

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

**JAMES DELLAMONICA, JR., *Applicant***

**vs.**

**CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION;  
legally uninsured, administered by STATE COMPENSATION INSURANCE FUND,  
*Defendants***

**Adjudication Number: ADJ7442248  
Salinas District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Applicant and defendant both seek reconsideration of the Findings and Award (F&A) issued on January 4, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that "compensable body parties injured, in addition to those set forth in the 2014 Stipulations with Request for Award (Stipulations)<sup>2</sup> include the coronary artery disease," but not in the form of atrial fibrillation, and that applicant was entitled to medical treatment for the coronary artery disease and the atrial fibrillation resulting from a 2018 lung biopsy.

He awarded further medical treatment for the coronary artery disease and the atrial fibrillation resulting from a 2018 lung biopsy and:

permanent partial disability indemnity in the total amount of \$195,242.50 payable at the weekly rate of \$290.00 commencing 3/3/11 and continuing for a total of 673.25 weeks, or until fully paid, with a life pension payable thereafter at the weekly rate of \$193.27, subject to the SAWW adjustment, less credit for all previous payments of permanent disability indemnity and less an attorney's fee payable to applicant's attorney of 15% of the permanent disability indemnity herein awarded, including the life pension, after subtracting the fee previously awarded in 2014. The parties are to

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<sup>1</sup> Commissioners Lowe and Sweeney were on the panel that issued the order granting reconsideration. Commissioners Lowe and Sweeney no longer serve on the Appeals Board. Other panelists have been appointed in their place.

<sup>2</sup> The Stipulations reflect that while employed as a fire captain, applicant sustained injury arising out of and in the course of his employment during the period March 1, 1967 to June 11, 2010, in the form of hypertensive heart disease, chronic obstructive pulmonary disease (COPD), and bilateral hearing loss.

adjust the amount and commutation of the attorney's fee informally, with jurisdiction reserved.<sup>3</sup>

Applicant contends that the WCJ erred by failing to find the atrial fibrillation industrial, failing to recognize that applicant had rebutted the Permanent Disability Rating Schedule (PDRS) under Agreed Medical Evaluator (AME) Raye Bellinger, M.D.'s method of adding internal whole person impairments (WPI) for the internal systems rather than using the Combined Values Chart (CVC), and failing to give appropriate weight to the opinion of vocational expert Gene Gonzales, MSW, who supported a 100% permanent disability rating.

Defendant contends that the WCJ erred in finding that applicant sustained an industrial injury in the form of coronary artery disease, and in adding the permanent disability from bilateral hearing loss to the overall award rather than applying the CVC.

We have not received Answers from either applicant or defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations in applicant's and defendant's Petitions and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we rescind the WCJ's January 4, 2022 F&A and return the case to the trial level for further proceedings consistent with this opinion.

## **BACKGROUND**

Applicant, while employed during the period March 1, 1967 to June 11, 2010, as a fire captain, sustained an industrial injury in the form of hypertensive heart disease, COPD and bilateral hearing loss and subsequently claimed to have sustained industrial injury in the form of coronary artery disease and atrial fibrillation.

On April 8, 2014, the parties executed Stipulations, wherein applicant sustained 72% permanent disability with the need for further medical treatment. As set forth in the Continuation of Comments, Paragraph 9, the Stipulations relied on the AME reporting of Paul Anderson, M.D., and David Schindler, M.D., as follows:

THIS SETTLEMENT IS BASED ON THE FINDINGS AND RECOMMENDATIONS OUTLINED BY THE AME, PAUL ANDERSON, M.D. (INTERNAL), REPORT DATED 4/1/11, 05/23/11, 02/14/12, 09/10/12, 10/8/12,

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<sup>3</sup> Although the WCJ did not include it in the F&A, it appears that the WCJ found that applicant's injury caused 85% permanent disability, less a prior stipulated Award of 72% dated April 8, 2014.

10/29/12,12/26/12; & AME, DAVID SCHINDLER, M.D. (HEARING LOSS),  
REPORT DATED 12/07/12; RATED AS FOLLOWS:

04.01.00.00-30-[5]38-490I-47-55 HYPERTENSIVE CARDIOVASCULAR  
DISEASE

50%(05.02.00.00-40-[7]54-490I-63-70)35 RESPIRATORY DISORDERS

80% (11.01.01.00-1-[8]1-4901-2-3)2 EAR - HEARING IMPAIRMENT

(Stipulations, Continuation of Comments, Paragraph 9, capitalization in original.)

