WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JASON SCHMUCKLE, ***Applicant***

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, ***Defendants***

Adjudication Number: ADJ16362629
Salinas District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant Jason Schmuckle seeks reconsideration of the October 9, 2025 Findings and Order, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant is entitled to benefits from the Subsequent Injuries Benefit Trust Fund (SIBTF) at a permanent disability rate of 90%, less the amount of the subsequent industrial injury of 66%, less credit for the prior back and neck injury, and less attorney's fees of 15%.

Applicant contends that the WCJ erred in excluding the psychological and cognitive permanent disability ratings from M. Joel Scheinbaum, M.D., which would have rendered applicant 100% permanently disabled.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration, defer the issue of applicant's entitlement to SIBTF benefits, and return this matter to the trial level for further development of the record.

FACTS

As the WCJ stated:

> Jason Schmuckle, while employed as a firefighter, stipulated occupational group number 490, for the City of Greenfield, was found to have sustained injury arising out of and in the course of employment on January 13, 2022, to his low back, right hip and left hip. This asserted work related injury, ADJ16362629, which had been disputed by the carrier, was resolved by the parties with a Compromise and Release settlement agreement. Based on the medical evidence accumulated for that injury claim, the assessment was that the applicant sustained 66% permanent partial disability as a result of this injury. The applicant filed an application for benefits from the Subsequent Injuries Benefit Trust Fund (SIBTF). SIBTF disputed that the January 13, 2022, injury arose out of and in the course of employment, but in the Findings and Order issued on October 9, 2025, it was found to have arisen out of and in the course of employment.
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> Mr. Schmuckle had sustained previous work related injuries on January 22, 2002, and October 8, 2002, which resulted in permanent impairment to the cervical and lumbar spine. These injuries, ADJ3269260 and ADJ2279679, were resolved by Compromise and Release settlement agreement. In that settlement agreement the parties stipulated to 28% permanent partial disability which was apportioned at 50% to each of the injuries. This stipulation by the parties was consistent with the medical evidence. Based on the medical evidence from these cases it was determined that the applicant had permanent impairment prior to the asserted injury on January 13, 2022.
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> Based on the medical and documentary evidence, and the testimony provided at trial, it was found in the Findings and Order issued on October 9, 2025, that the Applicant had sustained injuries resulting in labor disabling impairment on January 22 and October 8, 2002, and had sustained a subsequent injury arising out of and in the course of employment on January 13, 2022. It was found that, based on the assessment of permanent impairment associated with the injury of January 13, 2022, the Applicant's exceeded the statutory requirement of 35% permanent disability as required by Labor Code 4751(b). It was found that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury of January 13, 2022, alone, and that the permanent impairment due to the injuries in 2002, when combined with the permanent impairment from the subsequent industrially caused injury on January 13, 2022, when considered alone and without regard to or adjusted for Applicant's occupation or age, did exceed 70%, which would qualify the applicant for benefits from the SIBTF.
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> In assessing the extent of the combined permanent impairment the applicant also asserted pre-existing, labor disabling impairment due to a seizure disorder, psychological condition and cognitive condition. The evidence to support these conditions was found to be insufficient. Evidence related to the Applicant's previous seizure disorder was found to indicate that it had fully

> resolved with no residual impairment and no longer existed. After review of the evidence the Applicant was determined to have permanent partial disability of 90%, rather than determined to be 100% permanently totally disabled. It is from this conclusion and finding related to the extent of permanent disability that the Applicant seeks reconsideration. (Report, pp. 1-3.)

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. (§ 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)
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> (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.
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> (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 December 8, 2025, and 60 days from the date of transmission is February 6, 2026. This decision is issued by or on February 6, 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

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

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on December 8, 2025, and the case was transmitted to the Appeals Board on December 8, 2025. 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 December 8, 2025.

II.

The sole dispute here is the psychological and cognitive permanent disability ratings from Dr. Scheinbaum, which would have rendered applicant 100% permanently disabled. However, before we discuss applicant's psychological and cognitive disabilities, we discuss the 2022 subsequent injury and the 2002 preexisting disabilities.

Section 4751 provides:

> If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (§ 4751.)

