WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

LOUIS MADRIL, *Applicant*

vs.

LKQ PICK YOUR PART AUTO WRECKING;
ACE AMERICAN administered by CCMSI, *Defendants*

Adjudication Number: ADJ11800026
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings and Order issued by the workers' compensation administrative law judge (WCJ) on June 24, 2026.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] section 5950 et seq.

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to 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] All further statutory references are to the Labor Code, unless otherwise noted.

> (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."

Here, according to Events, the case was transmitted to the Appeals Board on July 29, 2026 and 60 days from the date of transmission is Sunday, September 27, 2026. The next business day that is 60 days from the date of transmission is Monday, September 28, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, September 28, 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 July 29, 2026, and the case was transmitted to the Appeals Board on July 29, 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 July 29, 2026.

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[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

II.

The WCJ provided the following discussion in the Report:

FACTS

Louis Madril, born [], while employed on May 19, 2017, as a mechanic, Occupational Group Number 212, at Riverside, by LKQ Pick Your Part, sustained injury arising out of and in the course of employment to right eye, psyche, dyspepsia.

On April 8, 2026, the parties tried this case before the undersigned Workers' Compensation Judge. The issues included parts of body injured, temporary disability, permanent and stationary date, permanent disability, apportionment, occupation and group number claimed, need for future medical treatment, EDD lien in the total amount of $30,732.00, attorney fees, whether Applicant is able to compete in the open market based on the industrial injury, and psych and sleep injury precluded from additional PD under Labor Code Section 4660.1.

All offered exhibits were admitted into evidence. Applicant and his wife testified.

On June 22, 2026, this WCJ issued a Findings and Award with Opinion on Decision, wherein it was found that:

1. Defendant Exhibit Q is admitted into evidence.
2. Body parts injured, head, headaches, left eye, and high blood pressure.
3. Applicant is entitled to temporary total disability indemnity from February 1, 2019, for 104 weeks, at $739.40 per week, less credit for sums previously paid, less credit for EDD disability payments, and less 15% reasonable attorney's fees as against any unpaid accrued temporary total disability indemnity.
4. Applicant is found to be entitled to a permanent disability award of 57%, equal to 327.25 weeks of indemnity payable at the rate of $290 per week in the total sum of $94,902.50, payable beginning February 1, 2021, less credit for sums previously paid.
5. Permanent and stationary date is April 10, 2025 per psychiatry QME Dr. Peng.
6. Based on the medical evidence, there is basis for apportionment.
7. Applicant needs future medical treatment to cure or relieve the effects of the industrial injuries herein
8. The reasonable value of the services of applicant's attorney is 15% of the permanent disability obtained for the applicant
9. Applicant's psychological and sleep injuries are a compensable consequence of industrial injury and are therefore not allowed to be combined to permanent disability.

Applicant is seeking reconsideration on the following issues:

A. Body Parts Injured: Right eye, Head, Psyche, Dyspepsia, Labyrinthitis, Neurologic injuries, sleep disorder.
B. Nature and Extent of Permanent Disability: permanent Total Disability and Rating.
C. Apportionment
D. Application of LC 4460.1(c).
E. Labor Code 4650(d) benefits.

No Answer received from Defendants.

DISCUSSION
BODY PART INJURED

Right Eye

This WCJ is puzzled by AA's contention to the right eye. Per parties' Stipulations, Applicant sustained injury AOE/COE to the right eye. And this WCJ gave 26% PD.

Head

This WCJ is also puzzled by AA's contention to the head. This WCJ had determined that Applicant sustain injury to head/headaches and gave 13% PD.

Dyspepsia

This WCJ is further puzzled by AA's contention to dyspepsia. Per parties' Stipulations, Applicant sustained injury AOE/COE to dyspepsia. And this WCJ gave 9% PD.

Labyrinthitis

This WCJ determined that Applicant did not sustain injury to labyrinthitis.

On 03/07/2019, PTP Dr. Ali first assessed Applicant with "posttraumatic labyrinthitis causing dizziness and imbalance," **Applicant Exhibit 6**, p 190., and he repeatedly mentioned the same assessment/diagnosis throughout his progress reports. But PTP Dr. Ali failed to discuss causation of Applicant's labyrinthitis throughout the reports. **See Applicant Exhibit 6**. In the P&S reports dated 9/3/2019 and 1/16/2023, PTP Dr. Ali also failed to discuss causation and whole person impairment for the alleged labyrinthitis. **Applicant Exhibit 3 & 2**. Moreover, at Dr. Ali's deposition, Applicant's attorney failed to ask any questions regarding labyrinthitis. **Applicant Exhibit 5.**

In Petition for Reconsideration, Applicant's attorney stated that PTP Dr. Ali did discuss causation for labyrinthitis in the September 3, 2019, report, and "gave a detailed description". Petition for Reconsideration, p 11, lines1-4. But Applicant's attorney failed to quate specific opinions by Dr. Ali pertaining to the causation of labyrinthitis. Applicant failed his burden of proof.