In Dr. Anderson's report, dated December 26, 2012, he concluded that applicant had 30% whole person impairment (WPI) under Class 3 on Table 4-2 on page 66 of the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides) based on applicant's hypertensive heart disease without evidence of symptomatic coronary artery disease with no basis for apportionment to non-industrial factors. (App. Ex. A-12, p. 3.) In addition, for his COPD, applicant had 40% WPI under Class 3 on Table 5-12 on page 107 of the AMA Guides based on a forced vital capacity of slightly over 60% and a one-second vital capacity (FEV<sub>1</sub>) of 45%. (*Ibid.*) He further determined that 50% of the permanent disability related to industrial exposure and 50% related to applicant's nonindustrial cigarette smoking. (*Ibid.*) In Dr. Schindler's report dated December 7, 2012, he concluded that applicant had 1% WPI due to a 1.9% binaural hearing loss under Table 11-3 on page 250 of the AMA Guides. (App. Ex. A-7 at p. 10.) He found that 80% of the permanent disability related to occupational noise exposure, with the remaining 20% resulting from prior surgery, noise exposure related to that surgery, and recreational noise exposure. (*Id.* at p. 9.)

Applicant filed a timely petition to reopen dated June 9, 2015, alleging that his medical condition had worsened, resulting in additional permanent disability and ongoing need for medical treatment.

On July 31, 2018, applicant underwent a CT-guided biopsy of a nodule of the left lobe of the lung and, shortly afterwards, developed recurring pneumothorax as well as atrial fibrillation requiring intravenous medications for control. (App. Ex. A-3, p. 2.)

On November 9, 2021, the parties proceeded to trial. Among the issues submitted for adjudication were applicant's claim of new industrial injury in the form of coronary artery disease and atrial fibrillation and new and further permanent disability.

Applicant offered into evidence AME reports of Dr. Anderson (App. Exs. A-8 to A-17), Dr. Schindler, (App. Ex. A-7), and Dr. Bellinger (App. Exs. A-3 to A-6), as well as the VE reports of Mr. Gonzales (App. Exs. A-1 to A-2). Defendant offered into evidence the VE report of Scott Simon, M.S. (Def. Ex. D-1.)

In his report dated May 4, 2019, AME Dr. Bellinger, after evaluating applicant, opined that, with respect to applicant's claim of injury in the form of coronary artery disease "[a]lthough treating physicians have suggested the examinee may have a silent myocardial infarction, studies to date have not documented any evidence of obstructive coronary artery disease or changes in left ventricular function suggestive of prior myocardial infarction." (App. A-6, p. 46.) In addition, AME Dr. Bellinger opined that, with respect to applicant's claim of injury in the form of atrial fibrillation, "more likely than not, [applicant] had the development of atrial fibrillation as a triggered event during respiratory failure . . . requir[ing] the use of antiarrhythmic therapy." (*Id.* at p. 47.)

In his supplemental report dated November 22, 2019, AME Dr. Bellinger stated that it is "more likely than not the examinee's decompensation was a triggering effect of atrial fibrillation" (App. A-5, pp. 5-6) and that "there is no direct evidence . . . suggesting that coronary artery disease on a non-presumptive basis could be tied to workplace activities or post-treatment/compensable consequence post activities." (*Id.* at p. 7.)

With respect to permanent disability, for the coronary artery disease, applicant has 10% WPI under Class 2 of Table 3-6a on page 36 of the AMA Guides. This rating reflects his history of angina documented by laboratory studies, while he remains asymptomatic during daily activities and moderate exertion (Functional Class I), exercises to over 90% of predicted maximum heart rate without abnormal findings, and requires only moderate dietary adjustments or medication. (*Id.* at pp. 6-7.)

For the atrial fibrillation, applicant has 10% WPI under Class 2 of Table 3-11 on page 56 of the AMA Guides because "he is taking antiarrhythmic medications having minimal breakthrough." (*Id.* at p. 6.) AME Dr. Bellinger apportioned 50% of the permanent disability to industrial factors with 50% to nonindustrial factors due to a complicated CT-guided biopsy exacerbating the condition. (*Ibid.*) For the COPD, applicant has 70% WPI under Class 4 of Table 5-12 on page 107 of the AMA Guides based on an FEV<sub>1</sub> of 35%. He experiences limitations in activities of daily living (ADLs) such as walking one block, climbing stairs, and inability to perform yard work, and evidence of worsening from a biopsy and ongoing need for at-home oxygen. (*Id.* at pp. 7-8.) While AME Dr. Bellinger did not discuss apportionment for the COPD, AME Dr. Anderson, in his

report dated July 24, 2017, apportioned 50% of the permanent disability to occupational exposure as a firefighter and 50% to previous nonindustrial cigarette smoking. (App. Ex. A-10, p. 3.)<sup>4</sup>

