WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JUAN AYALA, *Applicant*

vs.

CEJA-REYES; MEADOWBROOK INSURANCE GROUP, administering for STAR INSURANCE COMPANY, *Defendants*

Adjudication Numbers: ADJ10325909, ADJ10072782
Sacramento District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant filed a Petition for Reconsideration of the Findings and Award issued by the workers' compensation administrative law judge (WCJ) on July 22, 2026. Therein, the WCJ found that applicant sustained admitted injury arising out of and occurring in the course of employment (AOE/COE) to the lumbar spine, right hip, right knee, left knee, and circulatory system (hypertension) while employed as a field worker during the period January 1, 1996 through October 26, 2014. The WCJ further found that "[p]ursuant to the holdings in "*Kite*"[1] and "*Vigil*"[2], [a]pplicant is totally permanently disabled and therefore the ratable permanent disability for all injuries is 100%. The WCJ issued an Award against "Defendant" without identifying the insurer by name and without specifying the commencement date or the explicit rate of the life pension.[3]

Defendant contends that the WCJ erred in finding applicant permanently totally disabled arguing (1) that the panel qualified medical evaluator (PQME) opinion of Nicole Chitnis, M.D., and the vocational expert opinion of Scott Simon, upon which the WCJ relied, are not substantial

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[1] Referring to *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 [2013 Cal. Wrk. Comp. LEXIS 34]

[2] Referring to *Vigil v. County of Kern (Vigil)* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc).

[3] Labor Code section 5313 and *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc) require that the WCJ issue an award of sufficient clarity that it can be enforced as a judgment, should the need arise. (Lab. Code, §§ 5313; 5806; 5807.)

evidence to rebut the Permanent Disability Rating Schedule (PDRS) Combined Values Chart (CVC) and justify adding orthopedic impairments to reach a permanent total disability rating; (2) that that the WCJ should have relied on Dr. Chitnes' opinion to find apportionment; and (3) that the WCJ's reliance on the holding of *Vigil* is inappropriate.

Applicant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny the petition.

We have considered the Petition, the Answer, the Opinion on Decision, and the contents of the Report, and the record in this matter. Based upon our review and for the reasons stated below, we will grant reconsideration solely to amend the Award to name defendant STAR Insurance Company, to clarify that the parties are to adjust compliance with the Award pursuant to applicable authority, and to reserve jurisdiction on the issues of rate and the commencement date for payment of the life pension to the trial level if there is any dispute. We will otherwise affirm the WCJ's decision.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[4] section 5909, which states that:

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

[4] All further statutory references are to the Labor Code, unless otherwise noted.

Here, according to Events, the case was transmitted to the Appeals Board on August 31, 2026 and 60 days from the date of transmission is October 30, 2026. This decision is issued by or on October 30, 2026, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

Here, according to the proof of service for the Report, the Report was served on August 31, 2026, and the case was transmitted to the Appeals Board on August 31, 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 August 31, 2026.

II.

As relevant here, the WCJ stated the following in the Opinion on Decision:

> **Findings of Fact**
>
> The following findings of fact have been determined by the trial Court from reviewing the entire record.
>
> ….
>
> **Issue No. 2: Permanent Disability**
>
> Permanent disability is a measure of an injury's permanent effect on a worker. The employee has the burden of proving, by a preponderance of the evidence, both the overall level of permanent disability and that at least some of the permanent disability was industrially related. An injury can result in either partial or total permanent disability. While a finding of permanent disability is a question of fact for the appeals board, that must be supported by substantial medical evidence.
>
> Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be

more than a mere scintilla. To constitute substantial evidence a medical opinion must be framed in terms of reasonable medical probability. The medical reports and opinions cannot be speculative. They cannot be based on surmise, speculation, conjecture or guess. The medical reports and opinions must be based on pertinent facts and on an adequate examination and history. The medical reports and opinions must clearly set out the reasoning in support of the conclusions reached. If a medical report or opinion is known to erroneous, or if it is based on facts that are no longer germane, then the report cannot constitute substantial evidence. An inadequate medical history or examination will also prevent a report from being relied upon. If a medical report or opinion is based on an incorrect legal theory, then the report or opinion cannot constitute substantial evidence.