Moreover, PQME Dr. Anderson observed that "as the applicant came to new physicians, there was mention of labyrinthitis/vertigo, post concussive cognitive impact, sleep disorder, and so forth, attributed to the subject injury. *It is recognized that these initial consultations likely were conducted based on history alone in the absence of receipt of and review of previous medical records*." [*Emphasis added*] **Defendant Exhibit** F, p 52.

Applicant's attorney also cited reports which are not admitted into evidence, such as reports by Drs. Greer, Del Campo, Glendrange and Nick. **Petition for Reconsideration,** p 12 lines 3-11. Pursuant to *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal. Comp. Cases 473 (Appeals Board en banc), a decision must be based on admitted evidence in the record. *Id*. at 478. And the referenced reports by Drs. Greer, Del Campo, Glendrange and Nick were not submitted at the trial.

Based on the lack of causation discussion by PTP Dr. Ali, Dr. Ali's opinion is not substantial. Based on the substantial opinion by PQME Dr. Anderson's, this WCJ found that Applicant did not sustain injury AOE/COE to his labyrinthitis.

Psyche and Sleep Disorder

This WCJ determined that Applicant's psychiatric injury and sleep disorder are barred by LC § 4660.1.

Psychiatry QME Dr. Peng opined 60 GAF which translates to 15% WPI. Applicant has been temporarily totally disabled on a psychiatric basis from Applicant's medical leave through April 10,2025. Applicant reached MMI on 4/10/2025. Dr. Peng opined that 65% psychiatric disability is apportioned to applicant's industrial injury on 5/17/2017, specifically industrial reports by QME Anderson and Vishtech; and 30% apportioned to applicant's Parkinson's disease that has progressed over the last 5 years, and 5% to non-industrial factor. Defendant Exhibit k, p. 66-69.

> Labor Code Section 4660.1 reads as follows in relevant part:
> This section applies to injuries occurring on or after January 1, 2013.
> …
>
> (c)(1) Except as provided in paragraph (2), the impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.
>
> (2) An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:
>
> (A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.

(B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury. Labor Code § 4660.1(c)

Per psychiatry QME Dr. Peng, he opined that "the actual event of employment was predominate to all the causes to have produce a psychiatric injury." **Defendant Exhibit K**, p. 66. The doctor further stated that "the typical exemptions, namely being the victim of a violent act or suffering a 'catastrophic injury' do not appear to apply this case." *Id*. p 67. Moreover, QME Dr. Peng also opined that the psychiatric injury was derived from the neurologic and ophthalmologic injuries. **See Defendant Exhibit K**, p. 62, 63 and 69. In that:

"65% of the permanent psychiatric disability is apportioned to the applicant's physical injuries sustained from the industrial injury on 5/19/17:

a. 40% of the permanent psychiatric disability is derived from his post traumatic head injury and resulting headaches. Dr. Anderson indicated that this was 100% industrial.

b. 25% of the permanent psychiatric disability is derived from his ophthalmologic injury. Dr. Vishteh indicated that his ophthalmologic injury was 100% industrial." **Defendant Exhibit K**, p. 62, 63 and 69.

Pursuant to Labor Code Section 4660.1, because applicant's psychological injury arose out of physical injuries to his headaches and eyes, he is not entitled to an increase in permanent disability. Applicant failed to provide evidence to establish entitlement to an increase based on the exceptions codified in Labor Code Section 4660.1(c)(2). Thus, Applicant's psychiatric condition is not directly caused by the specific industrial injury.

Moreover, there is no evidence in the record that applicant's sleep condition was the direct result of the specific industrial injury. There is no exception in section 4660.1(c) permitting permanent impairment for a sleep condition that is a compensable consequence of an injury.

Therefore, Applicant's psychiatric injury and sleep disorder are barred by LC § 4660.1.

Neurologic injuries, Parkinson's Disease and Parkinsonian conditions

This WCJ determined that Applicant's Parkison Disease and Parkinsonian conditions are not industrial.

