WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARLAINA BATTLE, ***Applicant***

vs.

SCRIPPS HEALTH, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, ***Defendants***

Adjudication Number: ADJ10582157
San Diego District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendant seeks reconsideration of the November 7, 2022 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a patient service representative on October 20, 2015, sustained industrial injury to her bilateral upper extremities resulting in complex regional pain syndrome (CRPS), and further found that applicant sustained injury to her left shoulder, psyche, and in the form of irritable bowel syndrome. The WCJ found that applicant's injury resulted in permanent and total disability.

Defendant contends that the medical and testimonial record does not support the award of permanent and total disability.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the F&A and return this matter to the trial level for development of the record.

FACTS

Applicant claimed injury to her right upper extremity resulting in CRPS, left upper extremity, psyche, and in the form of irritable bowel syndrome, while employed as a customer service representative by defendant Scripps Health on October 20, 2015. Defendant admits injury to the right upper extremity resulting in CRPS, but disputes injury to the left upper extremity, psyche, and in the form of irritable bowel syndrome.

The parties have selected Qualified Medical Evaluators (QMEs) William Wilson, M.D., in pain management, Kelly O'Neill, Ph.D., in psychology, and John Hortareas, D.O., in internal medicine. Applicant has also designated Joshua Pal, M.D., as her primary treating physician (PTP), and Autumn Phillips, Psy.D., as a treating psychologist. Applicant has also obtained reporting from vocational expert Mark Remas.

On September 12, 2022, the parties proceeded to trial and stipulated to injury arising out of and in the course of employment to applicant's right upper extremity resulting in CRPS. (Minutes of Hearing (Minutes), dated September 12, 2022, at p. 2:4.) The parties placed in issue the nature and extent of the injury, including disputed body parts of left upper extremity, irritable bowel syndrome, and psyche, and further placed in issue the resulting levels of permanent disability. Also submitted was the issue of whether applicant's vocational evidence successfully rebutted the scheduled ratings under the Permanent Disability Schedule (PDRS).

On October 31, 2022, the WCJ heard testimony from applicant, and ordered the matter submitted for decision. (Transcript of Proceedings, dated October 31, 2022, at p. 97:12.)

On November 7, 2022, the WCJ issued his F&A, determining in relevant part that applicant sustained injury to both upper extremities in the form of CRPS, and to her left shoulder, psyche, and in the form or irritable bowel syndrome. (Finding of Fact No. 1.) The WCJ determined that applicant did not sustain a catastrophic injury within the meaning of Labor Code[1] section 4660.1(c)(2)(B), and that her psychiatric impairment was not ratable as a result. (Finding of Fact No. 2.) The WCJ determined that applicant's CRPS resulted in a scheduled rating of 84 percent, but that applicant's vocational reporting successfully rebutted the scheduled rating, and that applicant was not feasible for vocational retraining. (Findings of Fact, Nos. 3 & 4.) Accordingly, and based on the CRPS condition standing alone, the WCJ determined that applicant's disability

[1] All further references are to the Labor Code unless otherwise noted.

was permanent and total. (Findings of Fact, Nos. 5 & 7.) The WCJ awarded indemnity commensurate with permanent and total disability, less attorney's fees of 15 percent commuted from the far end of the award. (Finding of Fact No. 9; Award No. 1.)

The WCJ's Opinion on Decision explained that applicant provided the court with credible testimony regarding the onset of symptoms to her claimed body parts, and that the QME reporting in evidence was substantial and unrebutted. (Opinion on Decision, at p. 3.) The WCJ further noted that applicant's vocational expert reporting substantiated how applicant's industrial injury would render her an unreliable employee and would effectively preclude vocational retraining and reentry into the labor market. (*Id.* at p. 5.) After a review of the totality of the submitted record, the WCJ concluded that "[a]pplicant has successfully rebutted the PDRS, and an award of 100% permanent and total disability is appropriate." (*Id.* at p. 6.)