In *Vigil v WCAB* the WCAB discussed the requirement necessary for adding disability as opposed to combining them. Specifically, the WCAB held:

> 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.

(See *Vigil v. WCAB*, Page 9)

Dr. Chitnis (Exhibit L, page 31) and Dr. Greenberg (Exhibit X, page 3) provided the following strict ratings:

100% - (17.03.10.01 - 15 - [1.4] 21 - 491H - 26 - 28%) 28%
Right Lower Extremities - Hip - Diagnosis-based Estimate - Hip/Replacement
100% - (17.05.10.08 - 15 - [1.4] 21 - 491H - 26 - 28%) 28%
Right Lower Extremities - Knee - Diagnosis-based Estimate - Total Replacement
100% - (17.05.10.08 - 15 - [1.4] 21 - 491H - 26 - 28%) 28%
Left Lower Extremities - Knee - Diagnosis-based Estimate - Total Replacement
100% - (15.03.01.00 - 10 - [1.4] 14 - 491H - 18 - 19%) 19%
Spine - Lumbar - Diagnosis-related Estimate
100% - (04.01.00.00 - 10 - [1.4] 14 - 491H - 18 - 19%) 19%
Cardiovascular System; Systemic and Pulmonary Arteries - Hypertensive Cardiovascular Disease
Under the CVC that would equate to a total PD rating of: 76%.

However, based on the specific facts and circumstances of this case, Dr. Chitnis determined that 70% (combined value of the orthopedic injuries) does not accurately reflect Applicant's overall level of disability and indicated that addition of the disability related to the orthopedic injuries should be added as opposed to combined. In reaching this conclusion, Dr. Chitnis issued numerous reports (Exhibits M, Q, T, and U) that provided the necessary information sufficient to make her options substantial evidence on the issue of permanent disability by utilizing addition as opposed to combining Applicant's various disabilities.

Adding the orthopedic injuries leaves Applicant with an overall disability rating exceeding 100%.

Whether the PDRS is rebutted by vocational evidence:

Additionally, there is also the vocational evidence provided by Scott Simon (Exhibits 1 and 2).

It is clear from the reporting of Dr. Chitnis that the applicant has significant physical limitations associated with his industrial injuries. It is also clear from the record that the applicant has a history of jobs requiring a fair degree of manual labor.

Mr. Simon on page 16 and 17[]of Exhibit 1 clearly explains why, even the most sedentary-seeming jobs also would run afoul of the Dr. Chitnis' work restrictions. On page 23 of Exhibit 1, Mr. Simon clearly explains why the applicant would not be amendable to rehabilitation.

Given the reporting of Mr. Simon, this judge concludes that the applicant has lost 100% of his access to the open labor market.

Issue No. 3: Apportionment

Labor Code § 4663 Apportionment

Under Labor Code § 4663, apportionment shall be based on causation. Reports must include an apportionment determination to be deemed complete. Any medical report on which the Board may rely must be supported by substantial evidence. []

To be considered "…substantial evidence, a medical opinion must be predicated on reasonable medical probability." [] A medical report cannot be deemed substantial unless it expresses the reasoning behind the doctor's conclusions. []

"[A] physician's apportionment determination requires that the physician first identify the factors causing permanent disability both before and after the

industrial injury. … the physician must then make a finding of the approximate percentage of the disability caused by each factor." []. The report must disclose *why* and *how* the physician came to that apportionment determination. []

In reviewing the reports of Dr. Chitnis, her analysis of the apportionment did not meet the standards set forth in *Escobedo* and clarified further in *Sanchez.*

Labor Code § 4664 Apportionment

Under Labor Code § 4664, the employer is only liable for the percentage of permanent disability directly caused by the injury arising out of and in the course of employment and if the applicant has a prior award, it is presumed that the applicant has preexisting permanent disability at the time of any subsequent injury. However, defendants have the burden to prove overlap between the current disability and the previous disability. []

Here, although there is mention of a previous injury in the record, there is no clear analysis upon which to base apportionment under Labor Code § 4664. As such, Defendant did not meet their burden for apportionment.