In a supplemental report dated January 6, 2020, AME Dr. Bellinger stated that applicant's CT-guided biopsy with complication and exacerbation of the lung with secondary development of atrial fibrillation would be considered a compensable consequence and, in accordance with *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249 [82 Cal.Comp.Cases 679], there would be no basis for apportionment. (App. A-4, p. 3.) Regarding the coronary artery disease, AME Dr. Bellinger explained that it developed over several years and, based on its natural progression and applicant's history of myocardial infarction, the condition more likely than not existed before his retirement on June 11, 2010, although diagnostic testing cannot determine the exact onset. (*Ibid.*) Finally, with respect to aggregation of the WPIs, AME Dr. Bellinger stated that "[t]here appears to be no overlap . . . [and that h]ypertensive heart disease works in synergism with coronary artery disease and atrial fibrillation to make each condition worse . . . [while applicant's] bilateral hearing loss was a complete and separate injury, unrelated to any of his other internal medicine conditions." (*Id.* at p. 4.) "As such, the rated internal medicine issues should be added together simply, reflecting a more accurate determination of Mr. Dellamonica's overall impairment and resulting disability." (*Id.* at p. 5.)

Finally, in his supplemental report dated April 13, 2020, AME Dr. Bellinger stated that the CT-guided biopsy, complicated by a pneumothorax, precipitated the development of atrial fibrillation, with no evidence of any preexisting condition, and now necessitates industrially required aggressive treatment. (App. Ex. A-3, pp. 2–3.)

In his June 30, 2020 report, VE Mr. Gonzales concluded that, after evaluating applicant, due to the industrial injury, he is unable to perform his usual duties or any position similar to a Fire Captain, resulting in complete loss of access to his pre-injury labor market. (Ex. App. A-2, p. 37). He is not amenable to modified or alternative work, lacks transferable skills, and cannot perform unskilled occupations. Due to drowsiness, low energy, and impaired concentration, he is also unable to pursue educational training or self-employment, rendering him permanently and totally disabled with no feasible prospects for vocational rehabilitation. (*Id.* at pp. 38–42, 45). VE Mr. Gonzales concluded that, notwithstanding a basis for medical apportionment, in the absence

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<sup>4</sup> The WCJ incorrectly applied the atrial fibrillation apportionment calculation to the COPD. (Opinion on Decision, p. 3.)

of any prior nonindustrial vocational factors, applicant's labor market impairment commenced with the industrial injury, resulting in 100% of his loss of earning capacity resulting from the injury. (*Id.* at p. 44.)

On May 19, 2022, the WCJ issued his F&A, finding applicant sustained new and further industrial injury in the form of coronary artery disease, but not in the form of atrial fibrillation.

In his Opinion, he explained that he awarded applicant 85% permanent disability based on AMEs Dr. Bellinger, Dr. Anderson and Dr. Schindler, as well as VE Mr. Gonzales. The WCJ attributed 50% of the COPD permanent disability and 20% of the hearing loss to non-industrial factors. In calculating the permanent disability, the WCJ aggregated the hypertensive heart disease, coronary artery disease, atrial fibrillation and COPD by CVC and added the previously rated hearing loss permanent disability.

It is from this F&A that both applicant and defendant seek reconsideration.

## DISCUSSION

### I. PRESUMPTION OF COMPENSABILITY FOR HEART TROUBLE

Labor Code section 3212<sup>5</sup> establishes that heart trouble developing or manifesting during a firefighter's employment arises out of and in the course of employment. (Lab. Code, § 3212(a)(2).) The statute extends this rebuttable presumption after termination for three calendar months per full year of qualifying service, up to a maximum of 60 months from the last date worked. (*Ibid.*)

Section 3212 establishes a presumption that heart trouble developing or manifesting during a firefighter's service, or within a specified period after retirement, is work-related. This presumption is part of a broader statutory framework that extends similar protections to other public safety workers. (*Palombo v. City of Costa Mesa* [2015 Cal. Wrk. Comp. P.D. LEXIS 567, \*3].)<sup>6</sup>

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<sup>5</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

<sup>6</sup> Unlike en banc decisions, 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].) However, 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 Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

In defining “heart trouble,” in *Muznik v. Workers’ Comp. Appeals Bd.* (1975) 51 Cal.App.3d 622 [40 Cal.Comp.Cases 578], the Court stated as follows:

