

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

REGINA ARMSTRONG, *Applicant*

vs.

**SUTTER VALLEY HOSPITALS,
dba MEMORIAL MEDICAL CENTER, permissibly self-insured,
adjusted by SUTTER HEALTH SACRAMENTO, *Defendants***

**Adjudication Numbers: ADJ19328573
Sacramento District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact, Awards & Orders (FFA&O), issued by the workers' compensation administrative law judge (WCJ) on March 30, 2026. In the FFA&O, the WCJ found in pertinent part that applicant, while employed as a registered nurse by defendant "Memorial Medical Center" on October 24, 2021, sustained an injury arising out of and in the course of her employment to her lumbar spine, thoracic spine, cervical spine and right shoulder; and that her injury caused 38% permanent disability after apportionment.

Applicant contends that the finding of apportionment is not supported by substantial medical evidence.

Defendant filed an Answer. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have reviewed the record and we have considered the allegations of the Petition and the Answer and the contents of the Report, and for the reasons discussed below, we will grant the Petition for Reconsideration and amend the FFA&O to find that applicant sustained permanent disability without apportionment, correct the name of the employer to Sutter Valley Hospitals dba Memorial Medical Center, and amend the award of attorney's fees consistent with the finding of no apportionment. We otherwise affirm the decision.

I.

Former Labor Code section 5909¹ 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. (Former Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state 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.

(Lab. Code, § 5909.)

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 April 27, 2026, and 60 days from the date of transmission is Friday, June 26, 2026. This decision issued by or on June 26, 2026, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that “[w]hen 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.” Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

According to the proof of service, the Report was served on April 27, 2026, and the case was transmitted to the Appeals Board on April 27, 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

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on April 27, 2026.

II.

Applicant, while employed on October 24, 2021, by defendant as a registered nurse, sustained injury to her lumbar spine, thoracic spine, cervical spine and right shoulder.

1.

Relevant to our discussion here, the record contains reporting from Panel Qualified Medical Evaluator (PQME) Sean Robinson, M.D., who evaluated the applicant three times, issued a total of five reports, and was deposed. (Exhibits AA-FF, Sean Robinson, M.D.)

In his June 23, 2023, report Dr. Robinson took the following history of injury:

The applicant states that on October 24, 2021, during the course of her employment, while she was assessing a patient, the nurse from next door screamed for help. The applicant ran to the room and saw that a patient was attacking the nurse. The patient was holding the nurse by the scrub with one hand and hitting her with the other. The applicant reached the patient's hand and pulled the hand that was holding the nurse. She restrained the patient's lower extremities for about a minute until security arrived and restrained the patient.

(Exhibit AA, Sean Robinson, M.D., June 23, 2023, PDF p. 22.)

In his March 1, 2024 re-evaluation report, Dr. Robinson provided impairment based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides) and using the diagnosis-related estimate (DRE) method to arrive at “5% whole person impairment for the lumbar spine and 5% whole person impairment for the thoracic spine.” (Exhibit BB, Sean Robinson, M.D., March 1, 2024, PDF p. 50.)

Later, Dr. Robinson addressed cervical spine impairment in his March 4, 2025 report stating:

According to the AMA Guides to Evaluation of Permanent Impairment, Fifth Edition, when evaluating her cervical spine, I utilized the DRE method. This can be found in Table 15-5, in page 392. She underwent cervical disc arthroplasty. This was due to degenerative disc disease. Given the findings of an alteration of segment integrity from the surgical intervention, she falls under a Cervical Category IV. She is awarded 25% whole person impairment related to her cervical spine.

Lastly, she is awarded one additional percentage point with regard to pain in Chapter 18. This is related to her cervical spine, and largely related to ongoing occipital headaches and cervical spine pain that is associated with poor sleep.

(Exhibit CC, Sean Robinson, M.D., March 4, 2025, PDF pp. 63-64.)

With respect to apportionment, he stated:

I have considered apportionment, noting that permanent disability should be based on causation. All of my opinions are offered within a reasonable degree of medical certainty. In arriving at my conclusions, I have not engaged in guessing, speculation, or surmise.

With regard to the cervical spine, within reasonable medical probability, 90% of her injuries are caused by conditions arising out of and in the course of employment. She has significant issue of her cervical spine after the aforementioned injury. Fundamentally appropriate given this aggravation, that 90% is associated with the industrial cause.

I find it medically appropriate to associate 10% with non-industrial causes, largely due to the fact that she did have notable degenerative changes which did not occur in a single event, rather over time, and also associated with genetics outside activities. Given this, there is evidence of non-industrial cause that would be causing some degree of difficulty at this time, regardless of the work injury.

