WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RAUL RADILLA, *Applicant*

vs.

CARAVAN FOODS II, INC.;
GREAT AMERICAN INSURANCE CO., administered by STRATEGIC COMP,
Defendants

Adjudication Number: ADJ12660780
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Award (F&A) of May 13, 2026, wherein the workers' compensation judge (WCJ) found in relevant part that applicant while employed by defendant, sustained injury arising out of and in the court of employment to his neck, low back, and left shoulder; applicant became permanent and stationary on July 19, 2023; that his injury resulted in 96% permanent partial disability; and that applicant's attorney is entitled to 15% of all indemnity awarded. The WCJ awarded applicant permanent partial disability of 96%, entitling applicant to 849.25 weeks of disability indemnity at the rate of $290.00 per week starting July 19, 2023, in the total sum of $246.282.50, less credit to defendant for all sums heretofore paid on account thereof, and less $36,942.37 payable to applicant's attorney, as attorney fees, to be commuted from the far end of the award if necessary; b) a life pension beginning 849.25 weeks after July 19, 2023, at the weekly rate of $278.31, subject to increases required under Labor Code[1] section 4659(c), less 15% payable to applicant's attorney, as attorney fees with jurisdiction reserved as to any commutation; and c) future medical treatment reasonably required to cure or relieve from the effects of the injury.

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

Defendant contends that the WCJ erred in finding the QME's opinion regarding utilizing *Almaraz/Guzman* to increase the left shoulder and lower back impairment as substantial evidence and erred in finding that the impairments should be added rather than combined pursuant to the Combined Values Chart (CVC).

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. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and for the reasons discussed below, we will deny defendant's Petition for Reconsideration.

I.

Up through July 1, 2024, petitions for reconsideration were subject to former section 5909, which provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated in relevant part that:

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

Under section 5909(a) (in effect from July 2, 2024 through June 30, 2026), 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 2, 2026, and 60 days from the date of transmission is August 31, 2026. This decision is issued by or on August 31, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on July 2, 2026, and the case was transmitted to the Appeals Board on July 2, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 2, 2026.

II.

The workers' compensation system includes compensation for permanent disability. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320.) "'[P]ermanent disability is understood as 'the irreversible residual of an injury.'" (*Id*. at p. 1320, quoting *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1111.) "Thus, permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity." (*Brodie*, *supra*, at p. 1320, citing Lab. Code, § 4660(a).)

When assessing an injured employee's permanent disability, the first step is a comprehensive medical-legal report prepared by a treating or evaluating physician. (*Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 619.) The physician uses the AMA Guides to determine the whole person impairments (WPIs) for the applicant's medical conditions. (*Id*. at pp.

619-620.) The physician must set forth their reasoning behind the WPI. (*Id*. at p. 621.) "The expert opinion of a single physician may establish an injured employee's WPI, provided that the opinion constitutes substantial evidence. (*Id*. at p. 620, citing *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378–379 [35 Cal.Comp.Cases 525, 529-539].) Permanent disability payments are then calculated by converting that degree of permanent disability into an award based on a table, the Permanent Disability Rating Schedule (PDRS). (*Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (*Fitzpatrick*) (2018) 27 Cal.App.5th 607, 611 [83 Cal.Comp.Cases 1680], citing *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1270 [76 Cal.Comp.Cases 624].)

The scheduled rating under the PDRS can be rebutted. (*Fitzpatrick*, *supra*, 27 Cal.App.5th at p. 619.)

> [A]n 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.)

In *Almaraz v. Environmental Recovery Services* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) (*Almaraz II*), we held that a "scheduled permanent disability rating may be rebutted by successfully challenging the component element of that rating relating to the employee's WPI under the AMA Guides….by establishing that another chapter, table, or method within the four corners of the Guides most accurately reflects the injured employee's impairment." (*Id*. at pp. 1095-1096.) In *Milpitas Unified School District v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837], the Court of Appeal affirmed our decision in *Almaraz II*.