The employee must prove the following elements:

> (1) The combined disability of the preexisting disability and the disability from the subsequent industrial injury must be 70 percent or more; [footnote omitted]
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> (2) The combined disability of the two injuries must be greater than that of the disability from the subsequent injury alone; and
>
> (3) One of the following conditions must be met:
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> (a) The previous disability or impairment must have affected a hand, leg, arm, foot, or eye; the disability from the subsequent injury must affect the opposite and corresponding member; and the disability from the subsequent industrial accident, when considered alone and without regard to or adjustment for the employee's age or occupation, must be equal to 5 percent or more of the total; or
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> (b) The permanent disability resulting from the subsequent industrial injury, when considered alone and without regard to or adjustment for the employee's age or occupation must be equal to 35 percent or more of the total. [Footnote omitted.] (1 CA Law of Employee Injuries & Workers' Comp § 8.09 [1].)

A. The Subsequent 2022 Injury

The 2022 subsequent injury to the low back, and right and left hips, was settled by Compromise and Release in June 2023. We note that a Compromise and Release is not a finding on the issue of permanent disability. The language in the Compromise and Release form specifically states that, "The parties wish to settle these matters to avoid the costs, hazards and delays of further litigation, and agree that a serious dispute exists as to the following issues . . . ." (Compromise and Release for injury dated January 13, 2022, ¶ 9.) "Permanent disability" is initialed in the Compromise and Release as an issue in serious dispute by the parties. Furthermore, the Compromise and Release states that applicant "has been evaluated by QME Robert Dickman, DC, however, the QME has not finalized his conclusions and opinions." (Compromise and Release for injury dated January 13, 2022, ¶ 8.) That is, the parties settled the subsequent injury before there was a permanent disability rating for the injury.

In the Findings and Order, the WCJ found that applicant sustained injury arising out of and in the course of employment to his low back, and right and left hips on January 13, 2022. (Findings

and Order dated October 9, 2025, ¶ 1.) However, there is no finding as to applicant's level of permanent disability from this subsequent injury. In her Opinion on Decision, the WCJ provides the following subsequent injury permanent disability rating.

Lumbar Spine

75%(15.03.02.02 – 25 – [1.4]35 – 490I – 44 – 48)36%

Right Hip

17.03.04.00 – 16 – [1.4]22 – 490I – 29 – 32%

Left Hip

17.03.04.00 – 10 – [1.4]14 – 490I – 20 – 23%

39 C 32 C 23 = 66%

These permanent disability ratings are based on the October 10, 2023 medical report of Suresh Mahawar, M.D., who was hired specifically for a SIBTF evaluation. (Exhibit A11 – Dr. Mahawar report dated October 10, 2023, pp. 21-23.) The WCJ found the report of Dr. Mahawar to constitute substantial evidence. (Findings and Order dated October 9, 2025, ¶ 11.) SIBTF does not seem to dispute the medical substantiality of this report. (Answer, p. 4:25-27.)

The WCJ then determined that the 66% permanent disability after apportionment but unadjusted for occupation and age exceed the 35% threshold requirement. In order to determine the 35% subsequent injury threshold, the disability from the subsequent injury must be "considered alone and without regard to, or adjustment for, the occupation or age of the employee." (§ 751.) We have previously determined that apportionment should not be included in calculating whether an employee meets the 35% eligibility threshold. (*Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board En Banc); *Anguiano v. Subsequent Injuries Benefits Trust Fund* (November 7, 2023, ADJ11107890) [2023 Cal. Wrk. Comp. P.D. LEXIS 310]; *Heigh v. Subsequent Injuries Benefits Trust Fund* (October 9, 2023, ADJ12253162) [2023 Cal. Wrk. Comp. P.D. LEXIS 269]; *Riedo v. Subsequent Injuries Benefits Trust Fund* (October 21, 2022, ADJ7772639) [2022 Cal. Wrk. Comp. P.D. LEXIS 303]; *Anguiano v. Subsequent Injuries Benefits Trust Fund* (August 15, 2023, ADJ11107890) [2023 Cal. Wrk. Comp. P.D. LEXIS 214].) Here, although the WCJ erroneously applied apportionment in determining the 35% threshold, such error was harmless because applicant still met the 35% threshold.

Lumbar Spine

15.03.02.02 – 25 – [1.4]35%

Right Hip

17.03.04.00 – 16 – [1.4]22%

Left Hip

17.03.04.00 – 10 – [1.4]14%

35 C 22 C 14 = 56%

Thus, we have no objection as to the WCJ's determination that applicant met the 35% threshold and that applicant's subsequent injury resulted in 66% permanent disability, although the process at arriving at this determination was erroneous. Furthermore, the October 9, 2025 Findings and Order failed to include a permanent disability finding of the subsequent injury.

