WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

NOEL LACESTE, *Applicant*

vs.

AMNEAL PHARMACEUTICALS and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants*

Adjudication Number: ADJ12133509
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation on Defendant's Petition for Reconsideration (Report) of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate as quoted below, and for the reasons stated below, we will deny the Petition for Reconsideration

I.

Petitions for reconsideration filed on or after July 14, 2026 are subject to Labor Code[1] section 5909, which states that:

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

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

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 August 25, 2026 and 60 days from the date of transmission is Saturday, October 24, 2026. The next business day that is 60 days from the date of transmission is Monday, October 26, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 26, 2026, so that we have timely acted on the Petition as required by section 5909(a).

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

Here, according to the proof of service for the Report, the Report was served on August 25, 2026, and the case was transmitted to the Appeals Board on August 25, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 25, 2026.

II.

The WCJ provided the following discussion in the Report:

INTRODUCTION

> By a timely and verified Petition for Reconsideration (Petition) e-filed and dated August 6, 2026, defense counsel Tahirah Smith seeks reconsideration of the Findings, Award & Orders with Opinion on Decision (FA&O), which issued

[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.

and were served on July 21, 2026. That FA&O, in relevant part, found the Applicant to be permanently and totally disabled (PTD), as a result of the combined effects of the industrial injuries in this case, after considering the medical and vocational evidence and that he had successfully rebutted the Permanent Disability Rating Schedule (PDRS) pursuant to the *LeBoeuf* and *Ogilvie* cases.

I note the recently Amended Labor Code section 5909, effective July 13, 2026, provides, "(a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board. (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board." Per the notice at the end of this Report and Recommendation, the case has been transmitted to the WCAB Recon Unit simultaneously with the service of this report….

Defendant's 5-page Petition contends generally that the evidence does not support the findings of fact, and that the findings of fact do not support the award. (Page 1 of the un-paginated Petition.) More specifically, it argues: 1. I failed to address the discrepancy between the Applicant's trial testimony that the functional capacity evaluation (FCE) with Dr. Rachel Feinberg only lasted approximately 45 minutes to an hour, whereas the associated Dr. Feinberg report indicates the face to face testing portion of the FCE lasted four hours. (***Id.*** at p. 2.); 2. I failed to address the alleged inconsistency in the Applicant's trial testimony as to the NASM online course and as to how long he met with Applicant's vocational expert evaluator, Frank Diaz. (***Id.*** at pp. 2-3.); 3. That I erred as a matter of law in treating the NASM course as a failed vocational rehabilitation attempt, as it is "not equivalent to a structured, professionally supervised vocational rehab program under any standard recognized by the WCAB." (***Id.*** at p. 3.); 4. That I erroneously found Frank Diaz's vocational opinions more persuasive than those of the defense expert, Jill Moeller, because both [panel qualified medical evaluator (PQME) Ryan Derby, M.D.,] and I found the Dr. Feinberg FCE more credible than the competing FCE from Dr. Trivedi, and that I should have adopted/followed that of Dr. Trivedi's, despite the QME's opinion otherwise, which Ms. Moeller relied upon in providing her opinions. (***Id.*** at p. 4.); and 5. The Applicant's reported failure to participate in a functional restoration program that defendant had authorized, and his alleged refusal to treat, "creates an evidentiary gap that should have precluded a PTD finding." (***Id.*** at p. 4.)

Applicant's attorney, Andy Katz, e-filed an 11-page Answer to the Petition dated August 24, 2026, on August 25, 2026, which includes an attached verification and declaration indicating that he was not served with defendant's Petition, and only learned of it when he checked EAMS on August 22, 2026, and which explains the delay in filing his answer. (***Id.*** at p. 11.) That Answer argues that the Petition "identifies no legal error and no absence of substantial evidence"

but rather asks the Board to "reweigh the evidence, reject the WCJ's credibility and evidentiary determinations, and substitute Ms. Moeller's vocational interpretation for the combined medical and vocational evidence credited by the WCJ." (***Id.*** at p. 1.) It further argues that the Petition improperly "treats [the QME] Dr. Derby's 2024 request for a rehabilitation trial as though it were his final opinion, while ignoring that the real-world test occurred, failed, and caused Dr. Derby to concur with Mr. Diaz's conclusion that the Applicant's permanent work restrictions preclude employment in the open labor market." (***Id.***) It also argues and asserts that the FA&O are supported by substantial evidence, and that the WCJ properly "relied on Dr. Derby's QME reporting and deposition testimony, the Feinberg FCE adopted by Dr. Derby, and Frank Diaz's vocational opinions applying those restrictions." (***Id.*** at pp. 1-2.) It asserts, reasonably in my view, that the Answer should be treated as timely, as it represents his office never received via U.S. Mail or email a copy of the Petition, and that he learned of it only upon checking EAMS on August 22, 2026. (***Id.*** at p. 2.) The balance of the Answer provides additional details, arguments, and references to the record, in support of the main points noted above. (***Id.*** at pp. 3-10.)