Decisions of the Appeals Board must be based on substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) A medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, it must not be speculative,

and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]*; Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Bd. en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

On the other hand, there must be some solid basis in the medical report for the doctor's ultimate opinion; the Appeals Board may not blindly accept a medical opinion which lacks a solid underlying basis and must carefully judge its weight and credibility. (*National Convenience Stores v. Workers' Comp. Appeals Bd.* (*Kesser*) (1981) 121 Cal.App.3d 420, 426 [46 Cal.Comp.Cases 783].) In other words, the Appeals Board must look to the underlying facts of a medical opinion to determine whether or not that opinion constitutes substantial evidence, and accordingly, the expert's opinion is no better than the facts on which it is based. (*Turner v. Workers' Comp. Appeals Bd.* (1974) 42 Cal.App.3d 1036, 1044 [39 Cal.Comp.Cases 780].)

As explained by the WCJ in the Report, Dr. Chan's medical reporting constitutes substantial medical evidence to support an alternative rating within the four corners of the AMA Guides as Dr. Chan adequately explained why using the standard rating approach does not represent an adequate assessment given the impact on the activities of daily living (ADLs). (Report, pp. 5-6, 10-12; Jt. Ex. 1, QME Report of Raymond Chan, D.C. dated 6/29/24, pp. 2-4; Jt. Ex. 4, QME Report of Dr. Chan, dated 6/14/25, pp. 2-3; Jt. Ex. 5, Raymond Chan deposition dated 2/24/26, pp. 6-17, 25-26.)

III.

"Impairments to two or more body parts are usually expected to have an overlapping effect upon the activities of daily living, so that generally, under the AMA Guides and the PDRS, the two impairments are combined to eliminate this overlap." (*Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 691 (Appeals Board en banc.)) The PDRS contains the CVC, which uses a formula to take into account the overlapping effects on the ADLs. (*Id*.) *Vigil* provides the example of "impairments to the low back and the knee would likely both affect a person's physical activity,

ability to travel, and potentially other ADLs. In this example, the two impairments would then be combined in a way to eliminate this overlap. (*Id*.)

However, the CVC may be rebutted and the impairments added instead of combined, for example when "there was evidence showing no actual overlap between the effects on ADLs as between the body parts rated" and "where there is overlap, but the overlap creates a synergistic effect upon the ADLs." (*Vigil v. County of Kern*, *supra*, 89 Cal.Comp.Cases at p. 691.) "Where the medical evidence demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used." (*Id*. at p. 692.)

Dr. Chan's medical reporting and testimony at his deposition constitutes substantial medical evidence to support adding applicant's impairments instead of combining them pursuant to the CVC. (Report, pp. 7-9, 12-13; Jt. Ex. 1, p. 4; Jt. Ex. 4, pp. 3-4; Jt. Ex. 5, pp. 17-23, 26-31.)

Accordingly, we deny defendant's Petition for Reconsideration of the May 13, 2026 Findings of Fact and Award.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the May 13, 2026 Findings of Fact and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 31, 2026

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

RAUL RADILLA
LAW OFFICES OF NADEEM MAKADA
FINNEGAN, MARKS, DESMOND & JONES

JMR/*pm*

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

Report and Recommendation on Petition
for Reconsideration and Notice of Transmission to WCAB

INTRODUCTION

Defendant seeks reconsideration of May 13, 2026, Findings and Award (F&A). The substantive decision set forth therein was a finding of 96 percent permanent disability. In its petition, defendant contends my award was issued without or in excess of the appeals board powers, the evidence does not justify the Findings of Fact, and the Findings of Fact to not support the Order, Decision or Award. The petition is timely and verified. Applicant filed an answer.

FACTS

1. Procedural background.

This matter had previously proceeded to trial. In my April 23, 2025, Findings of Facts, Award, and Orders, I issued an order that the parties further develop the record and obtain supplemental reporting from the QME Ramond Chan, D.C. I also made a finding that applicant is entitled to further medical treatment to cure or relieve from the effects of the industrial injury. Applicant has an admitted industrial injury to his neck, low back, and left shoulder.

The matter proceeded to a second day of trial on April 20, 2026, with the parties submitting three additional joint exhibits.

