WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

LEWIS WILLIAMS, ***Applicant***

vs.

VOLT WORKFORCE SOLUTIONS,
AIU INSURANCE COMPANY, administered by GALLAGHER BASSETT ***Defendants***

Adjudication Number: ADJ16112682
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings, Award, and Order (F&A) dated February 13, 2026. The workers' compensation administrative law judge (WCJ) found in relevant part that "Applicant's injury caused permanent disability of 76% without apportionment."

Defendant argues that the Qualified Medical Evaluator (QME) report of Lorenzo Hughes, M.D., dated June 24, 2025, properly addresses and supports apportionment even though the section titled apportionment may fall short; that the record requires development because the QME prematurely found applicant to have reached maximum medical improvement based on a report from applicant's surgeon indicating a year recovery following surgery; and that a supplemental report is required as defendant believes applicant has improved and to provide the QME the opportunity to support his apportionment analysis.

Applicant did not file a response. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report), recommending that defendant's Petition be dismissed as it was unsigned and unverified or, in the alternative, denied on the merits.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report. Based on our review of the record, and as discussed below, we deny the Petition for Reconsideration.

FACTS

Applicant sustained injury arising out of and in the course of employment to the bilateral shoulders and left knee on December 24, 2021, while working for Volt Workforce Solutions.

The matter was set for an mandatory settlement conference (MSC) on October 6, 2025 following applicant's declaration of readiness to proceed (DOR). There was no objection to the DOR. At the hearing, the pre-trial conference statement (PTCS) was completed with a stipulation that the parties may amend up to 20 days before trial. Defendant served an amended PTCS on November 26, 2025. The PTCS does not include any record that any party objected to trial being set or that any party was requesting further discovery. The PTCS notes that the parties disagree as to the apportionment provided by the QME.

On December 18, 2025, the matter was submitted for trial on the issues of permanent disability and apportionment, occupational group number with applicant claiming group number 370 and defendant claimant group number 330, need for further medical treatment, lien of former attorneys Boxer & Gerson, and attorney's fees. No witness testimony was taken.

Two reports from QME Dr. Hughes dated December 6, 2022 and June 24, 2025 were admitted into evidence. In both reports, the QME did not review any medical reports from before the date of injury, and in both reports, applicant denied any prior non-industrial injuries. Also admitted into evidence were reports from Coastal Occupational Medical Group dated December 29, 2021 (Defendant's Exhibit D) and January 7, 2022 (Defendant's Exhibit E), which appear to have been authored by Joshua Hess, MPAP but are not signed. The filed reports also appear to contain more than one date of evaluation as the pages are misnumbered. Exhibit E notes at page 5 that "patient has cystic bone disease of both shoulders which are clearly pre-existing and non-industrial." This report and notation was reviewed and included in Dr. Hughes' report of December 6, 2022.

Defendant's Exhibit F is a report from Meena Mistry, PA dated June 2, 2025, in which the author notes that recovery time for total knee replacement is up to one year. There is no supervising physician signature included in the copy of the report admitted into evidence.

We adopt the remaining fact discussion of the WCJ's Opinion, except that the summary of the ratings should read with the following corrections[1]:

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[1] We further note that at page 4 of the WCJ's opinion, he mistakenly states, "Accordingly, I rate the permanent disability pursuant to the opinion of Dr. Reiter as follows, without apportionment." Dr. Reiter did not report in this

> In the permanent and stationary report of June 24, 2025, he provided an assessment of permanent impairment of 21% Whole Person Impairment (WPI) for the right shoulder, with apportionment of 25% to pre-existing non-industrial conditions. For the **left shoulder**, Dr. Hughes provided a 7% WPI, with apportionment of 10% to non-industrial conditions. Lastly, Dr. Hughes found a 30% WPI for the **left knee** as a result of the total knee replacement, with the same 25% apportionment rationale to non-industrial factors as he applied to the right shoulder.

