as a result of her cumulative trauma through April 4, 2016, and that the cost-of-living adjustments (COLA) of Labor Code section 4659(c) begin on January 1 of each year beginning in 2018. The defendant's Petition for Reconsideration was timely filed on May 6, 2026 (the "5/6/2026 Petition") and was verified. The defendant contends the applicant sustained 89 percent permanent partial disability and that COLA changes should begin on January 1, 2022. The applicant filed an Answer on May 11, 2026 disagreeing with defendant's assertions. The background and evidence sections which follow are taken largely from the April 27, 2026 Opinion on Decision with modifications for clarity and to address the 5/6/2026 Petition.

II. BACKGROUND

This matter had previously proceeded to trial over the course of two days with testimony from the applicant in addition to documentary evidence. The applicant filed a Petition for Reconsideration on the resulting Findings and Award, which was granted on October 30, 2023. On April 9, 2024, the Opinion and Decision after Reconsideration issued which rescinded the prior Findings and Award and returned the matter to me for further proceedings. After seeking further reporting from Qualified Medical Evaluator (QME) Steven Feinberg, M.D. the matter went to trial again January 6, 2026, on the issues of the parts of body injured, the permanent and stationary date, permanent disability, apportionment, future medical care, and attorney fees. There was no new testimony, but three new documentary exhibits were submitted. Both parties filed post-trial briefs, and the matter was submitted for decision on January 23, 2026.

Parties stipulated at the January 6, 2026 trial that Gina Davis, while employed through April 4, 2016 as a global trade compliance specialist, Occupation Group Number 112, by Oracle America, Inc., insured by Safety National Casualty Corporation sustained injury arising out of and in the course of employment to her bilateral upper extremities, specifically the hands and wrists.

The applicant was claiming injury to the entirety of the bilateral upper extremities, as well as chronic regional pain syndrome (CRPS). At the time of injury, the employee's earnings were $1,442.32 per week, warranting indemnity rates of $961.55 for total disability and $290.00 per week for permanent partial disability.

III EVIDENCE AT TRIAL

Evidence was reviewed in full in my April 17, 2026 Opinion on Decision. There were three new documentary exhibits submitted by the parties which are reviewed below. The previous documentary exhibits and testimony of the applicant were reviewed but are generally not summarized again here. The complete review of previously submitted evidence is found on pages 2-13 pf the August 9, 2023 Opinion on Decision (the "8/9/2023 Opinion"). In the interest of context, I am first including an abbreviated summary of the eight reports of QME Steven Feinberg, M.D. that were submitted at the prior trial, before reviewing the new QME report submitted as Joint Exhibit 109.

Joint Exhibits 101-108: Reports of QME Steven Feinberg, M.D., dated June 15, 2016 through August 4, 2021.

The applicant began working for Oracle in in September 2007 and began suffering from increased upper extremity pain associated with work in late 2015. (Joint Ex. 108, p. 13.) The applicant underwent arthroscopy surgery on her right thumb on June 6, 20177. (Joint Ex. 106, p. 9) Following a November 8, 2017 re-evaluation with Dr. Feinberg, he determined that her condition had been worsened by the surgery and that here was also now evidence of complex regional pain syndrome. (*Id*. at p. 15.) He found her condition to be permanent and stationary as of November 8, 2017. (*Id*. at p. 15.) He provided an impairment rating under Table 13-22 on page 343 of the *(AMA) Guides to the Evaluation of Permanent Impairment* (5th Edition) ("*AMA Guides*") for chronic pain in an upper extremity. (*Id*. at p. 16.) Dr. Feinberg found her disability to be 100% industrial as a result of the poor outcome from treatment. (*Id*. at p. 15.) In a January 8, 2018 supplemental report, Dr. Feinberg clarified that it was his opinion that the applicant's injury was a cumulative trauma injury. (Joint Ex. 104, p.4.)