Defendant's Petition contends that applicant's trial testimony as to her activities of daily living is inconsistent with a finding of permanent and total disability. (Petition, at p. 6:23.) Defendant further observes that applicant's testimony as to her exertional capabilities is inconsistent with the conclusions set forth in the vocational reporting, and that as a result, the vocational reporting is not substantial evidence. (*Id.* at p. 9:5.) Defendant further contends the evidence of nonindustrial apportionment was not adequately considered by the vocational expert. (*Id.* at p. 11:13.)

Applicant's Answer responds that both the QME and vocational expert (VE) reporting are substantial evidence and are unrebutted, and that the WCJ specifically found applicant's trial testimony to be credible. (Answer, at p. 2:24.) Applicant further notes that the WCJ's determination of permanent and total disability rested solely on the CRPS injury, which was wholly industrial in etiology. (*Id.* at p. 5:4.)

The WCJ's Report reiterates that the QME and vocational expert reporting are unrebutted and substantial. The Report confirms the WCJ's assessment of applicant's trial testimony as fully credible, and that applicant was subject to significant daily variability in her functional capacity. (Report, at p. 6.) Based on a complete review of the entire evidentiary record, the WCJ confirmed his prior assessment that applicant's disability was both permanent and total. (*Id.* at p. 8.)

DISCUSSION

I.

Section 4660.1 provides that permanent disability is determined by consideration of whole person impairment within the four corners of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides), as applied by the Permanent Disability Rating Schedule (PDRS) in light of the medical record and the effect of the injury on the worker's future earning capacity. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565] ["permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity"]; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (*Fitzpatrick*) (2018) 27 Cal.App.5th 607, 614 [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 Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

The scheduled rating is not absolute. (*Fitzpatrick, supra,* 27 Cal.App.5th 607, 619-620.) A rating obtained pursuant to the PDRS may be rebutted by showing applicant's diminished future earning capacity is greater than the factor supplied by the PDRS. (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal. App. 4th 1262 [76 Cal. Comp. Cases 624]; *Contra Costa County v. Workers' Comp. Appeals Bd.* (*Dahl*) (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 119].)

In analyzing the issue of whether and how the PDRS could be rebutted, the Court of Appeal has observed:

> Another way the cases have long recognized that a scheduled rating has been effectively rebutted is when 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. This is the rule expressed in *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [193 Cal. Rptr. 547, 666 P.2d 989]. In *LeBoeuf*, an injured worker sought to demonstrate that, due to the residual effects of his work-related injuries, he could not be retrained for suitable meaningful employment. (*Id.* at pp. 237–238.) Our Supreme Court concluded that it was error to preclude LeBoeuf from making such a showing, and held that "the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating."

(*Ogilvie, supra*, 197 Cal.App.4th at p. 1274.)

Thus, "an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating." (*Ogilvie, supra,* 197 Cal.App.4th at p. 1277.)

"The first step in any *LeBoeuf* analysis is to determine whether a work-related injury precludes the claimant from taking advantage of vocational rehabilitation and participating in the labor force. This necessarily requires an individualized approach…It is this individualized assessment of whether industrial factors preclude the employee's rehabilitation that *Ogilvie* approved as a method for rebutting the Schedule." (D*ahl*, *supra*, 240 Cal.App.4th at p. 758.)

Here, the WCJ has inventoried the admitted and claimed body parts, noting that the parties have stipulated to injury to the right upper extremity in the form of CRPS. (Finding of Fact No. 1.) Based on the medical-legal reporting in evidence, the WCJ also determined that applicant sustained industrial injury to the contralateral upper extremity, to her left shoulder, psyche, and in the form of irritable bowel syndrome. (*Ibid*.) While the WCJ determined that applicant's psychiatric impairment was not ratable per section 4660.1(c)(2), the WCJ rated the remaining body parts per the PDRS, yielding 84 percent permanent partial disability. (Finding of Fact No. 3; Opinion on Decision, at p. 4.)