2. Evidence at trial and decision.

Applicant testified in relevant part:

> He started working for the employer in 2003. On May 26, 2019, on the date of injury, he was working as a machine operator for the employer.
>
> In describing his injuries over the past 30 days, his left shoulder hurts. The pain is like a tense, tightening pain. The pain is constant in both the front and the back of his shoulder. The limitations he has because of the pain are: it is hard for him to bend, it hurts when he bends over, it hurts to lift with his arm, it hurts when it goes up. He can only lift his arm up to shoulder level. The heaviest object that he can lift is like a gallon of milk. It hurts more when he is sitting for too long, if he is standing for too long, and if he is lifting things. It hurts and the pain hits harder. He takes medication when the pain is bad: ibuprofen and acetaminophen. He has taken those since he got injured, so for five years. He will take the ibuprofen for a week and then stop. He takes the acetaminophen daily.

In his neck, the pain feels the same: tense pain, like stabbing pain. He feels the pain in the back of the neck where the bone is. The pain is constant. That is why he has to be straight or rest. Medication helps with his pain.

In his low back, the pain feels the same; it feels tense and tight, like something is pressing. The pain is constant. His limitations are: it is hard to stand up, to grab something, to lift something, and to bend over.

Regarding his activities of daily living, he has difficulty bathing: he has problems bending, and cleaning his feet. He is able to bathe by himself. He is left-handed. In the shower he is able to grab soap or shampoo with his left hand. He uses the right hand to turn on the shower. He gets dressed slowly so as to not hurt himself. He is able to put his clothes on by himself. He is able to button a dress shirt with his left hand. He is able to grab his clothes from the closet and/or any dressers if it is down low, but if it is high up then he has to use his right hand. It is hard to grab something that is high up. When he is getting dressed, he is able to zip up his pants with his left hand.

It hurts if he is sitting for too long. If he is standing for too long, he has to sit for a bit, then stand for a while. This is because of the back pain. Climbing stairs is hard because of the pain in his back. It hurts if he pushes – his left arm hurts and his back hurts. Regarding pulling, he has problems because of the pain in his arm and back. It hurts to sleep on his left side, he has to move because it hurts. Regarding household chores, he can make a simple meal such as in the microwave or heat up something. He is able to heat up food. He can cut with his right hand. He is able to use his left hand to use a fork and a spoon. He is able to heat something up. He hardly ever cooks, he just heats up things; he may make a sandwich. He cannot vacuum or mop. He is able to brush his teeth with his left hand. He is able to shave with his left hand, but with difficulty. He would be able to grab a razor with his left hand with a little bit of difficulty.

The injury was in 2019 and then he went back to work. The last day he worked was 6/26/2023. In 2022, he was treating with Dr. Alberto Retodo. He was working at times, and at times was not working. Sometimes he did, sometimes he did not.

He had shoulder surgery in 2021. He was told he needed another shoulder surgery but it is not operable at this time. He feels he got worse after the surgery because they did not do anything. He is aware he still has a large tear. They could not fix it.

(April 23, 2025 MOH/SOE.)

The parties offered several exhibits at the trials:

- Reports of QME Raymond Chan, D.C.

In his January 15, 2022, report, Dr. Chan reviewed and summarized several medical records. He summarized an August 19, 2019 MRI of the left shoulder as follows:

Impressions:

1. Full-thickness retracted tearing of the infraspinatus tendon and likely a small portion of [t]he adjacent supraspinatus tendon, with approximately 3cm of retraction and associated muscle atrophy.

2. Moderate acromioclavicular joint osteoarthritis with lateral acromial downsloping, predisposing to subacromial impingement.

3. Moderate glenohumeral joint osteoarthritis, with degenerative tearing of the labrum.

(p. 60.)

He noted applicant sustained injury to his left shoulder when using a long tool to scrape dough that fell off of a conveyor belt. Applicant eventually underwent debridement and subacromial decompression surgery on October 19, 2019. (pp. 35-36.)