On February 11, 2021 the applicant underwent surgery on the index, middle, and ring fingers on her right hand, followed by physical therapy sessions. (Joint Ex. 102, p. 14.) The applicant was evaluated for the final time on June 29, 2021. (*Id*. at p.1.) Her right hand symptoms

at the time of the evaluation with Dr. Feinberg included the skin on her right hand feeling like it is burnt, the skin on the inside of her right hand and fingers was wrinkled and dry, she had hypersensitivity up to her right elbow, her wrist felt like there was a rubber band around it, her nails looked different, and her pain was "…out of control whenever she did something." (Joint Ex. 102, p.15.) She did not do any tasks with her right hand. (*Ibid*.) Regarding her left hand she had pain even when she is not doing anything, she felt her left hand was very weak, using her left thumb was challenging, and she had hypersensitivity from her hand to her elbow although less on the left than on the right side. (*Ibid*.) Because of a need to hold her arms in special ways to avoid them being hit, which would cause a surge in pain, she now had shoulder problems. (*Ibid*.)

In his examination of the applicant Dr. Feinberg described range of motion for the shoulders and upper extremities as 50% for the right and 75% for the left. (Joint Ex. 102, p. 17.) Left wrist range of motion was 25% of the expected range and limited by pain. (*Ibid*.) The right hand and fingers were held flexed with deformity of the right fifth finger, and the ulnar side of the palm was noted as having a shininess. (*Ibid*.) Tremor was noted for the right upper extremity. (*Ibid*.) There was no grip in the right side, and it was markedly decreased on the left. (*Ibid*.) Hypersensitivity was observed bilaterally below both elbows, with right greater than left. (*Ibid*.) Both hands were swollen, with the right greater than the left. (*Ibid*.)

Dr. Feinberg again found the applicant's condition to be permanent and stationary. (Joint Ex. 102, p. 21.) He additionally opined on work status as, "… she could not return to her previous job. It is not medically probably that she could reengage in the open labor market. She has disability to her upper extremities precluding right upper extremity use and for the left upper extremity no heavy or forceful or repetitive use." (*Id*. at pp. 21-22.) Dr. Feinberg found a need for future medical care. (*Id*. at p. 22.) Dr. Feinberg again opined that apportionment was 100% industrial. (*Ibid*.)

Dr. Feinberg found disability for the bilateral upper extremities and provided impairment ratings. (Joint Ex. 102, p. 21.) Dr. Feinberg found impairment properly rated under Table 13-22 on page 343 of the AMA Guides for chronic pain in an upper extremity. (*Id*. at p. 22.) Based on that table, he found a class 4 rating with 50% whole person impairment (WPI) to the right hand, and class 3 for the left hand with 20% WPI. (*Ibid*.) He also found adding the impairments proper because, despite overlap, the synergistic effect between the upper extremities supports adding,

rather than combining the impairments. (*Ibid*.) In its entirety, Dr. Feinberg discussed adding impairments as follows:

> "There are 2 methods to rebut the CVC Table and add rather than combine. If the impairments have no overlap on AOLs, adding is appropriate. If there are overlapping ADLs with synergistic/amplifying effect, then adding is also appropriate. In this particular case, while there is evidence of overlap, the synergy between her upper extremities supports adding rather than combining." (Joint Ex. 102, p. 22.)

In an August 4, 2021 supplemental report, Dr. Feinberg clarified that his opinion regarding the applicant's ability to engage in the open labor market was a medical opinion. (Joint Ex. 101, p. 1.) He further stated that the issue of applicant's ability to compete in the open labor market needed to be opined upon by a vocational expert. (*Ibid*.)

Joint Exhibit 109: Report of QME Steven Feinberg, M.D., dated November 11, 2024.

The applicant was re-examined on November 11, 2024, with Dr. Feinberg having been provided updated medical records as well as the surveillance video previously summarized in the 8/9/2023 Opinion on pages 7-8. At the time of the re-evaluation the applicant had complaints of pain to the bilateral upper extremities with the right worse than the left. (Joint Ex. 109, pp. 18-19.) She was unable to move the fingers of her right hand, and her hand was stuck in the open position. (*Id*. at p. 18.) Although having constant left hand pain, she was able to use that hand normally, including opening and closing her hand, but the hand became tired and weak quickly. (*Id*. at p. 18.) The applicant reported being unable to do anything at home, and her husband must do everything for her including self-care and dressing. (*Id*. at p. 19.) The pain in her hands made it difficult to sleep. (*Id*. at p. 19.)