B. The 2002 Preexisting Disabilities

The January 22, 2002 and October 8, 2002 prior disabilities to applicant's back and neck were also settled via Compromise and Release. (Exhibit D13, Order Approving Compromise and Release and Compromise and Release for injuries dated January 22, 2022 and October 8, 2022.) In the Compromise and Release, it states that the "parties agree to permanent disability as outlined in Dr. Mark Howard AME report." (*Ibid*., at ¶ 10.) In his March 12, 2003 report, Dr. Howard states that he agrees with Dr. Genest regarding the "P & S rating" but does not specify the rating. (Exhibit D12, Dr. Howard report dated March 12, 2003, p. 4.) While we have not located Dr. Genest's report, the WCJ found that the parties stipulated to permanent impairment of 28% for the 2022 work related injuries and apportioned 50% to each of the injuries, which was determined to be labor disabling. (Findings and Order dated October 9, 2025, ¶ 4.)

Although applicant stipulated to 28% permanent disability, SIBTF was not part of this underlying stipulation and is not bound by it. In her Opinion on Decision, the WCJ provided the following permanent disability ratings for these preexisting disabilities, which, again, was not made into a finding in the 2025 Findings and Order:

Cervical Spine

15.01.01.00 – 8 – [1.4]11 – 490I – 16 – 18%

Lumbar Spine

15.03.01.00 – 8 – [1.4]11 – 490I -16 – 18%

66 C 18 = 72 + 18 = 90%

We observe the following errors in the permanent disability ratings above. Dr. Mahawar opined that applicant sustained an 8% WPI (whole person impairment) to the cervical spine, which he 100% apportioned to his pre-existing injuries in 2002. (Exhibit A11, Dr. Mahawar report dated October 10, 2023, pp. 19-20.) However, the WCJ erroneously applied the 1.4 Future Earning Capacity (FEC) adjustment. The 1.4 FEC is applied to injuries post January 11, 2013. Since the preexisting injuries occurred before this date, the correct FEC adjustment should be as demonstrated below. Furthermore, applicant was age 30 at the time of the January 22, 2002 injury and age 31 at the time October 8, 2002 injury, so the age adjustment was also in error. Applicant's preexisting cervical disability per Dr. Mahawar's report is as follows:

Cervical Spine

15.01.01.00 – 8 – [5]10 – 490I – 15 – 13%[2]

As to the lumbar spine, Dr. Mahawar opined that applicant sustained 25% WPI, of which 75% is apportionable to the 2022 subsequent injury and 25% is apportionable to the preexisting lumbar spine injury dated October 8, 2022. Again, the FEC and age adjustments were incorrectly made.

Lumbar Spine

25%(15.03.01.00 – 25 – [5]32 – 490I - 41– 38)9.5% rounding up to 10%

13 C 10 = 22

Per *Todd*, *supra*, 85 Cal.Comp.Cases 576, prior and subsequent permanent disabilities shall be added to the extent they do not overlap in order to determine the combined permanent disability. Because the lumbar injury was apportioned in calculating the subsequent and preexisting disabilities, there was no overlap, and simple addition applies.

66% subsequent injury + 22% preexisting disabilities = 88% permanent disability.

If, however, had applicant's stipulation of 28% permanent disability, apportioned 50% to each of the 2002 injuries, was applied, instead of Dr. Mahawar's opinions, the following calculation follows:

66% subsequent injury + 14% preexisting disability + 14% preexisting disability = 94% permanent disability.

[2] Dr. Mahawar's report does not provide sufficient information to provide separate permanent disability ratings between the January 22, 2002 and October 8, 2002 injuries. Per Dr. Mahawar, applicant suffered injury to both cervical and lumbar spine in both injuries, but his opinion lumps the cervical spine disability to both 2002 injuries. (Exhibit A11, Dr. Mahawar report dated October 10, 2023, p. 5.)

C. The Psychological and Cognitive Disabilities

We now turn to applicant's claim for psychological and cognitive disabilities. There are no requirements as to the origin of the preexisting disability; it may be congenital, developmental, pathological, or due to either an industrial or nonindustrial accident. (1 CA Law of Employee Injuries & Workers' Comp § 8.09 [1].) The purpose of the statute is to encourage the employment of the disabled as part of a "complete system of workmen's compensation contemplated by our Constitution." (*Patterson* (1952) 39 Cal.2d 83 [17 Cal.Comp.Cases 142]; *Ferguson v. Indus. Acc. Comm.* (1958) 50 Cal.2d 469, 475.)