BACKGROUND

The basic facts surrounding Applicant's September 23, 2018, injury are largely undisputed, as opposed to the residuals and resulting PD associated with that that injury. What follows is an abridged summary of the facts and Applicant's trial testimony, as found in the FA&O, at pages 4-9. Applicant, while working as a technician for Amneal Pharmaceuticals, was struck on the back of the neck by a metallic gate/room partition that was coming down while he passed under it carrying a barrel of raw materials. (Minutes of Hearing and Summary of Evidence MOH/SOE dated May 21, 2026, Stipulation No. 1, at p. 2.) He was 36 years old at the time, and aside from a very brief return to work on the day of the closure of the plant to say goodbye to co-workers, has not worked in any capacity since. He received at least 104 weeks of TTD, and was later was paid PDAs through August 2024, in the approximate amount of $43,225.86. (MOH/SOE Stipulation No. 4.) Most recently, he has been living in the Philippines with his wife, Zaida Castuera Laceste, with not much, if any, medical treatment.

At trial, the Applicant was the only witness to testify, and he did so at length. (MOH/SOE dated 5/21/26 at pages 4 to 20.) He was born in the Philippines and came to the U.S. at 8 years old, graduated from Sierra Academy as an aircraft mechanic, and obtained a job working on aircraft airframes and power plants at Rolls Royce from 1999 through approximately 2002 or 2003. (***Id.*** at pp. 4-5.) He started at Amneal Pharmaceuticals in 2014 or 2015, and his work there as a technician was heavy, and involved lots of lifting, pushing, and the running and cleaning of coating machines making pharmaceuticals. (***Id.*** at p. 5.)

He was injured on September 23, 2018, when transitioning between a clean room and a regular room, while carrying a fiber drum. (***Id.***) Between rooms, there was a sliding motorized door, which came down from above and unexpectedly came down and landed on the back of his neck. (***Id.***) He pushed it up with his neck and bent down to get out from under it, with the door continuing down to the floor. (***Id.***) He told his co-worker what happened, reported it to his supervisor, and finished his shift. (***Id.***) It was later determined there was some kind of sensor malfunction with the door. (***Id.***) He did not have pain that day, but did starting the next day, and was seen by the employer's workers' comp. doctor, who x-rayed his neck and took him off work. (***Id.***) He was off work because the employer could not accommodate his work restrictions. (***Id.***) The plant later closed and moved to New Jersey, and he was laid off. (***Id.*** at p. 6.)

His current symptoms include "constant unbearable pain," and he has headaches "at times." (***Id.***) He cannot sit or stand for more than 45 minutes at a time, and he needs to shift his position and/or stretch frequently. (***Id.***) He has pain in his neck and shoulders, as well as low back pain. (***Id.***) He gets migraines one to three days a week, and has trouble sleeping, waking frequently. (***Id.***) He sometimes has to lie down because static positions increase his pain. (***Id.***) The pain makes it difficult to concentrate and causes mood and attitude swings. (***Id.***) It is hard to keep his head in a static position, such as viewing a computer screen, and needs something to support his neck and he needs to adjust his neck every 20 minutes. (***Id.***)

He moved to the Philippines because he cannot afford to live locally. (***Id.***) He has lost everything and does not have a home or a car, and cannot work and/or do any high-paced job. (***Id.***) Since the injury, and until the move abroad, he and his wife lived with his brother-in-law in California and did not pay rent. (***Id.***) His brother-in-law informed them that he can no longer house them and that they needed to move forward in life. (***Id.***) He flew back from the Philippines for today's trial, and the flight took 17 hours. (***Id.*** at pp. 6-7.) They moved to the Philippines in January, 2026 and he and his wife live with his wife's relatives. (***Id.*** at p. 7.)