In his examination of the applicant, Dr. Feinberg noted that there was no atrophy in the upper body musculature. (Joint Ex. 109, p. 21.) There was diffuse pain, greater on the right than the left, and this prevented checks of the applicant's reflexes. (*Id*. at p. 21.) There was decreased range of motion in the shoulders bilaterally, the right elbow and wrist, and in the left thumb. (*Id*. at p. 21.) There was hypersensitivity bilaterally below the elbows, but much worse on the right. (*Id*. at p. 21.) Dr. Feinberg provided several work-related diagnoses for the applicant's upper extremities including chronic pain syndrome, CRPS, repetitive strain, as well as basilar thumb osteoarthritis.

Dr. Feinberg opined that the applicant remained permanent and stationary. (Joint Ex. 109, p. 27.) Dr. Feinberg was of the opinion that the applicant could not return to her previous job, and that, "[w]hen considering not just her nonfunctional right upper extremity but also her left upper extremity symptoms and her chronic pain, it is not medically probable that she could reengage in the open labor market." (*Id*. at p. 27.)

Regarding her disability, Dr. Feinberg opined, "She has a disability to her upper extremities precluding right upper extremity use and for the left upper extremity no heavy or forceful or repetitive use." (Joint Ex. 109, p. 27.) He provided an AMA Guides rating using Table 13-22 on page 343 for the rating of impairment of chronic pain for the upper extremities. (*Id*. at p. 27.) Using that table Dr. Feinberg assigned a Class 4 impairment for the right upper extremity at 60% WPI. (*Id*. at p. 27.) For the left upper extremity, he found a Class 3 impairment with a 20% WPI. (*Id*. at p. 27.) He opined that this was the most accurate impairment rating. (*Id*. at p. 28.) In discussing whether the applicant has lost all use of her upper extremities, he stated that while she has lost all functional use of her right upper extremity, there was still use of the left upper extremity with disability and loss of ADLs. (*Id*. at p. 28.)

Dr. Feinberg then discussed, in the framework of the 2024 *en banc* decision in *Vigil (Sammy) v. County of Kern*, (2024) 89 Cal. Comp. Cases 686, whether the impairments should be combined or added. (Joint Ex. 109, pp. 28-29.) Dr. Feinberg stated:

> "The Appeals Board defined the tem1 "synergy" and how that term applies in the context of evaluating two or more impairments arise out of an industrial injury: 'Synergy' is "(l) the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects; or (2) Cooperative interaction among groups .... that creates an enhanced combined effect." (American Heritage Diet. (Fifth Edition, 2022).) In some cases, two impairments overlap with one another in their effect on ADLs to the extent that they amplify (my underline) one another to cause further impairment than what is anticipated in the AMA Guides. Thus, it is pem1issible to add impairments where a synergistic amplification of ADLs is shown.
>
> Ms. Davis has an impairment of her dominant hand which impacts the ADL of non-specialized hand activities, such as being able to button a shirt, tie something, or do a two-handed activity. By having both hands involved/disabled, the ability to button a shirt or to do two handed activities becomes difficult at best and impossible in many situations. The purpose of the CVC, avoiding duplication, does not apply in such cases as the impairments arc not duplicative, because the two impairments together are worse than having a single impairment. There is clearly not only a synergistic effect by having both of her upper extremities involved but amplification of her disability because of this." (Joint Ex. 109, p. 29.)

Dr. Feinberg opined that causation of the upper extremity injury was industrial. (Joint Ex. 109, p. 27.) Dr. Feinberg opined that apportionment for the bilateral upper extremities is 100% to the medical treatment and the resulting CRPS. (*Id*. at p. 27.) It is not explicitly stated that the medical treatment was for the industrial injury. Dr. Feinberg additionally stated that there is a need for future medical care. (*Id*. at p. 27.)

Applicant's Exhibit 7: Report of George Rakkar, M.D., dated November 3, 2025.