The WCJ's opinion found that apportionment was not appropriately addressed per the standards outlined in *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 611 (en banc) because the physician did not clearly outline the pre-existing conditions nor did he adequately address with particularity how those conditions caused the current impairment. He accepted the QME's opinion that the impairment to the right and left shoulder should be added instead of combined. The WCJ also found that the correct occupational code is 330 based on the job description provided (Defendant's Exhibit A.)

Defendant filed an unsigned and unverified Petition dated February 24, 2026. The corresponding proof of service dated March 5, 2026 is likewise unsigned.

DISCUSSION

I

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

> (2) 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.

case and the ratings are the same as Dr. Hughes, thus we conclude this was a typographical error and note that the WCJ used the ratings from Dr. Hughes' report.

[2] All further statutory references will be to the Labor Code unless otherwise indicated.

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 March 20, 2026 and 60 days from the date of transmission is May 19, 2026. This decision is issued by or on May 19, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on March 20, 2026, and the case was transmitted to the Appeals Board on March 20, 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 March 20, 2026.

II

Section 5902 requires that a petition for reconsideration be verified. (Lab. Code, § 5902; see also Cal. Code Regs., tit. 8, § 10510(d).) In *Lucena v. Diablo Auto Body* (2000) 65 Cal.Comp.Cases 1425 (Significant Panel Decision), it was held that where a petition for reconsideration is not verified as required by section 5902, the petition may be dismissed if the petitioner has been given notice of the defect (either by the WCJ's Report or by the respondent's answer) unless, within a reasonable time, the petitioner either: (1) cures the defect by filing a verification; or (2) files an explanation that establishes a compelling reason for the lack of verification and the record establishes that the respondents are not prejudiced by the lack of verification. Here, the Petition for Reconsideration is not verified and notice of this defect was specifically given in the WCJ's Report. Moreover, a reasonable period of time has elapsed, but petitioner has neither cured the defect by filing a verification nor offered an explanation of why a verification cannot be filed.[3] It is within our authority to dismiss the Petition without considering it when it is unsigned and unverified, especially where no effort has been made to remedy the error.

[3] We also note that the Proof of Service for the Petition for Reconsideration is likewise not signed.

However, for the reasons stated in the WCJ's Opinion and Report, we will deny the Petition for Reconsideration.

Further, we remind defendant's counsel that compliance is required with our Rules and en banc decisions requiring proper identification of parties and liable entities. Under WCAB Rule 10390 all parties must fully disclose their own legal name, the name of their attorney or non-attorney representative, the name of the insurer and employer, and the third-party administrator, while clarifying that the third-party administrator is not a party. (Cal. Code Regs., tit. 8, §10390.) Under WCAB Rule 10400(b)(1), all attorney representatives must file a notice of representation or opening document that complies with WCAB Rule 10390 and includes "the name of the represented party." (Cal. Code Regs., tit. 8, §§10390, 10400(b)(1).) "If an attorney represents multiple parties or entities, all names of each represented party or entity must be disclosed." (*DiFusco v. Hands on Spa* (2025) 2025 Cal. Wrk. Comp. LEXIS 42, at p. *22 (Appeals Board en banc).)

The *Coldiron I* en banc decision requires that, in cases where an employer's liability is adjusted by a third party administrator, the administrator must disclose "the identity of its client, whether a self-insured employer or insurance carrier" and requires that, "[i]f the client is an insurance carrier, the administrator must disclose whether the policy includes a 'high self-insured retention,' a large deductible, or any other provision that affects the identity of the entity actually liable for the payment of compensation." (*Coldiron v. Compuware Corp*. (2002) 67 Cal.Comp.Cases 289, 290-291 (Appeals Board en banc) [*Coldiron I*].) Failure of the administrator to disclose the identity of its client may subject it to sanctions pursuant to Labor Code section 5813. (*Id.* at p. 291; see also *Coldiron v. Compuware Corp*. (2002) 67 Cal.Comp.Cases 1466, 1470 (Appeals Board en banc) [*Coldiron II*].)