Dr. Chan requested further diagnostic testing in the form of MRIs of the left shoulder and cervical spine. He also recommended electrodiagnostic studies "…to rule out plexopathy or peripheral neuropathy, [but applicant declined]…because he is afraid of needles." He diagnosed applicant with:

1. Massive irreparable rotator cuff tear of the left shoulder
2. Cervical strain/sprain
3. Left cervical radiculopathy vs. plexopathy
4. Adjustment disorder with mixed anxiety and depressed mood.

He stated applicant was not yet permanent and stationary. He commented, "Dr. Jensen's recommendation of superior capsule reconstruction is appropriate and will likely improve his shoulder function for the short and intermediate term." He gave work restrictions:

1. No repetitive motions of the bilateral wrists and hands.
2. Lifting, carrying and twisting not to exceed two pounds of the left hand
3. No use of the left arm above 60 degrees flexion and abduction.
(pp. 43-44)

In his August 8, 2023, report[1], Dr. Chan summarized a reevaluation of applicant. He added the diagnoses: lumbar sprain/strain, "a compensable consequence of shoulder injury". He noted:

> His lumbar strain and left radiculopathy are compensable consequence[s] of his left shoulder impairment. He was assigned to separate bagels on the production line. He stood eight hours by the conveyor belt and developed low back pain and left radiculopathy.

He noted applicant is permanent and stationary "as of the date of this report". He deferred the impairment rating and apportionment "until lumbar MRI and electrodiagnostic results are available." Regarding future medical treatment, he stated applicant will need conservative treatment with analgesics to treat his chronic pain, daily gentle exercises for his left shoulder to reduce stiffness, physical therapy, possible epidural injections, a TENS unit, left shoulder surgery, and psychological depression. (pp. 25-26.)

Dr. Chan provided work restrictions. He stated that applicant cannot return to his usual and customary work. (p. 26.)

Under the heading "Temporary Total Disability", Dr. Chan stated:

> Dr. Taylor, who initially operated on his shoulder, had placed the patient on temporary total disability after his rotator cuff surgery. Afterwards, his employer was accommodative for work restrictions and assigned the patient to take temperature of employees during the Covid pandemic.
>
> About four months ago (March 2023), he was transferred to the production area. He stood by the conveyor belt for eight hours each shift and [was] constantly using his left hand separating bagels that were stuck together. He experienced [an] increase of pain in the left shoulder and the low back. Dr. Retodo has recommended temporary total disability since 06/27/2023. I concur that the period of TTD is medically necessary.
>
> (p. 26.)

In his June 29, 2024, report, Dr. Chan addressed impairment ratings after reviewing diagnostic studies.

For the left shoulder, he assigned 15% WPI. He went on to state:

> Almaraz-Guzman Decision: It is my opinion that the straight rating by the Guides is not an accurate impairment.

[1] The report notes the date of the re-evaluation was July 19, 2023.

> On page 4 of the Guides, it states that "the whole person impairment percentages listed in the Guides estimate the impact of the impairment on the individual's overall ability to perform activities of daily living, excluding work, as listed in Table 1-2."
> …
>
> Within the four corner[s] of the Guides, the most accurate rating would be analogizing to Table 13-22, p. 343. Class 4 non-dominant extremity, with 35% WPI.
>
> Basis of opinion: Class 3 non-dominant hand…requires an individual can use the involved extremity but has difficulty with self-care activities. I would assign 29% WPI because of his massive irreparable rotator cuff tear affecting his [ADLs]. To further compensate for his impairment related to his work, a Class 4 with 24% WPI for the non-dominant hand is the most accurate rating for his left shoulder impairment including work impairment. The patient is precluded from using his glenhumeral joint for work activities.
>
> (pp. 2-3.)

For the cervical spine, Dr. Chan stated applicant has a "Cervical DRE Category II with 8% WPI." He assigned a 3% pain add-on "[t]o compensate for his extra burden of pain from TOX, grip loss and sensory loss in all digits." (pp. 3-4.)