Dr. Rakkar is the applicant's primary treating physician. (Minutes of Hearing and Summary of Evidence (MOH/SOE), March 2, 2023, p, 2, line 26.) In a telemedicine treatment report of November 3, 2025, the applicant indicated to Dr. Rakkar that there were no significant changes in her condition. (Applicant's Ex. 7, p. 2.) It did not appear that Dr. Rakkar reviewed the November 11, 2024 report of Dr. Feinberg because he references the older June 29, 2021 report. (*Id*. at p. 2.) Dr. Rakkar states that he was entirely in agreement with the opinions of Dr. Feinberg. (*Id*. at p. 3.)

Defendant's Exhibit D: Benefit printout dated January 6, 2026.

Defendant's benefit printout reflects that temporary disability indemnity was paid in broken periods from April 6, 2016 through December 4, 2021. (Def. Ex. D, p. 6.) The benefit printout also reflects an additional period of temporary total disability indemnity paid for the period February 1, 2021 through October 1, 2021. (*Id*. at p. 6.) Permanent partial disability was first paid for the period starting December 5, 2017 at the rate of $290 per week and continued through November 29, 2021. (*Id*. at pp. 1-3.) Payments for permanent partial disability resumed on December 14, 2021 and continued through January 2, 2026 at $290 per week. (*Id*. at pp. 3-6.)

IV. FINDINGS OF FACT AND AWARD – APRIL 17, 2026

After consideration of all the evidence I concluded that the applicant sustained injury to her bilateral upper extremities, inclusive of shoulders, elbows, wrists, hands, and fingers. (4/17/2026 Finding of Fact no. 1.) I further concluded that as a result of the injury at issue, the applicant was permanently totally disabled, was first permanent and stationary on November 8, 2017, and that the start date for COLA increases pursuant to Labor Code section 4659(c) was January 1, 2018. (*Id*. at Findings of Fact nos. 4, 5, and Award (a).) There were additional findings and an award for future medical care that are not disputed by the 5/6/2026 Petition.

V. CONTENTIONS ON RECONSIDERATION

The defendant contends that the evidence does not justify the findings of fact, the findings of fact do not support the "order" and decision[2], and that by the Findings of Fact and Award, I acted without or in excess of my authority. (5/6/2026 Petition, p. 1.) The defendant disputes my finding of permanent total disability and my finding for the start date of COLAs. (5/6/2026 Petition, pp. 2-3.) The defendant does not dispute other findings regarding the permanent and stationary date, the start date for permanent disability, findings on credit, attorney fees, or the award for future medical care.

Regarding the finding of permanent total disability, the defendant disputes that QME Dr. Feinberg justified his 60% WPI finding for the right upper extremity, an increase over the prior finding of 50% WPI. (5/6/2026 Petition, p. 4, lines 13-16.) Defendant asserts that the QME did not justify his opinion of 60% especially as, defendant asserts, there were only a minimal change in the applicant's physical condition. (*Id*. at p. 4, lines 15-16, p. 12, line 28 – p. 13, lines 4.)

Defendant's dispute with my permanent disability finding is centered on my opinion that Dr. Feinberg justified the adding of the disabilities pursuant to *Vigil (Sammy) v. County of Kern*, (2024) 89 Cal. Comp. Cases 686. (5/6/2026 Petition, p. 10, line 12 – p. 11, line 27.) The defendant contends that Dr. Feinberg's opinion regarding adding impairments is conclusory and, "He does not address the impact of the left upper extremity disability on her ADLs other than mentioning she would be unable to do two handed activities due to "an impairment in her dominant hand." (*Id*. at p. 29)." (5/6/2026 Petition, p. 11, lines 17-26.)