The recently issued en banc opinion in *DiFusco v. Hands on Spa* clarified that the *Coldiron I* and *II* disclosure requirements are applicable to all defendants, regardless of whether a third-party administrator is involved. (*DiFusco, supra,* 2025 Cal. Wrk. Comp. LEXIS 42, at pp. *23-*26.) The *DiFusco* disclosure requirements "…serve to ensure that all parties are accurately identified…" (*Id.* at p. *21.) *DiFusco* placed the burden of compliance squarely on defendants, explaining, "[r]ead together, WCAB Rules 10390, 10400 and 10401 ensure that all parties, representatives and liable entities are fully identified in each case. Compliance with these rules is important to avoid errors such as misidentification of parties, inadvertent omission of parties from

pleadings, and incorrect case captions. We observe that information as to the proper defendant is within a defendant's control, and not an applicant's, so that it is incumbent upon a defendant to comply with this responsibility." (*Id.* at p. *22.)

Here, several attorneys at the Law Offices of Stacey L. Tokunaga have failed to comply with these mandatory duties to identify the client or clients and to fully disclose the liable entities. The Substitution of Attorneys dated May 23, 2025 indicates that "Volt Information Sciences, Inc. admin by Gallagher Bassett Services" was initiating the change of representation. The subsequent Notice of Representation (NOR) dated May 29, 2025 does indicate that the insurance carrier is AIU Insurance Company for employer Volt Information Sciences with a third party administrator of Gallagher Bassett Corona. Prior to current counsel's representation, the prior firm filed an Answer to Application for Adjudication which did indicate that AIU Insurance Company was the insurance carrier but for employer "Volt Workforce Solutions." Both the first PTCS and the amended PTCS stipulate that the employer is "Volt Work Force Solutions" and that the carrier is Gallagher Bassett. The MOH/SOE also notes admitted facts that the applicant was employed by Volt Workforce Solutions and that the carrier was administered by Gallagher Bassett, yet no actual carrier is admitted. Last, the Petition indicates that the petitioner is Volt Information Services, Inc. administered by Gallagher Bassett services. Ultimately, the Award has issued against Volt Workforce Solutions and Gallagher Bassett, but not the insurance carrier.

We advise defendant's counsel to resolve these questions of client identity and liability immediately. Specifically, counsel's filings should clearly indicate all defendants' names; clarify which defendants are represented by her firm as well as the correct name for each entity; join any liable entities as necessitated by the facts of this case; and indicate whether service has been properly effected. Failure to address these issues could result in sanctions. (*Coldiron I*, *supra,* at p. 291; *Coldiron II, supra,* at p. 1470; *DiFusco*, *supra*, at pp. *25, *28.) Moreover, from the applicant's perspective, if the correct defendant is not identified, any award to applicant may potentially be unenforceable. (See Lab. Code, §§5806, 5807.)

Additionally, defendant alleges at page 6 of their petition, "At the time of MSC and Trial, defendants had requested that the record be further developed with cross examination of the PQME. The PQME was set for March of 2026, but over the objection of the defendants, the Trial went forward." (Petition, 6:22-24.) A petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue. (Lab. Code, § 5902; Cal. Code Regs., tit.

8, § 10945(a).) There is no record of an objection to the DOR, at the MSC, or at trial. Future compliance with the WCAB Rules is expected, and failure to do so will subject the offending party to sanctions. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421.)

Accordingly, we deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

LISA A. SUSSMAN, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 19, 2026

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

LEWIS WILLIAMS
LAW OFFICES OF ALEX BONILLA
LAW OFFICE OF STACEY TOKUNAGA
BOXER GERSON OAKLAND

TF/bp

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMISSION OF THE MATTER TO THE RECONSIDERATION UNIT OF THE APPEALS BOARD

INTRODUCTION

By a timely but unsigned and unverified Petition for Reconsideration (Petition) filed on March 5, 2026, defendant seeks reconsideration of my February 13, 2026 Findings, Award and Order, wherein I found, among other things, that applicant, while employed on while employed on December 24, 2021 as a dip operator (Occupational Group No. 330) by Volt Workforce Solutions, sustained injury arising out of and in the course of employment to his bilateral shoulders and left knee, causing permanent disability of 76%, without apportionment.