It is hard to bathe and groom himself, and he has constant pain in his neck. (***Id.***) It hurts to go up and down stairs, and he can only do limited chores at home. (***Id.***) His wife does all the cooking and cleaning, as he cannot do it. (***Id.***) Before the injury, he used to fish and ride his motorcycle, run, play football or basketball, and go on family outings, which he can no longer do. He is depressed and his is not the person he was, and is more humble now than he used to be. (***Id.***) His treating doctors did not do a good job, and Travelers denied or delayed treatment, including physical therapy, chiropractic, medications and an ablation procedure. (***Id.***) He had a medial branch block, but does not recall when. (***Id.***) He had an epidural injection in his neck in November of 2020, but the pain relief lasted for only 2-3 weeks, and chiropractic treatment did not really help. (***Id.*** at p. 8.) He learned how to stretch and massage in the course of his physical therapy

sessions. (***Id.***) He participated in a FCE with Rachel Feinberg, DPT, who had him try to do certain things, but he could not. (***Id.***) PT generally was not helpful. (***Id.***) He was worried about the risks of a proposed ablation procedure, including that it might worsen his condition, which he discussed with his PTP, Dr. Wedemeyer, and is why he did not pursue it. (***Id.***)

Last year he attempted an online education class, which he hoped would improve himself and help return him to health, as its subject was physical training/exercise and nutrition. (***Id.***) The online course was accessed via a laptop, and he would read and listen to the program. However, he could not complete the class because he had difficulty concentrating and retaining information even though it was self-paced. (***Id.***) It was hard to move his neck to look at the keyboard while typing. (***Id.***) He cannot remember how much of the class he completed, but knew he had to stop due to pain in his neck from looking down at the computer and keyboard. (***Id.*** at p. 9.) In his current condition, he does not believe he can work in any job or be competitive in the labor market and cannot work at a full-time pace, and does not know of any employers who would let him lie down as needed. (***Id.***) He has not had any medical treatment since he saw Dr. Wedemeyer last year. (***Id.***) He took over the counter Ibuprofen for a year, but as a result developed ulcerative colitis, which prompted a visit to a hospital Emergency Room in Dublin in 2022 or 2023, and the result of this experience caused him to stop believing in medication. (***Id.***) The only medication he currently uses is Tylenol 2000mg for headaches, which he takes 3-4 times a month. (***Id.***) He tries to avoid taking it until the pain becomes unbearable. (***Id.***)

On cross-examination, he testified he was off work for about a month, returned to work for one day, and was laid off the next day, when the plant closed permanently. (***Id.***) He said goodbye to his co-workers and does not recall what his work restrictions were at the time. He acknowledges wearing a soft neck collar at trial, which he has worn for the last 2-3 years. (***Id.*** at p. 10.) He was never formally prescribed this neck collar by a doctor, but asked for and was given one by a treating chiropractor in Castro Valley, and he also has a second one that his wife bought. (***Id.***) He did not wear this collar at the time of the QME exams, but always wears it now. (***Id.***)

He recalls speaking with vocational expert Frank Diaz by phone or Zoom 3-4 times, but he does not remember the exact number. (***Id.***) There were many questions, but he does not remember what they were, and he is sure he did not complete any vocational testing with Mr. Diaz' office. (***Id.*** at p. 11.) He does not recall what medications were prescribed and authorized or denied and what he took for neck pain. (***Id.***) His treaters over the years were Dr. Wedemeyer, Dr. Martinovsky, and Concentra St. Francis. (***Id.*** at pp. 11-12.) He last treated with Dr. Wedemeyer in 2025, probably between February and April. (***Id.*** at p. 12.) He is asked why he did not attend the authorized functional restoration program (FRP), and he responds he wanted to, but his treatment with chiropractors and

physical therapists over the prior 5 years did not really help him, and caused pain and did not fix his problem. (***Id.***) He has learned on his own how to manage his pain. (***Id.***) He does not know the difference between a functional capacity evaluation and a functional restoration program and does not recall discussing a FRP with Dr. Wedemeyer. (***Id.***) He cannot recall if any doctor ever told him he needs neck surgery. (***Id.***) He recalls discussing a possible ablation procedure with Dr. Wedemeyer, and was concerned about the risks, especially increased pain in the future, or a loss of sensitivity in the neck. (***Id.*** at p. 13.) At this point, he requested a break to stretch and lie down and/or use a recliner in another courtroom, and this was granted and a 15-minute break was taken. (***Id.***)

He did not take any medications over the last two days. (***Id.***) On his flight from the Philippines he took Tylenol before and after, since he cannot sit for extended periods, and would get up and walk around when he could (***Id.***) He took a total of 4,500 mg. of Tylenol. (***Id.***) Since the injury, he has been to the Philippines 3 times, the first time lasted about a month and he did not treat there. (***Id.***) The second time was in 2022 or 2023 for one to three months. (***Id.***) The third time was this year from January through April 20, 2026. (***Id.*** at p. 14.) In addition to the Tylenol, he takes marijuana edibles and vapes one to three times a day, which are self-procured. (***Id.***) He told both Dr. Wedemeyer and the QME Dr. Derby, that he vaped marijuana. (***Id.***) He last took a marijuana edible in the summer of 2025, and stopped because it was not for him and not as strong. (***Id.***) He vapes for both neck and low back pain. (***Id.***)