The WCJ then reviewed the sole vocational report in evidence, authored by applicant's vocational expert Mr. Remas, who determined that applicant was not feasible for vocational retraining. (Opinion on Decision, at p. 5.) The WCJ noted that applicant's trial testimony was fully credible and that it aligned with the reporting of the vocational expert. (*Id.* at pp. 5-6.) Based on the weight of the vocational reporting and based on the WCJ's assessment of applicant's trial testimony, the WCJ concluded that because applicant is not feasible for vocational retraining, her industrial disability is both permanent and total. (Finding of Fact No. 7.)

Defendant contends that applicant's trial testimony as to her activities of daily living is inconsistent with a finding of permanent and total disability. (Petition, at p. 6:23.) Defendant further contends that insofar as applicant's exertional capabilities are inconsistent with the analysis

and conclusions of the single vocational report in evidence, the vocational reporting upon which the WCJ relied is not substantial evidence. (Id. at p. 9:5.)

However, we note the WCJ's response as set forth in the Report, as follows:

> One of the most important (and often most difficult) duties of a WCJ is to assess the credibility of a witness at trial. This is especially true when assessing the veracity of complaints of pain and limitation resulting from an industrial injury, where there is the possibility of exaggeration due to secondary monetary gain. The issue is made even more complex when a witness states that their pain greatly varies from day to day, such as is present in this case.
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> Applicant testified that approximately 3 to 4 times per week she has a severe exacerbation of her symptoms. It results in a severe stabbing pain in one or both arms. When this occurs she cannot concentrate on anything and feels foggy and out of it. These episodes last for 20 to 45 minutes. It renders her unable to function and she has to lay down and do meditative breathing. Applicant has taken medications to relax in the form of anti-anxiety medications when she has these episodes. After the episode subsides applicant states she is "down for the day" and useless.
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> The above testimony is contrasted by the activities that applicant stated she is able to perform when not suffering the symptoms as indicated above. Applicant testified that when she is not having severe symptoms, she is able to take nature walks for approximately 1½ hours, and has been able to travel to visit family and friends in other states. The petition for reconsideration is essentially an argument that applicant's is not 100% disabled because she is able to perform these activities.
>
> However, the WCJ recognizes that symptoms from an injury, such as Complex Regional Pain Syndrome, can vary greatly in severity over time. The question then becomes whether applicant's testimony is credible in light of the medical record. One can never experience another person's pain. We can only rely upon their description under oath and make our best assessment as to whether the description is truthful. After having had the opportunity to observe applicant's demeanor at trial, and personally question applicant in regards to how her symptoms affect her ability to consistently and reliably perform the activities of work, the WCJ has concluded that applicant's testimony is credible.

(Report, at p. 6.)

The WCJ's thoughtful analysis reflects his consideration of applicant's trial testimony, and the extent to which that testimony is supported elsewhere in the evidentiary record. We also observe that the WCJ has considered the evidentiary weight of applicant's trial testimony and concluded that applicant was fully credible. A WCJ's credibility determinations are "entitled to

great weight because of the [WCJ's] 'opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand …." (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

However, to the extent that the WCJ has relied upon the vocational reporting to assess applicant's feasibility for vocational retraining, we are concerned that the reporting is analytically incomplete. Vocational expert Mr. Remas has opined that the inconsistent but pervasive nature of applicant's symptoms will effectively preclude her reentry into the labor market. (Ex. 20, Report of Mark Remas, dated November 17, 2021, at p. 21.) Mr. Remas writes:

> As a consequence of the industrial injury, Ms. Battle has a chronic pain condition that is of such severity as to prevent her from concentrating, focusing or sustaining any type of routine or regularly scheduled activity such that the intervention of a vocational rehabilitation counselor would not lead to a reasonable probability that she would be able to compete for employment now or in the future. Therefore, she is not amenable to vocational rehabilitation.