Defendant contends: (1) the decision should be rescinded with respect to apportionment because the undersigned did not rely on the entire June 24, 2025 report of the Qualified Medical Examiner (QME), Dr. Hughes (Exh. 101): (2) further development of the record is necessary; and (3) a supplemental report of the QME is necessary because "defendant believes the applicant's condition has improved."

No answer has been filed by applicant. After reviewing defendant's petition and the record in this matter, I recommend that the Petition dismissed for lack of verification and signature. If the Petition is not dismissed, I recommend that reconsideration be denied.

FACTUAL BACKGROUND

The factual background and my opinion on permanent disability, excerpted from pages 1-4 of the Opinion on Decision (Opinion), is as follows:

> **Background**
>
> The primary issue to be determined in this matter is the application of any apportionment of permanent disability, as well as applicant's occupation at the time of injury.
>
> Applicant was evaluated by Dr. Lorenzo Hughes as the Panel Qualified Medical Examiner (QME). He produced two reports dated December 6, 2022 (Exh. 101) and June 24, 2025. (Exh. 102.) In the permanent and stationary report of June 24, 2025, he provided an assessment of permanent impairment of 21% Whole Person Impairment (WPI) for the right shoulder, with apportionment of 25% to pre-existing non-industrial conditions. For the left knee, Dr. Hughes provided a 7% WPI, with apportionment of 10% to non-industrial conditions. Lastly, Dr. Hughes

found a 30% WPI for the right knee as a result of the total knee replacement, with the same 25% apportionment rationale to non-industrial factors as he applied to the right shoulder.

Permanent Disability and Apportionment

Apportionment of permanent disability is now "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." (Labor Code sections 4663 (a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 611 (en banc).) Examining physicians therefore must "make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries." (Labor Code section 4663(c).) For a medical opinion on apportionment 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.
>
> For example, if a physician opines that approximately 50% of an employee’s back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability.
>
> And, if a physician opines that 50% of an employee’s back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability.” (*Escobedo, supra,* at 70 Cal.Comp.Cases at 621-622.)

In the instant case, although Dr. Hughes reviewed several prior medical records, he does not specify the “how and why” pursuant to *Escobedo*, to justify his apportionment determinations.

Specifically, Dr. Hughes's discussion of apportionment of permanent disability is set forth at pp, 25-26 of his report as follows:

Right Shoulder and Left Knee

> Pursuant to Labor Code §4663, after considering the entirety of the medical evidence in this case, it is my opinion, to a degree of reasonable medical probability, that 25% of the permanent disability/ whole person impairment in this case is due to pre-existing non-industrial medical conditions. Both the right shoulder and left knee are noted to have some preexisting degenerative changes.
>
> It is my opinion, to a degree of reasonable medical probability, that 75% of the permanent disability/ whole person impairment in this case is due to the industrial injury of 12/24/21.

Left Shoulder

> Pursuant to Labor Code §4663, after considering the entirety of the medical evidence in this case, it is my opinion, to a degree of reasonable medical probability, that 10% of the permanent disability/ whole person impairment in this case is due to pre-existing non-industrial medical conditions. The applicant has preexisting degenerative changes in the left shoulder, and the rationale here is that those degenerative changes predisposed the applicant to the industrial injury, and are contributing the permanent impairment present.
>
> It is my opinion, to a degree of reasonable medical probability, that 90% of the permanent disability/ whole person impairment in this case is due to the industrial injury of 12/24/21.