For the lumbar spine, he stated: "Straight rating of the Guides: Lumbar DRE Category III with 13% WPI." He went on to state, under the heading "Almaraz-Guzman Decision:"

> It is my opinion that the straight rating is not an accurate rating because it does not include his work impairment. At work, prolonged standing, walking, repetitive bending and stooping are required. [⁋] He has lost his lifting capacity because of lumbar stenonsis and is precluded from heavy living. [⁋] The most accurate rating to address his [activities of daily living] and work impairment would be analogizing his lumbar impairment using the hernia chapter, Table 6.6, p. 163, Class 2 hernia with 19% WPI.
>
> (p. 4.)

Under the heading "Kite Decision", he stated

His cervical strain and rotator cuff injuries have adverse synergistic effects on his ADL. The trapezius assists the deltoid to raise his arm beyond 90 degrees. Dysfunction of the rhomboid

innervated by C5 would affect his scapular dyskinesia. I would therefore recommend addition instead of combining the cervical and shoulder impairments.

(p. 4.)

He reiterated his opinion regarding TTD and work status from his previous report. (p. 5.)

a. June 14, 2025, Report of QME Raymond Chan, D.C.

Joint Exhibit 4 is a supplemental report of QME Dr. Chan dated June 14, 2025. In his report, Dr. Chan made the following diagnoses:

- Massive irreparable rotator cuff tear of the left shoulder
- Cervical strain/sprain
- Left cervical radiculopathy vs. plexopathy
- Lumbar sprain/strain, a compensable consequence of shoulder injury

He assigned the following WPIs:

- Left shoulder: 35%
- Cervical spine DRE II: 8% + 3% pain add-on
- Lumbar spine DRE III: 13%; "By invoking Guzman, the most accurate rating is by analogizing his impairment to the hernia chapter with 19% WPI."

(p. 2.)

Dr. Chan went on to state that "the cervical and shoulder impairments [should] be added instead of…combined." He explained the mechanics of the manner in which the neck and shoulder impairments affect each other. He then stated that "the shoulder and the lumbar impairment should be added instead of being combined. Low back pain limits the ability to lift from the floor. The injured shoulder limits the ability to reach forward to [grasp] the object because of weakness and pain [in] the shoulder joint." (pp. 3-4.)

b. February 24, 2026, Deposition Transcript of QME Raymond Chan, D.C.

Joint Exhibit 5 is a deposition transcript of QME Dr. Chan dated February 24, 2026. Dr. Chan testified that his opinion regarding the WPI for the left shoulder remains the same at 35%. (pp. 6-13.) He stated his opinions remained the same for the WPIs for the cervical spine and lumbar spine as well. (pp. 13-25.)

Regarding whether the impairments should be combined versus added, Dr. Chan testified:

- The shoulder and lumbar impairments should be added rather than combined partially because both impairments independently limit similar activities of daily living such as lifting objects from the floor. Lumbar spine impairment restricts trunk flexion and lifting capacity. Shoulder impairment restricts reaching, grasping, and upper extremity strength. These limitations occur simultaneously during certain functional tasks. These impairments compound each other during any activities of daily living such as lifting, carrying, cleaning, or working at waist level.

- When a person attempts to lift an object from the floor, that activity requires coordinated lumbar flexion, core stability, and shoulder strength at the same time; one example might be lifting a box from a floor to a shelf, or lifting household objects to put on a shelf at home, or doing laundry. Making the bed would require repeated trunk flexion while tucking in sheets, sustained forward bending across the mattress, and twisting while walking around the bed. Shoulder involvement would be reaching across the bed to spread a blanket, lifting a mattress corner, or sustained arm elevation. Those would be amplified; that is an example of an ADL limitation.

- Grocery shopping for the lumbar spine impact would be lifting bags from the trunk of the car, bending to put the groceries away, carrying the weight of the grocery bag while walking. The shoulder impact would be carrying bags with sustained grip, reaching high shelves, controlling a load away from the body. That ADL would be amplified.

- Regarding bathing, the lumbar effects would be sustained by bending over a tub, bending to pick of soap or anything from the floor. For the shoulder, reaching forward repeatedly while bathing, holding or stabilizing one's weight while in a tub or shower, raising one's arm above one's head or hair level to wash oneself would be ADL limitations. Those ADLs would be amplified because of the shoulder and lumbar impairments.