(*Ibid*.)

Mr. Remas observes that "[c]hronic pain is recognized as a condition that impacts a person's functional capacity particularly in regard to concentration, persistence and pace," and that "[r]esearch also establishes that chronic pain is a sympathetically maintained pain that causes loss of concentration and disrupts activity and it is a stressor capable of impairing memory, concentration and functioning within the limbic, frontal and sensory centers of the brain and leads to high levels of distress." (Ex. 20, Report of Mark Remas, dated November 17, 2021, at p. 17.) While the vocational expert cites to the academic sources of his research, he does not offer collateral citations to the current medical or medical-legal record to substantiate the stated reductions in memory, concentration, focus and ability to maintain pace. We acknowledge that the issue of how severe chronic pain interferes with activities of daily living (ADLs) may reasonably be addressed from both a medical as well as a vocational perspective. However, from our review of the record, it does not appear that the vocational expert's assessment of how applicant's industrial injuries might limit her ability to perform upon a return to the labor market are specifically addressed elsewhere in the medical record.

In *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (Appeals Board en banc), we observed that "evaluating physicians play an integral role in the determination of permanent disability," and that "vocational evidence is often relevant and

appropriately considered by the reporting physician in their evaluation of issues pertaining to permanent disability." (*Id.* at pp. 750-751.) We also noted that "in order to constitute substantial evidence the opinions of both the evaluating physician as well as the vocational expert must detail the history and evidence in support of their respective conclusions, including 'how and why' a condition or factor is causing permanent disability." (*Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894, 897, citing *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 611 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc).)

Here, we believe that the vocational expert's conclusions with respect to the effects of applicant's injuries on her ability to "sustain a routine work schedule" and "maintain the concentration, persistence or pace required to complete essential job functions" should be reviewed and addressed by appropriate evaluating medical or medical-legal physicians. Similarly, we believe that the vocational expert's conclusion that applicant cannot "maintain a routine schedule" given the pervasive albeit inconsistent nature of her daily symptoms should similarly be addressed from a medical or medical-legal perspective. In addition, applicant's trial testimony is germane to the issue of her residual functional capabilities.

Once the full range of considerations described in applicant's trial testimony and endorsed by the vocational expert have been assessed from a medical perspective, then the WCJ may appropriately weigh the conclusions of the vocational expert reporting.

Accordingly, as our decision after reconsideration, we will rescind the F&A and return this matter to the trial level for development of the record at the discretion of the WCJ.

II.

Concurrent with our decision to rescind the F&A and return this matter for development of the record, we offer the following guidance to the parties and to the WCJ with respect to (1) the issue of psychiatric impairment and (2) the award of attorney's fees.

The first issue relates to the WCJ's determination that applicant's psychiatric impairment is not ratable because her injury was not "catastrophic" within the meaning of section 4660.1(c).

Section 4660.1 provides in relevant part:

> (a) In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee's age at the time of injury.

(b) For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee's whole person impairment, as provided in the Guides, multiplied by an adjustment factor of 1.4.

(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.

(Lab. Code, § 4660.1(a)-(c).)

In *Wilson v. State of CA Cal. Fire* (2019) 84 Cal.Comp.Cases 393 [2019 Cal. Wrk. Comp. LEXIS 29] (Appeals Board en banc) (*Wilson*), we explained:

> Section 4660.1(c) does not bar an employee from claiming a psychiatric injury or obtaining treatment or temporary disability for a psychiatric disorder that is a compensable consequence of a physical injury occurring on or after January 1, 2013. Additionally, section 4660.1(c) does not apply to psychiatric injuries directly caused by events of employment. Section 4660.1(c)(1) only bars an increase in the employee's permanent impairment rating for a psychiatric injury that is a compensable consequence of a physical injury occurring on or after January 1, 2013. However, the employee may receive an increased impairment rating for a compensable consequence psychiatric injury if the injury falls under one of the statutory exceptions outlined in section 4660.1(c)(2).