The Supreme Court in *Ferguson* held that the "previous disability or impairment" contemplated by section 4751 "'must be actually 'labor disabling,' and that such disablement, rather than 'employer knowledge,' is the pertinent factor to be considered in determining whether the employee is entitled to subsequent injuries payments under the terms of section 4751." (*Ferguson, supra,* p. 477; *Escobedo v. Marshall*, 70 Cal.Comp.Cases 604, 619 (Appeals Board en banc).) The court further noted that "'the prior injury under most statutes should be one which, if industrial, would be independently capable of supporting an award. It need not, of course, be reflected in actual disability in the form of loss of earnings [as this court has already held in *Smith v. Industrial Acc. Com*. (1955) 44 Cal.2d 364, 367 [2, 3] [288 P.2d 64]], but if it is not, it should at least be of a kind which could ground an award of permanent partial disability. . . .'" (*Ferguson,* at p. 477, quoting Larson's Workmen's Compensation Law (1952) § 59.33 (vol. 2, p. 63).)

Further, the preexisting disability "need not have interfered with the employee's ability to work at his employment in the particular field in which he was working at the time of the subsequent injury. [citations]" (*Franklin v. Workers' Comp. Appeals Bd.* (1978) 79 Cal.App.3d 224, 238.) "The ability of the injured to carry on some type of gainful employment under work conditions congenial to the preexisting disability does not require a finding that the preexisting disability does not exist. [citations]" (*Ibid.*)

To prove a preexisting disability, there needs to be evidence prior to the subsequent injury of a medically demonstrable impairment.

> A preexisting disability cannot be established by a "retroactive prophylactic work restriction" on the preexisting condition placed on the injured after the subsequent industrial injury in absence of evidence to show that the worker was actually restricted in his work activity prior to the industrial injury. (*Hulbert* v. *Workmen's Comp. Appeals Bd., supra*, 47 Cal.App.3d 634, 640; *Gross* v. *Workmen's Comp. Appeals Bd., supra*, 44 Cal.App.3d 397, 404-

405; *Amico* v. *Workmen's Comp. Appeals Bd., supra*, 43 Cal.App.3d 592, 606; see also *Bookout* v. *Workmen's Comp. Appeals Bd., supra*, 62 Cal.App.3d 214, 224-225.) Where the injured was actually under a prophylactic restriction for a preexisting condition at the time of the industrial injury, apportionment to a preexisting disability is proper. It is only the *retroactive* application of a prophylactic restriction to an otherwise nonexistent previous disability that is prohibited. (*Ibid*.)

The prohibition against "retroactive prophylactic work restrictions" to establish a preexisting disability is not inconsistent with the fact that prophylactic restrictions are ratable factors of permanent disability stemming from the industrial injury. (*Gross, supra*, 44 Cal.App.3d at p. 404.) Applying a prophylactic work restriction retroactively creates "a sort of factual or legal fiction of an otherwise nonexistent previous disability or physical impairment." (*Ibid*.) Apportionment involves a factual inquiry. (See *Mercier* v. *Workers' Comp. Appeals Bd., supra*, 16 Cal.3d 711, 716; see also, *State Comp. Ins. Fund* v. *Workers' Comp. Appeals Bd. (Gaba)* (1977) 72 Cal.App.3d 13, 16-17 [139 Cal.Rptr. 802].)

(*Franklin, supra,* 79 Cal.App.3d at p. 238.)

In this matter, Dr. Scheinbaum opined as follows:

> The claimant had suffered from a lifelong learning disability primarily regarding reading and mathematics which was permanent and stationary long before the subsequent industrial injury of 01/13/2022.
>
> He also suffered from seizure disorder and postconcussion syndrome regarding the two concussions described above in this report [a concussion at age 17 when he jumped into a swimming pool and hit his head and a concussion at work when a moving lumber fell on his head]. He had taken anti-seizure medications.
>
> He also suffers from a mixed personality trait dysfunction condition related to the verbal and physical abuse to which he was subjected as a child by a grandfather. It was very painful for him, giving rise to this Axis II condition, which improved and became permanent and stationary prior to the subsequent industrial injury of 01/13/2022.
>
> He has a Global Assessment of Functioning score of 50, translating into 30% whole person impairment.
>
> In addition, he suffers from cognitive disorder, not otherwise specified (13.04.00.00).
>
> The cognitive disorder was also permanent and stationary prior to the subsequent industrial injury of 01/13/2022. The cognitive disorder was related to the two significant concussions described above in this report, causing problems with memory, concentration, attention span, and focus. (Exhibit A13, Dr. Scheinbaum report dated January 18, 2024, p. 25.)