- With respect to the cervical spine, he recommended adding the cervical impairment to the lumbar impairment because if a patient has cervical radiculopathy or spasm in addition to lumbar pain, attempts to compensate for lumbar discomfort such as shifting posture or pelvic tilt would increase strain in the cervical region.

(pp. 25-32.)

- <u>Reports of PTP Albert Retodo, M.D.</u>
  Applicant's Exhibit 1 is five reports of PTP Dr. Retodo.

In these reports, dated 02/11/2022, 03/21/2022, 06/22/2022, 08/01/2022, and 10/05/2022, Dr. Retodo made the following diagnoses: left shoulder tendon tear; left shoulder pain/weakness. He stated "modified work – per P&S (declared P&S on 10/18/2021.) He provided work restrictions, including no overhead or over-shoulder work with left upper extremity.

I issued my F&A and Opinion on Decision on May 13, 2026. I found applicant's permanent disability to be 96% based on the reporting and deposition testimony of QME Raymond Chan, D.C., and awarded such. I also awarded of attorney's fees.

3. *Contentions on reconsideration.*

In its petition for reconsideration, defendant contends this WCJ erred in relying on the reporting of QME Dr. Chan in his applications of Guzman and Vigil to applicant's impairment ratings because, defendant argues, it was not based on substantial medical evidence. Defendant contends that the combined values chart (CVC) should be utilized instead to determine applicant's permanent disability.

DISCUSSION

With respect to permanent disability, the applicant holds the burden of proof by a preponderance of the evidence. (Labor Code section 3202.5.)

1. *Guzman*

It is well established that while the PDRS is prima facie evidence of an employee's permanent disability, it is rebuttable. (Lab. Code, § 4660.1; *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084.) In rebutting the AMA Guides, the doctor is expected to 1) provide a [standard] rating per the AMA Guides, 2) explain why the [standard] rating does not accurately reflect the applicant's disability, 3) provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that alternative rating most accurately reflects applicant's level of disability.

The current state of the law on *Guzman* and its progeny appears to heavily favor medical opinions where the evaluator cites *Guzman* and attempts to arrive at the most appropriate rating, regardless of the exact "four corners" technique employed. Put another way, a physician's *Guzman* rating is to be followed so long as he used his expertise "to assess the impairment most accurately." *City of Sacramento v. Workers' Comp. Appeals Bd.* (Cannon) (2013) 79 CCC 1, 9. Dr. Chan's *Guzman* analysis is unrebutted.

Here, in his June 29, 2024, report, Dr. Chan addressed impairment ratings. He provided [standard] ratings per the AMA guides, explained why the [standard] ratings do not accurately

reflect applicant's disability, provided alternative ratings using the four corners of the AMA guides, and explained why those alternative ratings most accurately reflected applicant's level of disability:

> For the left shoulder, he assigned 15% WPI. He went on to state:
>
> Almaraz-Guzman Decision: It is my opinion that the straight rating by the Guides is not an accurate impairment.
>
> On page 4 of the Guides, it states that "the whole person impairment percentages listed in the Guides estimate the impact of the impairment on the individual's overall ability to perform activities of daily living, *excluding* work, as listed in Table 1-2.
> …
>
> Within the four corner[s] of the Guides, the most accurate rating would be analogizing to Table 13-22, p. 343. Class 4 non-dominant extremity, with 35% WPI.
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> Basis of opinion: Class 3 non-dominant hand…requires an individual can use the involved extremity but has difficulty with self-care activities. I would assign 29% WPI because of his massive irreparable rotator cuff tear affecting his [ADLs]. To further compensate for his impairment related to his work, a Class 4 with 24% WPI for the non-dominant hand is the most accurate rating for his left shoulder impairment including work impairment. The patient is precluded from using his glenhumeral joint for work activities.
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> (pp. 2-3.)