….

(Opinion on Decision, at pp. 3-6 [citations omitted.)

As relevant here, the WCJ stated the following in the Report:

FACTS

JUAN AYALA, born [], sustained injury arising out of and in the course of his employment during the period of January 1, 1996 – October 26, 2014, to his lumbar spine, right hip, right knee, left knee, and circulatory system.

On May 20, 2026, the case was submitted on the following issues:

1.Temporary Disability; and
2.Permanent Disability; and
3.Apportionment; and
4.Whether the applicant is entitled to a SJDB Voucher if he is not deemed 100% permanently disabled; and
5.Whether the impairment should be added pursuant to *Kite/Vigil* and whether the PDRS is rebutted by vocational evidence; and
6.Whether or not the defense is entitled to credit for the EDD period [of] payments against the potential temporary disability period of May 1,2016, through May 19, 2018; and
7.Attorneys Fees.

On July 22, 2026, this WCJ issued a Findings and Award. This judge found that the applicant had a 100% permanent disability based on the reporting of QME Chitnis and *Kite/Vigil* and, additionally, based on the Vocational Rehabilitation reporting of Scott Simon, M.S. It was also found that the defendant had failed to meet its burden of proof on apportionment.

On August 17, 2026, Defendant filed a timely Petition for Reconsideration asserting the following:

> 1.The reporting of QME Chitnis did not provide the requisite factual foundation and legal reasoning under *Kite* and *Vigil* to rebut the PDRS Combined Values Chart and justify the adding orthopedic impairments to reach a permanent disability rating; and
>
> 2. That the vocational reporting of Scott Simon, M.S. did not constitute substantial evidence to rebut the presumptive PDRS rating and establish 100% permanent total disability; and
>
> 3. That the defendant met its burden of proof on apportionment.

[]

DISCUSSION

A Petition for Reconsideration is the appropriate mechanism to challenge a final order, decision, or award. An order that resolves or disposes of the substantive rights and liabilities of those involved in a case is a final order. []

Here, a Petition for Reconsideration is the appropriate mechanism to challenge the July 22, 2026, Findings and Award.

Dr. Chitnis' Reporting Provides the Requisite Factual Foundation and Legal Reasoning Under *Kite/Vigil* to Rebut the PDRS:

To rebut the statutory presumption of the Combined Values Chart (CVC), the impact of each impairment on activities of daily living (ADLs) must demonstrate:

(1) There is no overlap between the effects of the ADLs as between body parts rated; or

(2) There is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs. [].

Here, QME Chitnis notes that the applicant underwent a left Total Knee Arthroplasty in April 2015, a right Total Hip Arthroplasty in December 2018

(Exhibit S, page 39), and a right Total Knee Arthroplasty in November 2020. (Exhibit S, page 38.) QME Chitnis then opines that there is "…synergistic overlap between the function limitations related to each of the body parts…" (Exhibit S, page 40)

QME Chitnis further explains this "synergistic overlap" in Exhibit Q. She first gives an example of a two-finger amputation and how the loss of function is greater than the 20% allotted by the CVC. She then likens that to the loss of both natural knees as follows:

> " …he has 15% WPI for one knee, but loss of function of 2 knees is much bigger than 15+15+30%, because he does not have another "good knee" to compensate, in fact 3 'bad knees' put further strain on the rest of the body, including the back and hips, creating further functional loss …specially, if [the body parts] contribute to the same activities such as sitting, standing, walking, bending, lifting pushing, pulling, etc." (Exhibit Q, page 3.)