Internal QME Dr. Grodan testified that "... there is a probability of Parkinson's, but there is also something called intention tremor and different disease that can simulate Parkinson's. So I defer to neurology." **Defendant Exhibit E**, p 20 lines 20-24. PTP Dr. Ali also testified that neurology is the proper medical specialty for Parkinson's Disease: See **Applicant Exhibit 5**, p 10 lines 5-7. Thus, the proper specialty for Parkinson's Disease is neurology, and the parties used Dr. Anderson as the QME in neurology.

For Applicant's Parkinsonian condition, neurology QME Dr. Anderson opined that:

"If the reader were to look at my examination with no other context or if a neurologist were to come in and examine the applicant for the first time with no history and no context whatsoever, the diagnosis of Parkinson's would be high on the list. This was noted by other physicians as well, and l would suggest that the applicant is developing one of the Parkinsonian type conditions. There are different types of Parkinsonian conditions, some affecting balance. some affecting cognition. and most of them affecting the motor symptoms of rigidity, notably cogwheel rigidity. till rolling tremor, and shuffling gait, now seen but not seen on the previous evaluation.

This development of a new and separate neurological condition and its progression to a medical probability cannot be addressed as being a consequence of the subject injury." [*Emphasis added*]. **Defendant Exhibit G**, p 72.

Moreover, at PTP Dr. Mumtaz Ali's cross-examination on 2/24/2025, Dr. Ali opined that:

"Q: … Do you believe that he has Parkinson's?

"A: No.

Q: Do you believe that he has what can be described as a Parkinsonian syndrome?

A: No.

Q: Does he have any symptoms, to your knowledge as his treating neurologist, that mimic Parkinson's syndrome -- I mean symptoms?

A: Yes, that is depression as well as his memory problem, dizziness. Those are the common features that we see in Parkinsonian syndrome also." Applicant Exhibit 5, p 8 line 22 – p 9 line7.

…

A: "… And I have observed very closely, even in the last month I have seen him, I did not find any features of Parkinson's disease in him." **Applicant Exhibit 5**, p 10, lines 23-25.

However, on February 9, 2026, PTP Ali opined that:

"Based upon reasonable medical probability, the patient has secondary Parkinson's Disease secondary to his head trauma."

"The patient should be treated for Parkinson's Disease on an industrial basis." **Applicant**

Exhibit 5, p 1-2.

However, Dr. Ali failed to provide any justification as to why he changed his opinion from non-industrial Parkinson Disease and syndrome to industrial. A medical opinion must be framed in terms of reasonable medical probability, not speculative, based on pertinent facts and on an adequate examination and history, and sets forth reasoning in support of its conclusions to a reasonable medical

probability regarding causation for applicant's injury. See *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 621 (Appeals Board en banc).

In Petition for Reconsideration, Applicant's attorney also cited a statement from the National Library of Medicine on secondary Parkinsonism. **Petition for Reconsideration,** p 16 lines 7-15. Once again, pursuant to *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal. Comp. Cases 473 (Appeals Board en banc), a decision must be based on admitted evidence in the record. *Id*. at 478. And the referenced material was not submitted at the trial.

This WCJ finds that PTP Dr. Ali's subsequent opinion is speculative, not support by reasonable medical probability, and not substantial. Thus, Applicant's Parkison Disease and Parkinsonian conditions are not industrial.

Nature and Extent of Permanent Disability: Permanent Total Disability and Rating.

Applicant contends that this case should be 100% per Applicant's VR expert Laura Wilson's opinions.

Based on the substantial medical reports by QME Dr. Anderson in Neurology, QME Dr. Visteh in Ophthalmology, QME Dr. Grodan in Internal Medicine, and QME Dr. Peng in Psychiatry, this WCJ rated the case at 57% PD.

To rebut a scheduled rating under the permanent disability rating schedule, an applicant must establish that his or her future earning capacity is actually less than that anticipated by the scheduled rating. The primary method for rebutting the schedule rating is based upon vocational expert reporting determining 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), 76 Cal. Comp. Cases 624, 633.

However, an applicant's diminished future capacity must be directly attributable to his or her work-related injury [*Fitzpatrick, supra,* 83 Cal. Comp. Cases at p. 1690] and not due to non-industrial factors such as general economic conditions, illiteracy, proficiency in speaking English, or lack of education. *Ogilvie, supra,* 76 Cal. Comp. Cases at p. 633. Also, where apportionment is identified in the medical evidence, a vocational expert must consider it and determine how it affected his or her conclusions. *Acme Steel v. Workers' Comp. Appeals Bd. (Borman*) (2013) 78 Cal. Comp. Cases 751, 755-757.