He recalls the FCE with Rachel Feinberg and acknowledges there were certain lifting tasks he told her he could not do, as he knows his limits. (***Id.***) He tries not to take Tylenol because of what Ibuprofen did to him in the past. (***Id.***) With respect to the online class, he indicates that he had to retake the test for the first module 3 times, and failed twice before he passed. (***Id.*** at p. 15.) As part of this course, he studied 30 minutes to an hour a day before he had to take a break to lie down. (***Id.***) He cannot recall how many modules of the course he took, but could only do it for approximately 3 weeks, and it was supposed to last 6 months. (***Id.***) He could only work on it for 30 minutes to an hour each day. (***Id.***) During this class, he did not take any medications or vape. (***Id.***)

On re-direct, he indicates English is his second language. (***Id.*** at p. 16.) He returned to the Philippines by necessity, and not by choice. (***Id.*** at p. 17.) Vaping helps to reduce his pain, but he cannot concentrate after vaping, due to its effects on him. (***Id.***) He estimates he can sit comfortably for 10-30 minutes at a time, but then his neck and low back pain will increase, and he may have to lay down. (***Id.*** at pp. 17-18.) He no longer drives, and last did so about two years ago, but still has a valid driver's license. (***Id.*** at p. 19.) His wife now drives him because driving causes him pain. (***Id.***)

QME REPORTING AND DEPO TESTIMONY

As detailed summary of the reporting and opinions of pain management QME, Ryan Derby, M.D., can be found in the Opinion at pages 9-14. What follows, are relevant excerpts from that discussion. Dr. Derby's first report dated June 12, 2023, diagnosed: 1. Cervical spondylosis with cervical facet arthropathy per 1/4/22 MRI; and 2. Cervical radiculopathy with C5-6 left paracentral broad-based disc protrusion reported on 1/4/22 MRI. (Joint 101, Report of 6/12/23 at p. 20.) He concluded that the Applicant had not reached P&S status (***Id.*** at p. 20-21), and recommended a functional restoration program (FRP), an EMG/NCV study of the bilateral upper extremities, and a cervical medial branch blocks followed by ablation if effective, as recommended by the then PTP, Dr. Robert Rovner, (***Id.*** at p. 21.) He noted that no medical record contemporaneous with the injury were provided, but absent those records he found the claimed injury to the cervical spine to be industrial, deferred findings on impairment and apportionment until the Applicant was found to be P&S, and deferred interim work restrictions to the primary treating physician. (***Id.*** at pp. 22-23.)

In his second report dated December 19, 2023, Dr. Derby supplemented his earlier diagnosis with that of a lumbar spine strain, noted the Applicant reported that his symptoms had worsened since his initial exam, and that the Applicant will likely be returning permanently to the Philippines. (Joint 101, Report of 12/19/23 at pp. 12-13.) He reviewed the previously requested bilateral upper extremity EMG/NCS, which was normal, found that the complaints in the lumbar spine were a compensable consequence of the accepted cervical spine injury, found the Applicant to be P&S as of the date of the exam, November 20, 2023, (***Id.*** at pp. 13), and provided DRE impairment ratings of 18 WPI plus 2 WPI for pain for the cervical spine, and 8 WPI plus 1 WPI for pain for the lumbar spine, and that this was an accurate rating with no need for an *Almaraz/Guzman* rating. (***Id.*** at pp. 14-15.) He found no apportionment to non-industrial causes for either the cervical or lumbar spine impairment. (***Id.*** at pp. 15-16.) He provided permanent work restrictions of a preclusion from "reaching over shoulder level due to the sustained neck extension requirement and the muscular demand on his neck, as recommended in the November 8, 2022 Functional Capacity Evaluation signed by Rachel Feinberg P.T." (***Id.*** at p 16.)