QME Chitnis further explains this in Exhibit T, when she states:

> "Synergistic effect of disability involving low back and both knees affects ADLs including standing, bending, twisting, lifting, walking. These are all the activities where one requires full strength, ROM, endurance, flexibility and function of [the low back and both knees] to function efficiently. If one of those body parts is disabled, other 2 body parts can compensate, but when disability involves all these 3 body parts, then the person's ability to stand, walk, bend, lift and carry are impaired more because there is no additional support available to carry out these functions. This can impact day to day ADLs such as cooking, cleaning, making beds, doing laundry, vacuuming, gardening, etc." (Exhibit T, page 4.)

The above explanations constitute substantial medical evidence as they outline the "how and why" reasoning behind QME Chitnis' conclusions regarding the overlap increasing and amplifying the impact on the overlapping ADLs.

The Vocational Reporting of Scott Simon, M.S. Constitutes Substantial Evidence to Rebut the Presumptive PDRS Rating and Establish 100% Permanent Total Disability:

In order to rebut the PDRS schedule under *Ogilvie v. Workers' Comp Appeals Bd.* (2011) 76 Cal. Comp. Cases, 197 Cal. App. 4th 1262, and *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl),* 240 Cal. App. 4th 746, 80 Cal. Comp. Cases 1119, an applicant must prove through substantial evidence that the industrial injury prevents them from benefitting from vocational rehabilitation, resulting in total loss of future earning capacity.

Here, Mr. Simon explains applicant's total loss of future earning capacity in Exhibit 1, page 23:

> "The results of a Functional Capacity Evaluation limited Mr. Ayala to work at the sedentary level of exertion. A host of additional preclusions were detailed, including only occasional forward reaching. QME Dr. Chitnis endorsed these findings and indicated that the applicant should be permitted to change his position and/or elevate his legs at will to alleviate his pain. He should also have access to pain management modalities, as needed. Most notably, Dr. Chitnis stated that Mr. Ayala's impairments will produce both good and bad days, resulting in the need to take unscheduled breaks from work.
>
> In his report dated 01/20/23, Pain Management PTP, Dr. Tolentino, stated that the applicant is unable to work. In total, Mr. Ayala's impairments, overall functioning and the resulting work restrictions make it difficult to imagine that he is able to sustain himself over time in any type of competitive employment setting. …
>
> Some injured workers experience medical complications caused by the interactive or synergistic effects of multiple injuries on their medical recovery and their attempts to return to work. In this case, this clearly applies.
>
> *Based solely upon the effects of the industrial injury without any additional consideration given to other factors. The applicant is totally disabled when these factors are considered."* (Exhibit 1, page 23.)"

Although Mr. Simon did go on to comment on other factors (the Montana Factors), his conclusion was not solely based on them. In the above Mr. Simon clearly outlined why and how the applicant would not benefit from vocational rehabilitation.

Defendant did not Meet its Burden of Proof on Apportionment:

Defense argues that they met their burden on apportionment specifically directing the reader to QME Chitnis' review of medical records. This judge is aware that QME Chitnis reviewed substantial amounts of medical records. That does not change the fact that the defendant's burden of apportionment was not met.

Labor Code § 4663 Apportionment

Under Labor Code § 4663, apportionment shall be based on causation. Reports must include an apportionment determination to be deemed complete. Any medical report on which the Board may rely must be supported by substantial

evidence. (*See E. L. Yaeger Construction v. Workers' Comp Appeals Bd. (Gatten) (2006) 145 Cal. App. 4th 922, 928.* (internal citations omitted).)

To be considered "…substantial evidence, a medical opinion must be predicated on reasonable medical probability." (*Id.* at 928, (internal citations omitted).) A medical report cannot be deemed substantial unless it expresses the reasoning behind the doctor's conclusions. (*Id* at 928 (internal citations omitted).)