[T]he phrase ‘heart trouble’ assumes a rather expansive meaning. This result is further evidenced by the Legislature’s decision not to utilize a medical term or to list or require any specific malady for the presumption of [§] 3212 to become operative, but rather, to employ a lay term which is not necessarily related to physical deterioration or ‘disease’ at all. As defined in Webster’s Dictionary, the term ‘trouble’ when used as a noun covers a wide range of meanings, including distress, affliction, anxiety, annoyance, pain, labor, or exertion. The intent of the authors of the amendment adding the phrase ‘heart trouble’ to [§] 3212 was no doubt to have the meaning of that phrase encompass any affliction to, or additional exertion of, the heart caused directly by that organ or the system to which it belongs, or to it through interaction with other afflicted areas of the body, which, though not envisioned in 1939, might be produced by the stress and strain of the particular jobs covered by the section.

(*Id.* at p. 635.)

Developing refers to when the specified disease or injury arises or worsens in severity, and manifesting refers to when a physician detects or diagnoses the disease or injury, even if it was previously unnoticed. (*Brooks v. County of Tulare* [2015 Cal. Wrk. Comp. P.D. LEXIS 741, \*13] citing *Smith v. Workers’ Comp. Appeals Bd.* (1989) 212 Cal.App.3d 22, 27 [54 Cal.Comp.Cases 259]; *City of Los Angeles County v. Workers’ Comp. Appeals Bd. (Darling)* (2000) 70 Cal.Comp.Cases 1147 (writ denied); *County of El Dorado v. Workers’ Comp. Appeals Bd. (Klatt)* (2000) 65 Cal.Comp.Cases 1437, 1438 (writ denied); *Nicasio v. City of Modesto* [2014 Cal. Wrk. Comp. P.D. LEXIS 580, \*15].)

Here, AME Dr. Bellinger opined that the applicant’s coronary artery disease is non-industrial, finding no causal link between the condition and workplace activities or other compensable consequences. AME Dr. Bellinger also stated that the disease developed before applicant retired on June 11, 2010, but could not identify the exact onset due to the absence of diagnostic testing. This opinion appears to conflict with AME Dr. Anderson, who, in his supplemental report dated December 26, 2012, and based on his evaluation on April 1, 2011, found no evidence of symptomatic coronary artery disease. Moreover, AME Dr. Bellinger did not address when the disease manifested, as applicant did not report permanent disability until November 22, 2019. As a result, it is unclear whether the presumption of compensability applies. To resolve this gap in the record, AME Dr. Bellinger must provide supplemental opinions clarifying both the development and manifestation of the coronary artery disease to determine the applicability of the presumption.

## II. CAUSATION OF ATRIAL FIBRILLATION

An employee has the right to recover compensation when medical treatment for an industrial injury causes a new or worsening iatrogenic injury, leading to additional medical treatment and increased disability, regardless of whether the employer, the insurance carrier, or the employee chooses the physician. (*Applied Materials v. Workers' Comp. Appeals Bd. (Chadburn)* (2021) 64 Cal.App.5th 1042, 1074 [86 Cal.Comp.Cases 331]; *Hidika, supra*, 12 Cal.App.5th at p. 1261; *Yeghiazaryan v. State of California IHSS* [2023 Cal. Wrk. Comp. P.D. LEXIS 230, \*9]; *Rodriguez v. Southland Care Ctr.* [2022 Cal. Wrk. Comp. P.D. LEXIS 206, \*11-12].) This is based on the concern that applying apportionment to medical treatment could delay or deny an employee's treatment, and the principle that workers' compensation should cover all consequences of work-related injuries, leaving no grounds for a separate negligence claim against the employer. (*Hidika, supra*, 12 Cal.App.5th at p. 1263.)

Here, on July 31, 2018, the applicant underwent a CT-guided biopsy of a left-lobe nodule of the lung. In his November 22, 2019 report, AME Dr. Bellinger determined that the biopsy iatrogenically induced atrial fibrillation, requiring intravenous rate-controlling medications and resulting in permanent disability. We note that the WCJ contradictorily determined the same, found permanent disability and the need for further medical treatment, but ultimately found it non-industrial. Accordingly, although we are returning this case back to the trial level, we observe that the evidence supports that this body part is a compensable consequence of the injurious medical treatment.

## III. PERMANENT DISABILITY

It is axiomatic that substantial evidence must support the decisions by the Appeals Board. (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].) To constitute substantial evidence “. . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and

examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s findings if it is based on surmise, speculation, conjecture or guess.” (*Heggin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

In *Department of Corrections and Rehabilitation v. Workers’ Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680] (*Fitzpatrick*), the Court of Appeal found that impairments “are generally combined” using the CVC, but the “scheduled rating [under the CVC] is not absolute” and other methodologies may be used to calculate permanent disability. (*Id.* at pp. 613-614.)