In his supplemental report, dated February 15, 2024, he indicated that due to the synergistic effects of the injuries to the neck and low back the impairments should be added pursuant to *Kite* rather than combined. (Joint 101, Report of 2/15/24 at p. 3.) Specifically, he stated,

> "All three segments of the spine rely on one another for optimal function and stabilization. Injury, even if not ratable by strict interpretation of the AMA Guides, of adjacent segments of the spine at the same time directly reduces the ability for compensation as between the body parts, thereby increasing impairment and decreasing function. There is a synergistic

> effect from impairment to these body parts that render the applicant more disabled than they otherwise would be. Accordingly, for the above reasons, it is my opinion that adding as opposed to combing the impairments to these body parts is the most accurate and appropriate assessment of impairment." (***Id.***)

In the same report, explicitly agrees with and adopts the work restrictions "summarized in the table under the Functional Capacity Activity Summary" of the Rachel Feinberg DPT FCE report dated November 8, 2022. (***Id.***) In Dr. Derby's fourth report, a supplemental dated March 8, 2024, he reaffirms his *Kite* opinion and reasoning (Joint 101, Report of 3/8/24 at pp. 2-3, and as between the competing FCE reports of Dr. Feinberg (Applicant's 1) and the earlier FCE of Dr. Trivedi, which found much greater capacities (Defendant's B), he *explicitly defers to and adopts the opinions on the Feinberg FCE* over that of Dr. Trivedi, as he "find[s] this report to be detailed and comprehensive and should be used to determine the applicant's permanent work restrictions." (***Id.*** at p. 4.)

In his fifth report, a supplemental dated May 2, 2024, he reviews and comments on the vocational report of Frank Diaz dated March 5, 2024 (Applicant's 3) stating as follows,

> "The opinions and determinations as discussed in the March 5, 2024 vocational opinion from Diaz & Company are consistent with my determinations of the applicant's work restrictions and based on an accurate assessment of the applicant's functional capacity. It is therefore reasonable to incorporate and adopt the findings within the vocational evidence report. As discussed in my previously reports, I find within a reasonable medical probability that the applicant's need for medical care and impairments stims from the industrial injury with 100% of the permanent impairment is a direct result of the specific injury that occurred on September 23, 2018, with 0% due to nonindustrial causation. Therefore I agree that the applicant's inability to participate in vocational retraining is attributable solely to current industrially related factors." (***Id.*** at p. 7.)

Dr. Derby's sixth report, a supplemental dated August 20, 2024, reviews and discusses the Dr. Trivedi FCE dated August 24, 2022, and defendant's vocational expert report of Jill Moeller dated May 16, 2024. In short, he again explains that as previously reported, he finds the FCE of Dr. Feinberg to be more credible and persuasive than that of Dr. Trivedi, for the reasons previously expressed, and also that the Feinberg report "reflects a more accurate assessment of the Applicant's functional capacity as it appears the applicant exerted a higher levels of effort during the November 8, 2022 FCE." (Joint 101, report of 8/20/24 at p. 5.) To this end, I quote from Dr. Feinberg's report, who provided what amount to very significant and de facto work restrictions as follows:

> "Mr. Laceste is limited to static neck positioning in cervical flexion up to 5 minutes at one time followed by a 5 minutes period where the neck is then in a neutral position. The total amount of time for static neck positioning in flexion is 1 hour over the day for any task. He is precluded from any static neck position in extension. Mr. Laceste is limited to static neck positioning in cervical rotation up to 30 seconds at one time followed by a 1-minute period where the neck is then in a neutral position. The total amount of time for static neck positioning in rotation is 30 minutes over the day for any task. He does not need to lie down but would benefit from the ability to rest his head on a high-backed chair for 5 minutes every 30 minutes. Mr. Laceste is precluded from repetitive neck motion for any task. He is able to bend/twist his neck for driving within his comfortable range during driving or other tasks on an occasional basis. He has decreased range of left cervical rotation and this would limit his ability to fully twist (rotate) to look over his left shoulder with driving. He is precluded from fast cervical movements." (Applicant's 1, Feinberg report of 11/8/22 at p. 3.)

Dr. Derby's seventh report, a supplemental dated December 3, 2024, reviews and comments on Mr. Diaz's report of September 5, 2024. After reviewing and discussing the reports of Mr. Diaz and Ms. Moeller, he concludes by opining that, "While the applicant has significant functional restrictions, his ability to perform most ADLs with difficulty suggests that a trial of vocational rehabilitation may be appropriate." (Joint 101, report of 12/3/24 at p. 6.) He states that, "Mr. Diaz' vocational conclusions, while thorough and well-supported, assume that any attempt at vocational rehabilitation would necessarily fail. This assumption overlooks the applicant's ability to manage basic activities and the potential for modified work environments to accommodate his restrictions." (***Id.*** at p. 7.)