Pursuant to Labor Code § 4660, the determination of permanent disability is addressed by consideration of whole person impairment within the four corners of the AMA Guides, the proper application of the permanent disability rating schedule in light of the medical record and the effect of the injury on the applicant's future earning capacity. [*Brodie v. Workers' Comp. Appeals Bd*. (2007) 72 Cal. Comp. Cases 565, 570 ("permanent disability payments are intended to compensate workers for both physical loss of some or all of their future earning capacity"); *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.*

(Fitzpatrick) (2018) 83 Cal. Comp. Cases 1680; *Almaraz v. Environmental Recovery Service/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc) as affirmed by the Court of Appeal in *Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman*) (2010) 75 Cal. Comp. Cases 837]. The determination of permanent disability may also be shown by rebutting the diminished future earning capacity factor supplied by the permanent disability rating schedule. [*Ogilvie v. Workers' Comp. Appeals Bd*. (2011) 76 Cal. Comp. Cases 624; *Contra County v. Workers' Comp. Appeals Bd. (Dahl*) 80 Cal. Comp. Cases 119; *LeBoeuf v. Workers' Comp. Appeals Bd*. (1983) 48 Cal. Comp. Cases 587].

In this case, Laura Wilson and Nick Corso provided vocational evaluations of Applicant. Ms. Wilson failed to review the psychiatric reports by PQME Dr. Peng, and she also failed to review the cross-examinations of PQME Dr. Grodan and PTP Dr. Ali. Furthermore, Ms. Wilson's conclusion failed to discuss why Applicant's non-industrial factors did not attribute toward Applicant's ability to compete in the open labor market. And Ms. Wilson failed to show that applicant's diminished future capacity is directly attributable to his work-related injury and not due to non-industrial factors. Thus, Ms. Wilson's opinion is unconvincing and not substantial

On the contrary, Mr. Corso reviewed all the QME med-legal reports, depositions of Drs. Grodan and Ali, and all the reports by PTP Drs. Ali and Dorsey. Mr. Corso concluded that Applicant is not totally disabled as a result of his 2017 industrial injury. Applicant is unable to work due to subsequent Parkinson's disease which is non-industrial. Thus, Mr. Corso's opinion is persuasive and substantial.

Thus, Applicant's VR expert failed to rebutted the scheduled rating, and 57% PD is based on substantial medical evidence.

Apportionment

This WCJ determined that Dr. Grodan's non-industrial apportionments are supported by substantial evidence.

The reporting physician shall determine what percentage of an injured worker's 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..." *Labor Code* § 4663, subd. ©. It is well established that any award, order or decision of the WCAB must be supported by substantial evidence. *Labor Code* § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 281 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases 310]. A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. *Granado v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal. 2d 399, [71 Cal. Rptr. 678, 445 P.2d 294, 33 Cal.Comp.Cases 647]. To be substantial evidence on the issue of apportionment a medical opinion must set forth reasoning in support of its conclusions. For example, as in the present matter, if a physician states that a

percentage of an injured worker's disability is caused by a pre-existing condition, the physician must explain the nature of the pre-existing condition, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for the percentage of the disability identified by the doctor. *Acme Steel v. Workers' Comp. Appeals Bd. (Borman)* (2013) 218 Cal.App.4th 1137 [160 Cal. Rptr. 3d 712, 78 Cal.Comp.Cases 751]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc). Applicant has the burden of establishing the percentage of permanent disability caused by the industrial injury and defendant has the burden of establishing the percentage of disability caused by other factors. *Escobedo, supra*.

The WCJ rated applicant's hypertensive heart disease based on the opinion by PQME Dr. Grodan. As quoted above, when addressing the issue of apportionment, the doctor stated:

> "I noted he had Helicobacter pylori positive gastritis. He was not treated to eradicate the Helicobacter. There is no question that taking NSAIDs can irritate gastric mucosa but with Helicobacter there will be at least 50% nonindustrial apportionment." **Defendant Exhibit D**, p. 17.
>
> For the hypertensive disease, Dr. Grodan opined that "it is within reasonable medical probability that 60% apportionment is attributed to preexisting nonindustrial disease and 40% apportionment would be aggravation by the trauma he sustained with associated medical issues." **Defendant Exhibit D**, p. 17.

PQME Dr. Grodan further confirmed the non-industrial apportionment at his cross-examination. See **Defendant Exhibit E**, p. 18-20. Based thereon, this WCJ found that Dr. Grodan's non-industrial apportionments are supported by substantial evidence.

Application of LC 4460.1(c)

Applicant contends that Applicant's psychiatric injury and sleep disorder are not exclude by LC § 4660.1.