"[A] physician's apportionment determination requires that the physician first identify the factors causing permanent disability both before and after the industrial injury. … the physician must then make a finding of the approximate percentage of the disability caused by each factor." (*Sanchez v. McDonald's,* 2025 *Cal. Wrk. Comp. P.D. LEXIS 192, 14).* The report must disclose *why* and *how* the physician came to that apportionment determination. (See, *Escobedo v. Marshalls (2005) 70 Cal. Comp. Cases 604 (Appeals Bd. en banc) (Escobedo); See also, Sanchez v. McDonald's,* 2025 *Cal. Wrk. Comp. P.D. LEXIS 192, 14.*)

In reviewing the reports of Dr. Chitnis, her analysis of the apportionment did not meet the standards set forth in *Escobedo* and clarified further in *Sanchez.*

Labor Code § 4664 Apportionment

Under Labor Code § 4664, the employer is only liable for the percentage of permanent disability directly caused by the injury arising out of and in the course of employment and if the applicant has a prior award, it is presumed that the applicant has preexisting permanent disability at the time of any subsequent injury. However, defendants have the burden to prove overlap between the current disability and the previous disability. (See generally, *Kopping v. WCAB* (2006) 71 CCC 1229.)

Here, although there is mention of a previous injury in the record, there is no clear evidence of overlap upon which to base apportionment under Labor Code § 4664. As such, Defendant did not meet their burden for apportionment. The Board was not provided with the prior settlement documents, if any. Nor was the Board provided with prior rating strings or medical reports on which those ratings would have been based.

[]

RECOMMENDATION

For the foregoing reasons, it is respectfully recommended that the Petition for Reconsideration be denied.

(Report, at pp. 1-8, citations omitted.)

III.

Permanent disability refers to the lasting, irreversible effects of an injury. It includes conditions that impair earning capacity, limit the normal use of a body part, or create a competitive disadvantage in the labor market. Permanent disability payments compensate workers for both physical loss and the reduction, partial or total, of their future earning potential. (*Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565].)

In *Department of Corrections and Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Court concluded 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 den.), 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 den.) [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*, the Appeals Board held that an employee could rebut the CVC under the PDRS and combine impairments upon establishing the impact of each impairment on ADLs. To do so, they 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. (*Vigil, supra*, 89 Cal.Comp.Cases at p. 692.)

Apportionment is the process utilized to segregate permanent disability or the residuals caused by an industrial injury from those attributable to other industrial injuries or to nonindustrial factors, to allocate legal responsibility fairly. (*Brodie, supra,* 40 Cal.4th at p. 1321 [72 Cal.Comp.Cases 565]; *Marsh v. Workers' Comp. Appeals Bd*. (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787.].)

The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 927–928 [71 Cal.Comp.Cases 1687].) Instead, apportionment of permanent disability is "based on causation" and the "employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment." (Lab. Code, §§ 4663(a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (*Escobedo*) (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc).) Apportionment now includes pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Pursuant to *Escobedo*, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. (*Id*. at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion (*Ibid*.) and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson v. The Permanente Medical Group* (2007) 72 Cal.Comp.Cases 1620, 1622 (Appeals Board en banc.)

The burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, *9]; *Moraido v. County of San Diego* [2024 Cal. Wrk. Comp. P.D. LEXIS 375, *13, fn. 3]; *Arias v. William Roofing Co*. [2024 Cal. Wrk. Comp. P.D. LEXIS 29. *5]; *Matias v. Naturipe Berry Growers* [2024 Cal. Wrk. Comp. P.D. LEXIS 52, *4]; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, *15].)

With respect to vocational expert evidence, pursuant to *Nunes v. State of California, Dept. of Motor Vehicles* (*Nunes I*) (2023) 88 Cal.Comp.Cases 741 (Appeals Board en banc), the Appeals Board held as follows:

> 1. Section 4663 requires a reporting physician to make an apportionment determination and prescribes the standard for apportionment. The Labor Code makes no statutory provision for "vocational apportionment."
>
> 2. Vocational evidence may address issues relevant to the determination of permanent disability.
>
> 3. Vocational evidence must address apportionment, and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment.