In Dr. Derby's final report, a supplemental dated October 30, 2025, he reviews and comments on Mr. Diaz's report dated September 20, 2025. The report, as summarized by Dr. Derby, details Applicant's failed attempt to participate in an online class, after 1-2 weeks, which was limited by pain, and loss of associated sleep. (Joint 101, report of 10/30/25 at p. 3.) His response to that report is as follows:

> "Review of the newly submitted vocational record confirms the applicant's ongoing and significant functional limitations, particularly regarding activity tolerance, chronic pain, and concentration. These findings are consistent with prior documentation and further substantiate that Mr. Laceste is not amenable to vocational rehabilitation, as demonstrated by his filed attempt at online learning. As stated in my supplemental report, it was my opinion that should the applicant be unable to successfully complete the vocational rehabilitation, such an outcome would further substantiate his exclusion from the competitive labor

> market. Therefore, given the applicant was unable to complete vocational rehabilitation, I agree that the applicant's permanent work restrictions preclude him from maintaining employment in the open labor market and I concur with the opinions expressed in the September 30, 2025...report of Frank Diaz." (***Id.*** at p. 4.)

At his deposition on January 5, 2026, Dr. Derby in essence stood by his prior opinions, as expressed in his written reports. (Joint 102.) He did say that a functional restoration program can or might help the Applicant, but would not necessarily guarantee him improvement. (***Id.*** at pp. 27-28.) He also acknowledged it was possible that injections or medication could mitigate the Applicant's pain and/or "temporarily" improve his functional capacity. (***Id.*** at pp. 29-30.) On cross-examination, he reaffirmed the work restrictions he provided in the DWC form from December 3, 2024. (***Id.*** at pp. 33-34.) He reaffirmed his adoption of the work restrictions in Dr. Feinberg's FCE. (***Id.*** at p. 34.) In general, he reaffirmed his opinions in his final report that after the failed online class, he felt that the vocational opinions of Mr. Diaz should be followed over those of Ms. Moeller. (***Id.*** at pp. 35-40.) He also opined that the Applicant's pain level interferes with his ability to concentrate. (***Id.*** at p. 49.)

DISCUSSION

Any F&A must be supported by substantial evidence in light of the entire record. (Labor Code section 5952(d); *Escobedo v. Marshalls* (2005) (Appeals Board en banc) 70 Cal.Comp.Cases 604, 620; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310, 314]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500, 503]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16, 22].) A rating under the Permanent Disability Rating Schedule (PDRS), which includes the prima facie utilization of the combined values chart (CVC), may be rebutted based on the specific circumstances of a given case. (See *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1263-1276, [76 Cal.Comp.Cases 624, 626]; *Contra Costa County v. Workers' Comp. Appeals Bd.* (*Dahl*) (2015) 240 Cal.App.4th 746, 755-761 [80 Cal.Comp.Cases 1119]; *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808, 827-829, [75 Cal.Comp.Cases 837].) The PDRS may also be rebutted by vocational evidence that proves the Applicant is not amendable to benefiting from vocational rehabilitation services, which is consistent with a total loss of earning capacity. (*LeBoeuf v. Workers' Comp. Appeals Bd*. (1983) 34 Cal.3d 234. 242-243, 48 Cal.Comp.Cases 587, 594.)

As noted in the Opinion on Decision at pages 19-20, I found that the Applicant had done so via the preponderance of the evidence, namely the Applicant's credible and largely unrebutted testimony, the QME reporting and testimony of Dr. Derby, and the FCE report of Dr. Feinberg which the QME explicitly

adopted and incorporated over the competing FCE of Dr. Trivedi, and the vocational reporting of Frank Diaz, who opined that the Applicant was not amenable to vocational rehabilitation and was not realistically employable given his limited physical capacities/[limitations] as determined by Dr. Feinberg and the permanent work restrictions provided by Dr. Derby.

The arguments and assertions of error in Defendant's Petition will be addressed sequentially as follows. First, is the claim that I did not consider the discrepancy between Applicant's trial testimony as to exactly how long he spent with Dr. Feinberg in his FCE with her and what is indicated in her report. (***Id.*** at p. 2.) It is true that the Applicant's trial testimony was inconsistent with Dr. Feinberg's FCE report dated November 8, 2022, as to exactly how long he spent with her as part of the evaluation, namely he said he believes he spent 30 minutes to 1 hour with her, as opposed to the FCE report which indicates he arrived at 9:12 AM for his 9:00 AM appointment and testing took place from 9:15 AM to 1:10 PM, i.e., just under four hours. (See MOH/SOE at p. 15, lines 13-21, and p. 17, lines 6-9, vs. Applicant's 1, Report of 11/8/22 at p. 1, and pp. 12-23.) However, Dr. Feinberg's 34-page FCE report includes very detailed descriptions of every physical/functional test she conducted with the Applicant and their results, and the exact time of each, which cover the range from 9:50 AM to 12:50 PM. (See Applicant's 1 at pp. 12-23.)