(*Id.* at p. 403.)

Here, applicant contends her psychiatric impairment is ratable because she has sustained a "catastrophic injury" as contemplated by section 4660.1(c)(2)(B).

The WCJ's Opinion observes that while applicant sustained a "serious and greatly disabling injury," she was nonetheless "able to perform many of the activities of daily living, and is able to take nature walks and visit relatives on occasion." (Opinion on Decision, at p. 4.) Accordingly, the WCJ determined that applicant's injury did not constitute a "catastrophic injury" within the meaning of section 4660.1(c)(2)(B).

However, in *Wilson, supra*, 84 Cal.Comp.Cases 393, we noted that:

> A fact-driven analysis of whether an injury is catastrophic may encounter a range of circumstances beyond the statutorily specified injuries covered by section 4660.1(c)(2)(B). There are factors the trier of fact may consider in determining whether an injury may be deemed catastrophic. These factors include, but are not limited to, the following, as relevant:
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> 1. The intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury.
> 2. The ultimate outcome when the employee's physical injury is permanent and stationary.
> 3. The severity of the physical injury and its impact on the employee's ability to perform activities of daily living (ADLs).
> 4. Whether the physical injury is closely analogous to one of the injuries specified in the statute: loss of a limb, paralysis, severe burn, or severe head injury.
> 5. If the physical injury is an incurable and progressive disease.
>
> Not all of these factors may be relevant in every case and the employee need not prove all of these factors apply in order to prove a "catastrophic injury." This list is also not exhaustive and the trier of fact may consider other relevant factors regarding the physical injury. In determining whether an injury is catastrophic, the trier of fact should be mindful of the legislative intent behind section 4660.1(c).

(*Id.* at p. 415.)

The question of whether an injury is catastrophic thus requires a fact-driven analysis of the evidence that include aspects of treatment, outcome, the impact of the injury on the employee's ADLs, and the similarity of the injury to those conditions specified in the statute or an incurable or progressive disease. Here, we observe that the F&A does not substantively engage with the factors described in *Wilson.* We also acknowledge that the WCJ's finding of permanent and total disability based solely on applicant's CRPS condition may have obviated the necessity of further inquiry into whether applicant's psychiatric condition was ratable under section 4660.1(c).

While we note that the list of factors described in *Wilson* is neither exclusive nor exhaustive, we believe that in the present matter a more substantive analysis of the factual and medical circumstances may be required to reach a just and reasoned determination. We encourage the parties and the WCJ to further explicate the issue following our return of the matter to the trial level.

The other issue for which we offer nonbinding guidance to the parties involves attorney's fees commuted "from the far end" of the award. (Finding of Fact No. 9; Award No. 1.) In *City of Foster City v. Workers' Compensation Appeals Bd*. (*Sanchez*) (2001) 66 Cal.Comp.Cases 742, 747-744 (writ den.), we discussed the considerations relevant to the calculation and payment of attorney's fees in cases involving the award of lifetime benefits to the employee:

> [A] lien for attorney's fees may be allowed against compensation "thereafter payable" or "to be paid," i.e., future weekly payments, by commuting sufficient amounts from those future weekly payment so as to make a lump sum payment to the lien claimant. This is usually done by commuting sufficient "final payments" of permanent disability indemnity to satisfy the lien (Calif. Worker's Comp. Practice, 4th Ed., Calif. Continuing Education of the Bar, 2000, Section 15.91, p. 976), but only when there is a fixed number of weeks of permanent disability payable to the applicant so as to reduce the number of weeks of permanent disability indemnity payments from the actual "far end" or final weekly payments of the award.
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> However, a commutation from the far end of a lifetime award appears to be a fee over and above compensation benefits, because theoretically, there is no particular end to a lifetime award from which to effect a commutation. Therefore, the Board has long held that in cases of a life pension the proper method for commuting fees is to commute them through the lifetime award using appropriate actuarial tables. (*Goler v. W. & J. Sloan Company* (1979) 44 Cal.Comp.Cases 1065 (en banc WCAB opinion); writ denied at 45 Cal.Comp.Cases 58.) Commutation through the award effectively pro-rates the attorneys' fee over the life of the award by the use of actuarial methods and life expectancy tables, which are easily calculated by the professional staff of the Disability Evaluation Bureau. Such commutation reduces the applicant's benefits by only a few dollars per week as of a specific date, and is consistent with section 4904.1's requirement that lien claimants shall in no way affect the commencement of immediate payments on any balance of the award to the injured worker where an installment payment for the disability has been determined.
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> Furthermore, commutation is specifically provided for by Labor Code section 5100 which provides that the Board may commute compensation payable to a lump sum and order it to be paid forthwith if such commutation is necessary for