This WCJ relied on psychiatry QME Dr. Peng's opinions to determine the retro TD indemnity and P&S date. And this WCJ found that Applicant's psychiatric injury and sleep disorder are barred by LC § 4660.1.

Psychiatry QME Dr. Peng opined 60 GAF which translates to 15% WPI. Applicant has been temporarily totally disabled on a psychiatric basis from Applicant's medical leave through April 10,2025. Applicant reached MMI on 4/10/2025. Per the industrial reports by QME Drs. Anderson and Vishtech, QME Dr. Peng opined that 65% psychiatric disability is apportioned to applicant's industrial injury on 5/17/2017. QME Dr. Peng also assigned 30% apportionment to applicant's Parkinson's disease that has progressed over the last 5 years, and 5% to non-industrial factor. **Defendant Exhibit K**, p. 66-69.

Labor Code Section 4660.1 reads as follows in relevant part:
This section applies to injuries occurring on or after January 1, 2013.
…
(c)(1) Except as provided in paragraph (2), the impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.
(2) An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:
(A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.
(B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury. *Labor Code* § 4660.1(c)

Per psychiatry QME Dr. Peng, he opined that the actual event of employment was predominate to all the causes producing a psychiatric injury. **Defendant Exhibit K,** p. 67. QME Dr. Peng further stated that "he typical exemptions, namely being the victim of a violent act or suffering a 'catastrophic injury' *do not appear to apply this case*." [*Emphasis added*] *Id*.

Moreover, QME Dr. Peng also opined that the psychiatric injury was derived from the neurologic and ophthalmologic injuries. See **Defendant Exhibit K**, p. 62, 63 and 69. In that:

"65% of the permanent psychiatric disability is apportioned to the applicant's physical injuries sustained from the industrial injury on 5/19/17:
a. 40% of the permanent psychiatric disability is derived from his post-traumatic head injury and resulting headaches. Dr. Anderson indicated that this was 100% industrial.
b. 25% of the permanent psychiatric disability is derived from his ophthalmologic injury. Dr. Vishteh indicated that his ophthalmologic injury was 100% industrial." **Defendant Exhibit K**, p. 62, 63 and 69.

Pursuant to Labor Code Section 4660.1, because applicant's psychological injury arose out of physical injuries to his headaches and eyes, he is not entitled to an increase in permanent disability. Applicant failed to provide evidence to establish entitlement to an increase based on the exceptions codified in Labor Code Section 4660.1(c)(2). Thus, Applicant's psychiatric condition is not directly caused by the injurious event.

There is no evidence in the record that applicant's sleep condition was the direct result of the specific injury. There is no exception in section 4660.1(c)

permitting permanent impairment for a sleep condition that is a compensable consequence of an injury.

Therefore, Applicant's psychiatric injury and sleep disorder are barred by LC § 4660.1.

Labor Code 4650(d) Benefits

Applicant contends that Labor Code § 4650(d) should be applied to impose additional 10% penalties on the retro TD benefits

The WCAB indicated that the proposition that Labor Code § 4650(d) was a self-executing, strict liability provision was not in dispute. Rather, the WCAB indicated that the issue was whether Labor Code § 4650(d) applied to the circumstances of the case. In relevant part, the WCAB indicated that *Leinon v. Fishermen's Grotto* (2004) 69 Cal. Comp. Cases 995 (Appeals Board en banc opinion) was directly on point, that under *Leino* no Labor Code § 4650(d) arises if the disputed disability indemnity payments are made within 14 days of a final order, decision, or award imposing liability for those benefits or within 14 days of a defendant's acceptance of liability for the injury and disability benefits, that, for purposes of Labor Code § 4650(d), an order, decision, or award became final when a defendant had exhausted all of its appellate rights or had not pursued them. See *Braun v. WCAB* (2010) 75 CCC 510 (writ denied).

In our case, Applicant failed to show that Defendant did not issue the retro TD payments within 14 days of the 6/22/2026 Findings & Award. Therefore, Labor Code § 4650(d) does not apply.

RECOMMENDATION

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

(Report, at pp. 1-13.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

It is well established that decisions by the Appeals Board must be supported by 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, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant

evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, it appears from our preliminary review that the record may not be complete regarding several issues, including finding of injury arising out of and occurring in the course of employment (AOE/COE) to the appropriate body parts and/or conditions including psychiatric injury, temporary disability, permanent disability and the applicability of section 4660.1(c), and apportionment. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the

commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp*. *Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp*. *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

V.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed*** **to WCABmediation@dir.ca.gov**.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 28, 2026

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

LOUIS MADRIL
MOORE AND ASSOCIATES
TOBIN LUCKS LLP

PAG/cm

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