(*Id*. at pp. 743–744.)

It is well established that vocational evidence may be used to address issues relevant to the determination of permanent disability. While the PDRS is presumptively correct (see *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd*. (2010) 187 Cal.App.4th 808, 826 [75 Cal.Comp.Cases 837]), "a rating obtained pursuant to the PDRS may be rebutted by showing an applicant's diminished future earning capacity is greater than that reflected in the PDRS." (*Nunes I, supra*, at p. 749.) Among the methods described for challenging a rating obtained under the PDRS is establishing that "the injury to the employee impairs his or her rehabilitation, and for that reason, the employee's diminished future earning capacity is greater than reflected in the employee's scheduled rating." (*Ogilvie v. Workers' Comp. Appeals Bd*. (2011) 197 Cal.App.4th 1262, 1274 [76 Cal.Comp.Cases 624].) Our opinion in *Nunes I* made clear that "[t]he same considerations used to evaluate whether a medical expert's opinion constitutes substantial evidence are equally applicable to vocational reporting … [i]n order to constitute substantial evidence, a vocational expert's opinion must detail the history and evidence in support of its conclusions, as well as 'how and why' any specific condition or factor is causing permanent disability." (*Nunes I, supra*, at p. 751.)

The law requires the Appeals Board to base its decisions on substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35

Cal.Comp.Cases 16].) To constitute substantial evidence, a medical opinion must state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo, supra,* 70 Cal.Comp.Cases at p. 621.) Medical reports do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical opinion cannot support the Board's findings if it rests on surmise, speculation, conjecture, or guesswork. (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, for the reasons stated by the WCJ, we agree Dr. Chitnis' opinion is substantial medical evidence that establishes overlap that increases or amplifies the impact on overlapping ADLs. Therefore, applicant met the burden necessary to rebut the use of the CVC. We also agree with the WCJ that defendant did not meet its burden on apportionment given the lack of evidence of prior disability in the record. We also note that defendant did not dispute the ratings outlined in the WCJ's Opinion on Decision, beyond the apportionment that it failed to prove up. Based on this record, we are persuaded that the WCJ appropriately found applicant permanently totally disabled. While we acknowledge Mr. Simon opined that there is no vocational apportionment (report of Scott Simon, 3/16/23, applicant's Exhibit 1, at pp. 23, 25), and to the extent that opinion can be considered impermissible vocational apportionment, the WCJ did not rely on it for the finding of permanent total disability.

Accordingly, and for the reasons stated herein, we will grant reconsideration solely to amend the Award to name defendant STAR Insurance Company, to clarify that the parties are to adjust compliance with the Award pursuant to applicable authority, and to reserve jurisdiction on the issues of rate and the commencement date for payment of the life pension to the trial level is any dispute. We will otherwise affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the July 22, 2026 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 22, 2026 Findings and Award is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

* * *

AWARD

AWARD IS MADE in favor of **JUAN AYALA** and against **STAR INSURANCE COMPANY** as follows:

1. Permanent total disability payable at the statutory rate pursuant to Labor Code section 4659(b), continuing for life, and commencing on a date consistent with Labor Code section 4650(b)(1) and *Brower v. David Jones Construction* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc). The payments are to be increased annually, pursuant to Labor Code section 4659(c). The payments are less credit for any sums previously paid, and less attorney's fees in the amount of 15% of Applicant's award. Attorney's fees are to be commuted from the far end of the award in an amount to be adjusted by the parties and paid in one lump sum. All amounts to be adjusted by the parties with jurisdiction reserved at the trial level if there is any dispute.

2. Future medical care to cure or relieve the effects of the industrial injuries.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 30, 2026

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

JUAN AYALA
THE LAW OFFICES OF MARCUS & PULLEY, LLP
LAW OFFICES OF BRADFORD & BARTHEL, LLP

PAG/cm

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