In my assessment of which of these accounts is more credible, either a detailed contemporaneous medical report created to create a record, which includes specific time stamps, or witness testimony almost four years after the fact, there is no question that Dr. Feinberg's report is more reliable and credible, and based on that, I conclude the Applicant spent nearly four hours face to face with her, despite his inconsistent trial testimony to the contrary. Given that finding, *I conclude that this discrepancy has no impact on either the credibility, persuasiveness, or substantial medical evidence nature of the Dr. Feinberg FCE, and therefore has no impact whatsoever on my overall finding, that based on that FCE, which was explicitly adopted by the QME Dr. Derby, in conjunction with the Applicant's trial testimony, and other reporting and deposition testimony of the QME, Dr. Derby, the Applicant is PTD.* The Petition does not explain or provide a rationale otherwise.

I also note in general that the Petition's repeated assertions that in my Opinion on Decision I did not address a specific alleged discrepancy or inconsistency in Applicant's extended trial testimony, *does not mean that my findings were in error and/or contrary to fact or law*, and the Petition in general does not explain in detail what the actual errors were beyond its general disagreement with my finding the QME reasonably adopted Dr. Feinberg's FCE and that his reporting and testimony constituted substantial medical evidence because they were based on exams and reasonably explained the basis of his reasoning and conclusions as required by *Escobedo*.

The second argument alleges I erred in improperly treating the online class the Applicant attempted as the equivalent of a failed effort at vocational rehabilitation. It goes onto cite Applicant's alleged inconsistent trial testimony with respect to the online course he took/attempted, which can be found at the MOH/SOE at pages 15, starting at line 23, through p. 16, line 2. With respect to this assertion, I agree with Applicant's Answer at p. 5, that Applicant nor I ever asserted or argued this was equivalent to a formal rehab program. It is evident the online class that the Applicant attempted, had difficulty with, and could not complete, as summarized in his trial testimony above, was not part of a formal vocational rehabilitation program, and was initiated by the Applicant himself. However, it is also clear that the QME, Dr. Derby, who in his early reporting suggested such an effort, did review and consider the experience as significant in changing his opinions as to the likely success or failure of future vocational training efforts, and which in turn lead him in part to believe and agree with the vocational reporting of Frank Diaz, over that of defendant's expert Jill Moeller. Having read the entire record, including Dr. Derby's deposition, I think that is a reasonable opinion, which he explained and constitutes substantial medical evidence. As argued in Applicant's Answer, "Applicant testified he did not take medications or vape during the class. But no physician opined that medication or vaping would have enabled him to complete the course, vocational training, or competitive work. Dr. Derby reviewed the failed online learning attempt with that history and still concluded it substantiated non-amenability and precluded open-labor-market employment. Dr. Derby concluded that the failed online learning substantiated non-amenability to vocational rehabilitation and that Applicant's permanent work restrictions precluded employment in the open labor market." (Answer at p. 6.)

The third argument is that my adoption of the Frank Diaz opinions over those of defendant's vocational expert Jill Moeller, is not supported by substantial evidence. (Petition at p. 4.) I disagree. I did not "adopt" the Frank Diaz opinions, even though the QME, Dr. Derby in essence did and/or at a minimum agreed with them based on the quotes provided above, but it is true I did find that Mr. Diaz's reporting constituted substantial vocational evidence, and like Dr. Derby, I found them to be more persuasive than those of Ms. Moeller. Interestingly, the Petition does not make any arguments or effort to explain *why* Ms. Moeller's reporting is substantial, and/or more persuasive that that of Mr. Diaz. It only argues that Dr. Derby improperly adopted the Feinberg FCE over the Trivedi FCE and conclusorily asserts that was improper an incorrect without saying why. Although I think Dr. Derby's adoption of the Feinberg FCE is really more of a medical opinion that I am not inclined to second guess, I will say that upon a side by side comparison of the two FCE's (Applicant's 1 vs. Defendant's B), I believe it is evident upon review that the 34-page FCE by Dr. Feinberg dated November 8, 2022, is more detailed, better documented, and better reasoned that that of Dr. Trivedi's much more cursory and in my opinion more conclusory 15-page report dated August 24, 2022, and I can understand why Dr. Derby found it more persuasive and why he adopted its opinions and conclusions.