With regard to the right shoulder and left knee, Dr. Hughes does not specify exactly what he is apportioning to. He merely states that the "non-industrial medical conditions" are "some pre-existing degenerative changes." This falls well short of the long-established apportionment standard set forth in *Escobedo. Supra,* of explaining how and why the apportionment exists.

With regard to left shoulder, Dr, Hughes provides a little more guidance as to his rational for apportionment, but he does not specify the

> condition or how and why said pre-existing degenerative changes were causing permanent disability at the time of the evaluation, and how and why these changes are responsible for approximately 10% of the permanent disability.
>
> Therefore, I find that all of the apportionment determinations made by Dr. Hughes are not consistent with *Escobedo*.

DISCUSSION

Defendant's petition does not cause me to alter my decision. I note at the outset that the Petition is defective on its face because of the lack of verification and lack of signature by defendant. This alone can constitute grounds for dismissal of the Petition. Presuming that this defect is cured timely, I recommend that the petition be denied for the reasons set forth in my Opinion, with the following additional comments.

With respect to apportionment of permanent disability, defendant is correct that at pp. 22-23 of his June 24, 2025 (Exh. 101), Dr. Hughes noted applicant had advanced osteoarthritis of the left knee, and long-term progressive degenerative changes in both shoulders. What defendant's petition fails to address, however, is the language from *Escobedo, supra,* as set forth above in detail in my Opinion. That is, Dr. Hughes does not address how and why the prior left knee osteoarthritis and bilateral shoulder degenerative changes are directly responsible for a portion of the permanent disability to the left knee and bilateral shoulders. Without any such analysis, defendant has failed to meet its burden to prove apportionment.

Regarding further development of the record, defendant raises this argument for the first time in its Petition. Because the issue was not raised at trial, it is deemed waived, and it cannot be raised for the first time on Reconsideration. Raising an issue for the first time in a Petition of Reconsideration may subject a part to sanctions. Similarly, defendant's mere unsupported belief that applicant's condition may have improved is meritless and is not appropriate for inclusion in a petition for reconsideration.

RECOMMENDATION

Based upon the foregoing, it is respectfully recommended that defendant's Petition be **DISMISSED** for lack of verification and signature. If the Petition is not dismissed, it is recommended that the reconsideration be **DENIED**.

NOTICE OF TRANSMISSION TO THE APPEALS BOARD

On March 20, 2026, this matter is transmitted to the Reconsideration Unit of the Appeals Board.

Dated: March 20, 2026

JAMES GRIFFIN
Workers' Compensation
Administrative Law Judge

OPINION ON DECISION

Background

The primary issue to be determined in this matter is the application of any apportionment of permanent disability, as well as applicant's occupation at the time of injury.

Applicant was evaluated by Dr. Lorenzo Hughes as the Panel Qualified Medical Examiner (QME). He produced two reports dated December 6, 2022 (Exh. 101) and June 24, 2025. (Exh. 102.) In the permanent and stationary report of June 24, 2025, he provided an assessment of permanent impairment of 21% Whole Person Impairment (WPI) for the right shoulder, with apportionment of 25% to pre-existing non-industrial conditions. For the left knee, Dr. Hughes provided a 7% WPI, with apportionment of 10% to non-industrial conditions. Lastly, Dr. Hughes found a 30% WPI for the right knee as a result of the total knee replacement, with the same 25% apportionment rationale to non-industrial factors as he applied to the right shoulder.

Permanent Disability and Apportionment

Apportionment of permanent disability is now "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." (Labor Code sections 4663 (a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 611 (en banc).) Examining physicians therefore must "make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries." (Labor Code section 4663(c).) For a medical opinion on apportionment 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.
>
> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused

> vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability.
>
> And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability." (*Escobedo, supra,* at 70 Cal.Comp.Cases at 621-622.)