For the cervical spine, Dr. Chan stated applicant has a "Cervical DRE Category II with 8% WPI." He assigned a 3% pain add-on "[t]o compensate for his extra burden of pain from TOX, grip loss and sensory loss in all digits." (pp. 3-4.)

For the lumbar spine, he stated: "Straight rating of the Guides: Lumbar DRE Category III with 13% WPI." He went on to state, under the heading "Almaraz-Guzman Decision:"

> It is my opinion that the straight rating is not an accurate rating because it does not include his work impairment. At work, prolonged standing, walking, repetitive bending and stooping are required. [¶] He has lost his lifting capacity because of lumbar stenonsis and is precluded from heavy living. [¶] The most accurate rating to address his [activities of daily living] and work impairment would be analogizing his lumbar impairment using the hernia chapter, Table 6.6, p. 163, Class 2 hernia with 19% WPI.
>
> (p. 4.)

Dr. Chan explained that analogizing the lumbar impairment to a hernia was most accurate since increased pressure could lead to the lumbar disc bulge. (Joint Exhibit 5, pp. 14-15.)

In accordance with *Guzman*, Dr. Chan provided a thorough explanation based upon reasonable medical probability. Accordingly, I concluded that assignment of impairments under *Guzman* constitutes substantial medical evidence.

Regarding the pain add-on to the cervical spine, Dr. Chan testified there was no overlap between the pain add-on and the DRE II impairment. The undersigned found Dr. Chan's rating well-supported in his June 29, 2024, report, as he reviewed the MRIs, noted applicant's constant neck pain. He assigned a 3% pain add-on "[t]o compensate for his extra burden of pain from TOX, grip loss and sensory loss in all digits." (pp. 3-4.) I adopted the 3% pain add-on.

2. Vigil

Although the preferred method of combining impairments is using the Combined Values Chart ("CVC"), the impairments may be added if it is a more accurate reflection of the overall impairment because of the synergistic effect of the impairments. (*Athens Administrators vs. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal. Comp. Cases 213). In order to rebut the CVC, the applicant should establish the impact of each impairment on his activities of daily living ("ADLs") and that either there is no overlap between the effects on those ADLs for the rated body parts or there is overlap but it increases or amplifies the impact on the overlapping ADLs. (*Vigil v. County of Kern*, (2024) 89 Cal. Comp. Cases 686 *(en banc.)*

Dr. Chan explained that:

> His cervical strain and rotator cuff injuries have adverse synergistic effects on his ADL. The trapezius assists the deltoid to raise his arm beyond 90 degrees. Dysfunction of the rhomboid innervated by C5 would affect his scapular dyskinesia. I would therefore recommend addition instead of combining the cervical and shoulder impairments.

(Joint Exhibit 1, p. 4.)

In his deposition testimony, Dr. Chan outlined the numerous ADLs impacted by each impairment (Joint Exhibit 5.). I found his testimony on this issue to be substantial and persuasive. Defendant contends that the testimony is not substantial evidence, as applicant's counsel asked several leading questions to which Dr. Chan simply replied, "yes." A leading question may be asked of a witness on cross-examination or recross-examination. (Evid. Code, § 767.) Furthermore, there were no objections made to any of those questions. (pp. 53-59.) I found the CVC has been rebutted, and the impairments should be added.

I found the following permanent partial disability:

- Left shoulder: 35% (16.02.01.00 - 35 - [1.4] 49 - 320F - 49 - 51%) 51%

- Cervical spine DRE II: 11% (15.01.01.00 - 11 - [1.4] 15 - 320F - 15 - 16%) 16%

- Lumbar spine DRE III: 19% (15.03.01.00 - 19 - [1.4] 27 - 320F - 27 - 29%) 29%

= 51 + 16 + 29 = <u>96% permanent disability</u>

RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on June 8, 2026, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

Hillary R. Allyn
Workers' Compensation Judge
Workers' Compensation Appeals Board

The REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMISSION TO WCAB was filed and served on all parties listed in the Official Address Record pursuant to Rule 10628, and the case was transmitted to the Appeals Board on this date.

ON: July 2, 2026
BY: V. Chung