I also found it odd, especially in Ms. Moeller's last report dated February 27, 2026, (Defendant's C), that she continued to provide vocational opinions based on Dr. Trivedi's FCE and old/stale treater reports from Dr. Gupta and Dr. Trolan, and seemingly and inexplicably minimized the crucial QME reporting and opinions of Dr. Derby and Dr. Feinberg, providing opinions that per the former, the Applicant still had access to 75.39% per of jobs in the local labor maker, and per the latter only 8.72% (***Id.*** at p. 16), and likewise had diminished labor market access of 20.70% per the former and 90.83% for the latter. Furthermore, in my estimation, unlike Mr. Diaz, she did not squarely address the significant combination of work restrictions provided by the QME combined with the capacity limits/de facto work restrictions of Dr. Feinberg which he explicitly adopts. Her evaluations of labor market access, realistic jobs that are consistent with those restrictions in the real world, do not in my view discuss those work restrictions, and in contrast to Mr. Diaz, in my view she fails to persuasively explain the basis for her conclusions and rationale as to why the Applicant is amendable to vocational rehabilitation especially in conjunction with the Applicant's failed attempt to complete the online course. That is why I did not find Ms. Moeller's opinions and conclusions to be substantial vocational evidence and why they were less persuasive to me than those of Mr. Diaz.

Fourth and finally, the Petition argues that the Applicant's failure to enroll in a functional restoration program and by implication his trial testimony that he declined a potential cervical ablation procedure after discussing it with his then PTP, Dr. Wedemeyer, somehow "creates an evidentiary gap that should have precluded a PTD finding." (Id. at p. 4.) This argument is not explained and no legal authority is provided. There is only a summary of his trial testimony with respect to his subjective pain and headaches, which stand rebutted, and which the Petition implies is somehow inconsistent with his testimony regarding his flights to and from the Philippines. The Answer's discussion of this at page 9, points out that such travel does not establish competitive work capacity, and that the Applicant's testimony about taking Tylenol to get through such long flights "is consistent with positional intolerance and is not evidence that he can maintain an eight hour competitive workday" and/or that any specific medical treatment either in the U.S. or Philippines "would restore Applicant to competitive employability." (***Id.*** at p. 9.) I agree, and I fail to see how the Applicant's declination of a possible ablation procedure, which does have risks, and which he explained at trial he declined because of the chance it could make his position worse, somehow precludes a PTD finding. No relevant caselaw is cited to support such a claim. Additionally, as the Answer notes, Applicant was skeptical of the utility of the FRP given the years of PT and chiropractic treatment, without much benefit, and did not know the difference between an FRP and FCE. (Answer at p. 9, MOH/SOE at pp. 7-8.)

In sum, I found and still believe that a combination of medical and vocational evidence, and specifically the work restrictions provided by Dr. Derby in

combination with the restrictions/limitations found by Dr. Feinberg in her FCE, which he formally adopted, and in conjunction with the vocational reporting of Frank Diaz, which he agreed with over the opinions of Jill Moeller, and which I found to be substantial medical and vocational evidence support and warrant my finding the Applicant is PTD pursuant to *LeBoeuf*, and that the Applicant has successfully rebutted the PDRS. There is nothing in the Petition that in my view provides evidence or compelling analysis documenting factual or legal error, nor is any legal authority provided that supports such a conclusion.

RECOMMENDATION

Having reviewed and considered defendant's arguments in its Petition for Reconsideration and for the reasons explained above, I stand by my findings and opinions as expressed in the Findings, Award & Orders with Opinion on Decision dated July 21, 2026, and believe that the 100% PD award is indicated and appropriate based on this record, including the reports and opinions of the QME, Dr. Derby, the FCE of Rachel Feinberg, DPT, which include significant permanent work restrictions adopted by the QME, and the vocational reports and opinions of Frank Diaz, which I found to be substantial evidence and more persuasive than those of defendant's vocational expert, Jill Moeller. I therefore recommend that defendant's Petition for Reconsideration be **DENIED**.

(Report, at pp. 1-20, emphasis in original, footnotes omitted.)

III.

The 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).) Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

For the reasons stated by the WCJ, as quoted above, we are persuaded that the opinions of PQME Dr. Derby and vocational expert Frank Diaz are substantial evidence upon which the WCJ appropriately relied to find permanent total disability. Moreover, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 23, 2026

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

NOEL LACESTE
LAW OFFICE OF ANDY KATZ
LAURA G. CHAPMAN & ASSOCIATES
ALMEDA COUNTY OF CHILD SUPPORT SERVICES
INTEGRATED PAIN CARE

PAG/cm

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