> the protection of the person entitled thereto or for the best interest of the applicant. In so doing the Board is required to consider the applicant's ability to live without periodic indemnity payments and whether or not commutation will avoid inequity and not otherwise cause undue expense or hardship to the applicant.

(*Sanchez, supra*, at pp. 747–744; see also *Rader v. Ticketmaster* (2026) 91 Cal.Comp.Cases 11 [2026 Cal. Wrk. Comp. LEXIS 1] (Appeals Bd. significant panel[2] decision).)

Although we rescind the F&A herein, we observe that the award of attorney's fees in a case involving lifetime indemnity payments is incompatible with a commutation of attorney's fees "from the far end of the award." Accordingly, should the WCJ determine in subsequent proceedings that applicant is entitled to an award involving either permanent total disability or a life pension, any attorney's fees awarded should be calculated using appropriate actuarial tables and commuted laterally from the weekly payment of indemnity ("from the side of the award"). We further observe that the lateral commutation of attorney's fees from an award of lifetime benefits is limited to the specified amount of attorney's fees approved by the WCJ or the Appeals Board in the first instance. Once defendant has deducted an aggregate amount commensurate with the specified commuted attorney's fees, no further deduction from applicant's weekly indemnity payment is appropriate or permissible. (*Rader*, *supra*, 91 Cal.Comp.Cases at p. 19.)

In summary, we conclude that the evidentiary record is incomplete insofar as the unrebutted vocational expert reporting has determined that applicant's intermittent but pervasive symptoms will effectively preclude her reentry into the labor market. (Ex. 20, Report of Mark Remas, dated November 17, 2021, at p. 21.) Because the current medical record does not substantively address the factors identified by the vocational expert, including impairment to memory, concentration, focus and ability to maintain pace, or the issue of whether and how applicant's chronic pain interferes with activities of daily living (ADLs) and her ability to consistently perform core occupational duties, we conclude that the record must be developed, including the review of the vocational reporting by appropriate evaluating and treating physicians.

[2] A significant panel decision is a decision of the Appeals Board that has been designated by all members of the Appeals Board as of significant interest and importance to the workers' compensation community. Although not binding precedent, significant panel decisions are intended to augment the body of binding appellate and en banc decisions by providing further guidance to the workers' compensation community. (Cal. Code Regs., tit. 8, § 10305(u).)

Accordingly, we will rescind the F&A and return this matter to the trial level for development of the record in conformity with this opinion.

We also observe that the question of whether applicant's injury is "catastrophic" within the meaning of section 4660.1(c)(2)(B) should be addressed through an analysis that includes the factors identified in *Wilson*, *supra*, 84 Cal.Comp.Cases 393, and that any award of attorney's fees against lifetime indemnity benefits should reflect lateral commutation ("off the side") from the weekly indemnity amount awarded.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 7, 2022 Findings and Award is **RESCINDED**, and the matter **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 6, 2026

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

MARLAINA BATTLE
LAW OFFICE OF THOMAS D. DEBENEDETTO
ENGLAND, PONTICELLO & ST. CLAIR

SAR/abs

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