In the instant case, although Dr. Hughes reviewed several prior medical records, he does not specify the "how and why" pursuant to *Escobedo*, to justify his apportionment determinations. Specifically, Dr. Hughes's discussion of apportionment of permanent disability is set forth at pp, 25-26 of his report as follows:

> **<u>Right Shoulder and Left Knee</u>**
>
> Pursuant to Labor Code §4663, after considering the entirety of the medical evidence in this case, it is my opinion, to a degree of reasonable medical probability, that 25% of the permanent disability/ whole person impairment in this case is due to pre-existing non-industrial medical conditions. Both the right shoulder and left knee are noted to have some preexisting degenerative changes.
>
> It is my opinion, to a degree of reasonable medical probability, that 75% of the permanent disability/ whole person impairment in this case is due to the industrial injury of 12/24/21.
>
> **<u>Left Shoulder</u>**
>
> Pursuant to Labor Code §4663, after considering the entirety of the medical evidence in this case, it is my opinion, to a degree of reasonable medical probability, that 10% of the permanent disability/ whole person impairment in this case is due to pre-existing non-industrial medical conditions. The applicant has preexisting degenerative changes in the left shoulder, and the rationale here is that those degenerative changes predisposed the applicant to the industrial injury, and are contributing the permanent impairment present.
>
> It is my opinion, to a degree of reasonable medical probability, that 90% of the permanent disability/ whole person impairment in this case is due to the industrial injury of 12/24/21.

With regard to the right shoulder and left knee, Dr. Hughes does not specify exactly what he is apportioning to. He merely states that the "non-industrial medical conditions" are "some pre-existing degenerative changes." This falls well short of the long-established apportionment standard set forth in *Escobedo. Supra,* of explaining how and why the apportionment exists.

With regard to left shoulder, Dr, Hughes provides a little more guidance as to his rational for apportionment, but he does not specify the condition or how and why said pre-existing degenerative changes were causing permanent disability at the time of the evaluation, and how and why these changes are responsible for approximately 10% of the permanent disability.

Therefore, I find that all of the apportionment determinations made by Dr. Hughes are not consistent with *Escobedo*. Accordingly, I rate the permanent disability pursuant to the opinion of Dr. Reiter as follows, without any apportionment:

Right Shoulder: 16.02.02.00 – 21% [1.4] 29 % - 330G – 32 – 39%
Left Shoulder: 16.02.01.00 – 7% [1.4] 10 – 330F – 10 – 13%
Add per *Vigil* case – 52%

Left Knee: 17.05.10.08 – 30% [1.4] 42% - 330F – 42 – 50%

CVC of 52% and 50% = 76%

Occupational Title

Applicant contends that with respect to applicant's occupational code, he is in occupational group 370. Defendant contends that applicant is in occupational group 330. The parties did not stipulate to an occupational title, so I must first determine his occupational title in order to reach the occupational group number. Other than as described in the medical reports, the only evidence offered regarding his occupation is exhibit A, which is his job description. His job title is listed as a "Dip Operator." The physical requirements of this job are listed on the job description as being able to: dip wax assemblies into dip tanks using robotic system and/or hand dipping; monitor and control computerized systems; monitor and control conveyor red lines; clean of slurry tanks making up new slurries to maintain slurry thanks full. Control and testing of slurries; stucco maintenance, maintaining sand beds and rain sanders clean and full; prepare wax assemblies for face coat, including visual inspection and how to plate assemblies so they can be hung on racks or conveyor and how to etch and clean assemblies; and preparation for de-wax. These job requirements appear to fit closer to occupational group 330, which is utilized in the permanent disability rating above.

Need for Further Medical Treatment

Dr. Hughes stated at p. 26 that applicant is in need of further medical treatment for each admitted body part.

Attorney's Fee

Lastly, applicant's attorney has performed valuable services on behalf of applicant, and is entitled to a fee of 15% of the permanent disability indemnity awarded herein.

Dated: February 13, 2026

JAMES GRIFFIN
WORKERS'COMPENSATION
ADMINISTRATIVE LAW JUDGE