Regarding the start date for COLAs, defendant contends it should be January 1, 2022 because the last date that temporary disability was paid was in 2021. (5/6/2026 Petition, p. 2, lines 15-19.) Defendant asserts that COLA begins January following the year in which the applicant's disability was found to be permanent and stationary and permanently totally disabled indemnity. (*Id*. at p. 7, lines 10-12.) The 5/6/2026 Petition emphasizes that it is defendant's interpretation of the Labor Code and case law that the initiating date for determination of when COLA begins occurs only when:

> "[A]pplicant is "permanent and stationary" and "determined to be permanently totally disabled." The applicant was only deemed permanently totally disabled after the June 29, 2021, report of Dr. Feinberg according to Judge Keller as he relies on

[2] It is assumed that the reference to an order is a typographical error and the defendant intended to state that the findings of fact do not support the decision or award.

it to make a PTD finding. Prior to that report, there was not substantial medical evidence to find PTD, as evidenced by the original F&A of Judge Keller (finding there was not substantial medical evidence to support PTD)[.]" (*Id*. at p. 8, lines 12-17 [emphasis in original].)

VI. DISCUSSION

PERMANENT DISABILITY.

WHETHER THE APPLICANT HAS REBUTTED THE USE OF THE COMBINED VALUES CHART.

A permanent disability rating should reflect as accurately as possible an injured worker's diminished ability to compete in the open labor market. The *2005 Permanent Disability Rating Schedule* (*2005 PDRS*) is prima facie evidence of the percentage of permanent disability. (Labor Code §4660(c).) The scheduled rating can be rebutted by a rating derived from the opinions of vocational rehabilitation and labor market experts where such evidence shows that the employee "… will have a greater loss of future earnings than reflected in a rating because, due to the industrial injury, the employee is not amenable to rehabilitation." (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1275.) As clarified in *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746, the applicant must have lost 100% of her earning capacity solely due to her industrial injury. (*Id*. at 761.)

The applicant did not submit any vocation expert evidence to rebut the 2005 PDRS as a whole. I am not persuaded by Dr. Feinberg's opinion that the applicant has lost 100% of her earning capacity as there is no evidence to support that the QME is qualified to make such a determination. In fact, he stated that his is a medical opinion and defers to a vocational expert. Therefore, I did not find the applicant to be permanently totally disabled based on vocational evidence. I also found that the applicant had not established that she met the presumption of permanent total disability found in Labor Code section 4662(a)(2) for the loss of both hands or the use thereof. This is because the applicant does have limited use of her left hand as discussed by Dr. Feinberg.

The applicant's claim of permanent total disability was based on the adding, rather than combining, of disability. The 2005 PDRS states that multiple impairments should be adjusted and then combined to determine a final overall disability rating. (2005 PDRS, page 1-11.) In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)*, (2013) 78 Cal. Comp. Cases 213 (writ

denied), the Appeals Board held that while impairments are generally to be combined, alternative methods of rating impairment may be utilized. (*Id*. at page 216.) The scheduled impairment rating is rebuttable, and simple addition of impairments, rather than combining impairments, may be used where justified. (*Id*. at page 216.)

Further clarification on adding impairments was provided in the *en banc* decision in *Vigil (Sammy) v. County of Kern*, (2024) 89 Cal. Comp. Cases 686. That decision held that:

> "The Combined Values Chart (CVC) in the Permanent Disability Ratings Schedule (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 (Sammy) v. County of Kern*, (2024) 89 Cal. Comp. Cases 686, 694 (Appeals Board en banc).)

I had previously found, in my opinion on decision before the Vigil decision, that the reporting of Dr. Feinberg did not meet the standards of Kite to justify adding disabilities. With the new November 11, 2024 report of Dr. Feinberg I find the prior deficiencies had been cured, and Dr. Feinberg's opinion met the standards of Vigil. Dr. Feinberg laid out the AMA Guides rating for the applicant's right and left upper extremities. He then stated that although there is an overlap in the effect of the disabilities on the applicant's ADLs, the effect of the disabilities of the contralateral extremities amplifies the impact on the applicant's ADLs. As an example, Dr. Feinberg discusses how a unilateral impairment would impact the ability to do something like buttoning a shirt. The involvement of the contralateral extremity makes that activity impossible in many situations in his opinion. He explained that the presence of impairment to both extremities represented an amplification of the applicant's disability beyond what was anticipated in the AMA Guides.