For example, in *Athens Administrators v. Workers’ Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ denied), the Appeals Board concluded that impairments resulting from a cumulative injury to the bilateral hips can be added together where substantial medical evidence supports a physician’s opinion that adding impairments will result in a more accurate rating of the level of disability than the rating that results from using the CVC. (See *De La Cerda v. Martin Selko & Co.* (2017) 83 Cal.Comp.Cases 567 (writ denied) [requires following a physician’s opinion as to the most accurate rating method if they provide a reasonably articulated medical basis for doing so and does not require use of the term “synergistic”].)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc), the Appeals Board held that an injured employee may rebut the CVC under the PDRS and combine impairments upon establishing the impact of each impairment on ADLs. To do so, the employee must demonstrate either that the rated body parts affect separate and distinct ADLs with no overlap, or that any overlap in the affected ADLs results in an increased or amplified overall functional impact. The Appeals Board explained that medical expertise is required:

In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant’s impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the *medical evidence* demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

(*Id.* at p. 692, italics added.)

Our en banc decision in *Vigil* issued on June 10, 2024, after our Opinion and Order Granting Petition for Reconsideration dated March 8, 2022, and is mandatory authority on all WCJs and WCAB panels. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers’ Comp. Appeals*

*Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5; *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6; see also Govt. Code, § 11425.60(b).)

As noted above, the Court in *Fitzpatrick* also acknowledged that it is permissible to depart from the scheduled rating based on a VE opinion that an employee has a greater loss of future earning capacity than reflected in a scheduled rating. (*Fitzpatrick, supra*, 27 Cal.App.5th at pp. 613-614 and 618-620; see *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1274 [76 Cal.Comp.Cases 624]; *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746, 758 [80 Cal.Comp.Cases 1119]; *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234, 245-246 [48 Cal.Comp.Cases 587, 594].)

Finally, to rebut the PDRS and establish permanent total disability, applicant must prove the following:

- 1) Applicant has received a work restriction(s), which requires substantial medical evidence.
- 2) The work restriction(s) precludes applicant from rehabilitation into another career field, which requires vocational expert evidence.
- 3) The work restriction(s) precludes applicant from competing on the open labor market, which requires vocational expert evidence.
- 4) The cause of the work restriction(s) is 100% industrial, which requires substantial medical evidence.

(*Valdovinos v. Universal Site Services, Inc.* [2025 Cal. Wrk. Comp. P.D. LEXIS 76, \*14].)

Here, after independently reviewing the record, we conclude that AME Dr. Bellinger, in finding addition rather than CVC applied due to no overlap of the internal WPis and their cumulative synergistic effects, failed to discuss how the combined effects impacted applicant's ADLs pursuant to *Vigil*, leaving the analysis incomplete. Accordingly, AME Dr. Bellinger's opinion regarding the addition of applicant's impairments requires further development to address our holdings in *Vigil*.

In addition, VE Mr. Gonzales's opinion that applicant was permanently totally disabled did not consider medical apportionment, relying instead on vocational apportionment to conclude that, due to applicant's labor market impairment from the injury, he suffered a 100% loss of earning capacity, rendering him permanently totally disabled. This approach conflicts with *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741, 743-744 (Appeals Board en banc), which prohibits substituting vocational apportionment for medical apportionment. As such, VE Mr. Gonzales will need to provide supplemental reporting to correct this evidentiary defect.

“[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process,” the WCJ and the Appeals Board both have a duty to further develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924] (*Tyler*); *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) Indeed, the Appeals Board has a constitutional mandate to “ensure substantial justice in all cases,” and is therefore “clearly permitted” to admit evidence even after the discovery cut-off under section 5502(d)(3). (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264].) “[A]llowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers’ compensation claims” and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler, supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ’s decision. (*Evans v. Workers’ Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) [76 Cal.Comp.Cases 343, 346-347] (Appeals Board significant panel decision).)

Pursuant to sections 5701 and 5906, a WCJ or the Appeals Board may not leave undeveloped issues that, through the exercise of its specialized knowledge, recognizes as requiring further evidentiary development. (*Kuykendall, supra*, 79 Cal.App.4th at p. 404.)

Accordingly, we rescind the F&A and return the matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the January 4, 2022 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**March 19, 2026**

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

**JAMES DELLAMONICA, JR.  
DILLES LAW GROUP  
STATE COMPENSATION INSURANCE FUND  
OFFICE OF THE DIRECTOR-LEGAL UNIT (OAKLAND)**

**DLP/abs**

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