The WCJ did not find Dr. Scheinbaum's report to be substantial medical evidence because it "is based on an inaccurate history which differs in essential aspects from the testimony provided by the Applicant at trial, and is speculative in many respects as there is no review of medical documents contemporaneous with the preexisting conditions assessed which document such conditions being present, and no diagnostic testing done by Dr. Scheinbaum to confirm the speculated medical conditions actually exists at present, and results in rateable impairment." (Report, pp. 4-5.)

We agree that Dr. Scheibaum's report is lacking. There is no evidence of testing for either a learning disability, a personality dysfunction, or a cognitive disorder. We acknowledge that there is prior contemporaneous evidence of applicant's past seizures in the form of a neurology consultation dated 1990 (Exhibit A5, Jack C. Sipe, M.D., report dated December 3, 1990), a driver medical evaluation submitted in 1991 (Exhibit A16, Driver Medication Evaluation dated April 15, 1991), and a military discharge dated 1990 (Exhibit A17, Release and Discharge from Active Duty dated October 12, 1990). We also acknowledge that the 1990 neurology consultation references a loss consciousness with a head injury in 1988 when applicant jumped into a shallow pool. (Exhibit A15, Dr. Spine report dated December 3, 1990.) We found no contemporaneous evidence of the alleged second concussion.

We are aware that applicant testified that his seizures suddenly went away and that his driving restrictions were restored. (Minutes of Hearing and Summary of Evidence (MOHSOE) dated April 25, 2025, p. 12:4-8; MOHSOE dated June 25, 2025, pp. 7:22-8:8; Report, p. 10.) As a result, the WCJ found that that the seizure condition has fully resolved and was not labor disabling at the time of the subsequent injury. (See Report, p. 10.) Episodic neurological impairments are rateable under the AMA Guides to the Evaluation of Permanent Impairments, Fifth Edition. (AMA Guides, Fifth Edition, pp. 311-317.) Although Dr. Scheibaum failed to rate applicant for his past seizures, the WCJ cannot replace a medical opinion that the past seizures are no longer labor disabling and lack impairment.

Moreover, while applicant may not have been formally diagnosed in the past for a learning disability or a cognitive disorder, we agree that current diagnostic evaluation in conjunction with applicant's testimony can confirm the existence of such conditions. (Report, pp. 10-11.)

For these reasons, we grant reconsideration, defer the issue of applicant's entitlement to SIBTF benefits, and return this matter to the trial level for further development of the record on

the issue of applicant's psychological and cognitive disabilities. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; see also *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389,394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924]; §§ 5701, 5906.)

For the foregoing reasons,

IT IS ORDERED that applicant Jason Schmuckle's Petition for Reconsideration of the October 9, 2025 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the October 9, 2025 Findings and Order is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

. . .

3. The injury occurring on January 13, 2022, resulted in 66% permanent disability to the lumbar spine, and bilateral hips, with an indemnity rating that exceeded the statutory requirement of 35%, when considered alone and without regard to or adjusted for Applicant's occupation and age.

4. The Applicant sustained previous work related injuries on January 22, 2002 and October 8, 2002, which resulted in prior permanent disability to the cervical and lumbar spine, with these injuries being included in a Compromise and Release Agreement for AD3269260 (SAL107234) and ADJ2279679 (SAL98233) executed by the parties and approved on June 30, 2004.

5. The issue of Applicant's entitlement to benefits under the Subsequent Injuries Benefits Trust fund is deferred.

6. Exhibit S-2, excerpts of video footage, which was reviewed and summarized in the Minutes of Hearing and Summary of Evidence of June 25, 2025, is admitted into evidence. Gayle Oshima of OD Legal, counsel for SIBTF, is designated as custodian of the video footage.

AWARD

There are no awards at this time.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

CRAIG L. SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 5, 2026

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

JASON SCHMUCKLE
DILLES LAW GROUP, PC
DIR OD LEGAL, OAKLAND

LSM/*ara*

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