I disagree with defendant's assertion that Dr. Feinberg failed to address the synergistic effect on the left upper extremity. Instead, I found, and continue to find, that Dr. Feinberg properly addressed how the bilateral impact on the upper extremities amplified the applicant's impairment. I found that Dr. Feinberg, in his November 11, 2024 report, had not just provided a conclusion that the impairments should be added, nor did he rely on just mentioning the work synergy. Dr. Feinberg explained how the overlap of the impairments served to amplify the impact on the

overlapping ADLs. The November 11, 2024 report therefore meets the standards laid out in Vigil. Accordingly, I found, and continue to find, that the upper extremity impairments in this matter should be added rather than combined.

PERMANENT DISABILITY AND APPORTIONMENT.

In this case I found Dr. Feinberg's reporting to be substantial medical evidence on impairments and adopted his finding of 60 percent WPI for the right upper extremity, and 20 percent WPI for the left upper extremity. Dr. Feinberg's opinion was based on Table 13-22 on page 343 of the AMA Guides[.]…

In this case I find that there was sufficient support in the reporting of Dr. Feinberg to justify his opinions on WPI. The applicant has consistently reported that she cannot use her dominant right upper extremity for self-care or daily activities. Therefore, she meets the stated criteria of a Class 4 impairment for the right upper extremity, which was what Dr. Feinberg assigned. The applicant also has consistently reported that she has difficulty with self-care activities with her non-dominant left upper extremity, thus meeting the criteria for a Class 3 impairment of the left upper extremity per Table 13-22. Dr. Feinberg's physical examination of the applicant supported the applicant's complaints in his observation of her bilateral upper extremities. He found reduced range of motions, positive tests, and obvious deformity. He had the opportunity to observe the applicant's pain reaction in examination and comment on possible inconsistencies, which he did not state that he found.

To the extent that the surveillance footage demonstrates an exaggeration in the impact of the injury on the activities of daily living, it shows only an exaggeration, not a fabrication. It is also noted that although the applicant was using her right upper extremity in the videos from 2019, in the 2021 videos she was performing all activities (use of a hose, opening and closing a car door, moving items in the grocery, etc.) using her left hand only. I do not find that the credibility of the applicant's complaints to Dr. Feinberg is undermined by the investigative video.

Dr. Feinberg was able to review and consider the investigative video and he incorporated that in his reporting. The decision of where the applicant's impairment falls within the WPI range for each impairment class is a medical one. Dr. Feinberg had the opportunity to review the complete medical record submitted, as well as evaluate and question the applicant on multiple occasions. He stated that his opinions in his report are based on all information available to him

and are based on reasonable medical probability. I therefore found that Dr. Feinberg's opinions on impairment are substantial medical evidence.

Defendant argues that Dr. Feinberg's rating of 60% WPI for the right upper extremity should not be used because he failed to justify the change from 50% WPI in his earlier reporting. (Def. Trial Brief, filed 1/20/206, p.7, line 10 - p. 9, line 8; 5/16/2016 Petition, p. 11, line 29 – p. 12, line 4.) Defendant had suggested that the change was based on the applicant's unreliable subjective complaints. (Def. Trial Brief, filed 1/20/206, p. 9, lines 2-5.) This disregards that Dr. Feinberg also reviewed additional medical records, and the surveillance footage. I believe that Dr. Feinberg is only obligated to justify and support his current impairment rating, and I continue to find that he has done that. I do not believe that Dr. Feinberg is required to justify a change from a prior impairment when the change is not challenged by defendant in a deposition or through a request for a supplemental report. The defendant did not undertake those efforts and presented no substantial medical evidence to rebut Dr. Feinberg's impairment opinion. Besides not questioning the change in WPI from prior reporting, the defendant also failed to depose Dr. Feinberg to challenge his opinion of 60% WPI. I continue to be persuaded by Dr. Feinberg's opinion of 60% WPI for the right upper extremity, and 20% WPI for the left upper extremity.

Defendant also argues that vocational evidence supports that the applicant did not sustain a complete loss of future earing capacity and was able to compete in the open labor market. (5/6/2026 Petition, p. 12, lines 5-9.) I first note that my finding of permanent total disability was not based on vocational evidence or a change in the future earning capacity modifier, but instead on the adding of the bilateral permanent disability ratings. Additionally, the report of Scott Simon referenced by defendant is from March 28, 2022, over three years old, and did not consider the most recent reporting of Dr. Feinberg. (Defendant's Exhibit A.) Therefore, I do not find Mr. Simon's report to be substantial evidence.

Based on the discussion above, I find substantial evidence to support adding of impairments. As discussed in my 8/9/2023 Opinion, I concur in, and adopted, the parties' stipulation that occupation group 112 is the proper occupation code in this matter.[3] I also adopted the parties' stipulations regarding the applicant's date of birth and date of injury to calculate the applicant's age (58 years on the date of injury). Relying on my expertise as a disability rater (see

[3] In its Trial Brief filed January 20, 2026, defendant uses 251 as the occupation code when discussing the ratings on page 4, but the parties stipulated to 112 at trial. (1/6/2026 Minutes of Hearing, p. 2, line 15.)

Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613), I found that applicant's WPI is subject to adjustment for age and occupation as follows:

Right Upper Extremity

13.09.00.00 – 60 – [1.4] 84 – 112H – 87 – 91

Left Upper Extremity

13.09.00.00 – 20 – [1.4] 28 – 112H – 34 – 41

91 + 41 = 132

There is no substantial evidence for apportionment to anything other than the cumulative trauma injury. Thus, I found, and continue to find, that applicant is entitled to a permanent disability rating of 100% for her cumulative trauma injury through April 4, 2016.

COLA START DATE.

Because I found the applicant to be permanently totally disabled, the applicant is entitled to an annual cost of living adjustment (COLA) pursuant to Labor Code section 4659(c). The timing of those adjustments was discussed in the *en banc* decision of *Brower v. David Jones Constr*., 79 Cal. Comp. Cases 550:

> "(1) When a defendant stops paying temporary disability indemnity pursuant to section 4656(c) before an injured worker is determined to be permanent and stationary, the defendant shall commence paying permanent disability indemnity based on a reasonable estimate of the injured worker's ultimate level of permanent disability.
> (2) When an injured worker who is receiving permanent partial disability payments pursuant to section 4650(b)(1) becomes permanent and stationary and is determined to be permanently totally disabled, the defendant shall pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated.
> (3) COLAs begin on the first day in January after an injured worker becomes entitled to receive permanent disability indemnity pursuant to sections 4650(b)(1) or (b)(2)." (*Brower v. David Jones Constr.*, 79 Cal. Comp. Cases 550, 552 (En Banc).)

In this case, I found that the applicant's disability was first permanent and stationary on November 8, 2017, which was not challenged by the defendant in the 5/6/2026 Petition. Therefore the applicant was first entitled to permanent disability indemnity on November 8, 2017. The defendant is obligated to pay retroactive permanent total disability indemnity retroactive to the day the obligation to pay temporary disability ended. (Brower, supra, at p. 552.) Therefore, November

8, 2017 is the start date of the applicant's entitlement to permanent total disability indemnity. Since November 8, 2017 was the first date the applicant was entitled to receive permanent disability indemnity, I found that COLAs begin on January 1, 2018 pursuant to Labor Code section 4659(c).

Defendant argues that because there was a second period of temporary disability from February 1, 2021 through October 1, 2021 due to surgery, and that the applicant was not found permanently totally disable until after that surgery, that COLA increases should begin January 1, 2022. In support of this position, defendant cites to the Supreme Court of California's decision in in *Baker v. Workers' Comp. Appeals Bd.* (2011) 52 Cal.4th 434:

> "To receive the benefit of a COLA on any given January 1, a worker who has sustained an industrial injury must meet two conditions. First, he or she must have been injured "on or after January 1, 2003 … ." ([Lab. Code] § 4659(c).) Second, he or she must "*become*[] entitled to receive a life pension or total permanent disability indemnity … ." (*Ibid*., italics added.)" (*Baker, supra* at p. 443.)

Defendant argues that he decision in Brower, supra, supports the contention that the start date for COLA is after the final payment of permanent disability:

> "[U]sing the authority provided by Judge Keller, *Brower v. David Jones Constr.*, 79 Cal. Comp. Cases 550, 552 (*En Banc*), the timing of the COLA is determined "[w]hen an injured worker who is receiving permanent partial disability payments pursuant to section 4650(b)(1) becomes permanent and stationary and is determined to be permanently totally disabled, the defendant shall pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated." (Id) (Emphasis added).
>
> Use of the word "and" is conjunctive and means all criteria must be met. [See *Dr. Leevil, LLC v. Westlake Health Care Center* (2018) ("the use of the conjunctive word "and" to connect the three conditions can only mean that all three conditions must be satisfied." 6 Cal.5th 474, 479.); *Frank L. Ricker, Inc. v. City of Colton* (2003) 106 Cal.App.4th 190, 192.); *DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388.]
>
> The court in Bower [sic] used the word "and" which requires both the finding that applicant is "permanent and stationary" and "determined to be permanently totally disabled." The applicant was only deemed permanently totally disabled after the June 29, 2021, report of Dr. Feinberg according to Judge Keller as he relies on it to make a PTD finding. Prior to that report, there was not substantial medical evidence to find PTD[.]" (5/6/2026 Petition, p. 7, line 20 – p. 8, line 16 [emphasis in original].)

Defendant is correct that Brower, supra, uses "and" as described. However, defendant fails to acknowledge that in the same sentence the Appeals Board stated that once those conditions were met that defendant is required to, "… pay permanent total disability indemnity retroactive to the date its statutory obligation to pay temporary disability indemnity terminated." (*Brower v. David Jones Constr.*, 79 Cal. Comp. Cases 550, 552 (En Banc).) This obligates the defendant to pay permanent total disability indemnity retractive to the initial permanent and stationary date. There is no exception for periods where the applicant's disability may become temporary for a period after the initial permanent and stationary date. Immediately following that sentence, the Appeals Board addresses the start date of COLA. The en banc decision in Brower held that, "COLAs begin on the first day in January after an injured worker becomes entitled to receive permanent disability indemnity pursuant to sections 4650(b)(1) or (b)(2)." (Brower supra, at p. 552.) The start date for COLA is not determined by when the applicant is determined to be permanently totally disabled, but rather when they became entitled to permanent disability indemnity. Because the applicant is entitled to permanent disability indemnity, and in this case that is permanent total disability indemnity, retroactively to the first permanent and stationary date in this case, that date is the trigger for calculating when COLAs begin. In this case that first permanent and stationary date is November 8, 2017, meaning that COLA increases begin January 1, 2018.

This interpretation of Brower, supra, and Baker, supra, is supported in the non-binding panel decision of *Atkinson v. First Transit, Inc.*, 2019 Cal. Wrk. Comp. P.D. LEXIS 69. In that case, the Appeals Board stated that:

> "In Brower, the Appeals Board held that an applicant is entitled to receive permanent disability payments, including permanent total disability payments when a defendant stops paying temporary disability pursuant to Section 4656(c) before an applicant becomes permanent and stationary. The Board also held, pursuant to Baker, that COLAs begin on the first day in January after an injured worker becomes entitled to receive permanent total disability indemnity. In *Baker v. Workers' Comp. Appeals Bd.(Guerrero)* (2017) 13 Cal.App.5th 1040, 220 Cal. Rptr. 3d 761, the Sixth District Court of Appeal adopted the reasoning of Brower and held that SIBTF benefits also commence when an applicant first becomes entitled to receive permanent disability benefits." (*Atkinson v. First Transit, Inc.*, 2019 Cal. Wrk. Comp. P.D. LEXIS 69, *4 [footnote omitted].)

Based on the discussion above, I continue to find that COLAs, pursuant to Labor Code section 4659(c), begin on January 1, 2018 in this matter.

VII. RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on May 6, 2026, be DENIED.

This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

DATE: May 21, 2026

LAWRENCE A. KELLER
WORKERS' COMPENSATION JUDGE