(Exhibit CC, Sean Robinson, M.D., March 4, 2025, PDF p. 64.)

In his August 27, 2025 supplemental report, Dr. Robinson changed his opinion on cervical disability apportionment stating:

Pertinent in these medical records include past cervical spine injury, which had not been reviewed or provided prior.[sic] She had evidence of significant left shoulder and left neck pain with findings of cervical radiculopathy dating back to 2014. At that time, there was moderate to severe foraminal stenosis and degenerative disc disease at C5-C6 and C6-C7. These findings demonstrate degenerative disc disease that was long-standing prior to the aforementioned injury.

According to her injury, it is within reason medical probability any type of forceful movement and/or any type of altercation that results in awkward positioning can reasonably create an aggravation of a pre-existing and/or a new injury. With regard to the cervical spine, I would alter my opinion to consider this a re-aggravation of a pre-existing condition that was quite severe and noticeable as she obtained a number of evaluations and treatments regarding her cervical spine that predated the date of injury.

Given this, I find it medically appropriate to alter my apportionment. I previously found 90% apportionment to industrial cause. However, I find it medically

appropriate that industrial cause is-related to 45% of her disability. These are due to the finding that she had significant and severe cervical spine degenerative disc disease that was treated for an extended period of time and resulted in similar symptoms and signs. These are the same levels that she ultimately received surgery; C5-C6 in particular, as well as C6-C7; yet she underwent surgery on C 5-6 and C4-C5; which was found to be unremarkable in the medical record in 2014. Nonetheless, she did have left-sided greater than right sided neuroforaminal stenosis in the 2014 MRI, whereas her symptoms with this industrial injury is predominantly right-sided. Given this, I find it medically appropriate that 45% of disability is apportioned to nonindustrial and pre-existing causes.

Within reasonable medical probability, I find 55% of her disability is due to a nonindustrial cause. This is due to the fact that per these updated medical records, she has had advanced cervical spine degenerative disc disease dating back to 2014 in bilateral foramina. Given this, it significantly alters my opinion. as she had received care and treatment for the degenerative disc disease that predated the injury by approximately seven years. I find this the most appropriate method of discussing apportionment in her particular case.

(Exhibit DD, Sean Robinson, M.D., August 27, 2025, PDF pp. 23-24.)

During the deposition of Dr. Robinson on October 14, 2025, the following exchanges occurred:

Q. Now, with respect to the 55 percent apportionment to non-industrial, explain that.

Why -- why is it 55 percent suddenly from -- instead of 10 percent?

A. Yeah. So I -- I boil that down because of the -- because of the entirety of the cervical spine because of the findings of severe neural foraminal stenosis found back in 2014.

That being said, I -- I understand, and looking back in my report, I comment in my discussion that most of those symptoms were related to the left side, rather than the left -- rather than the right, and the right side is predominant.

So apportionment is something I can certainly review, re-review in her specific situation.

I don't change my opinions on depositions, but that is something that I had noticed in my review, which I could lend more thought to.

Q. Well, what more information would you need to be able to -- to come up with this precise percentage of apportionment?

A. I don't need any more information. I don't change opinions on depositions.

This is something that I consider outside of a deposition without someone speaking and looking directly at me and asking continued on-and-on questions about --

(Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 45, ln 17, to p. 46, ln 17.)

Q. Sure. So how could you apportion to it then?

A. Because you can still go -- based off anatomic factors, complaints in the left hand, I can't ask her specific events.

There's a level of assuming and speculation and medical knowledge that has to go into it.

Q. Right. Okay. So you're agreeing, right, that in doing your apportionment, there's going to be a fair amount of speculation that's going to occur here, correct?

A. There is always a degree, yes --

Q. Right.

A. -- especially with the longstanding ones.

(Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 73, ln 13-25.)

Q. Right. But you can't say one way or the other, as you sit here now, which one it was, is that fair, without speculating?

A. I can speculate more to the cervical spine than I can the shoulder. Actually, I have imaging of the cervical spine for 2014. I don't have imaging of the shoulder.

So if you want to call in speculation in which one's more or most accurate, then it would be the cervical spine.

(Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 75, lns 16-25.)

Finally, in his November 13, 2025 supplemental report, Dr. Robinson stated:

During the deposition, I noted that I would reconsider my opinions in light of the discussion and additional findings. Following this further review, I have slightly revised my apportionment and now find that 60% of the cervical spine condition is due to industrial causes and 40% is nonindustrial. While this marks my third adjustment to apportionment, I find this current allocation to be the most medically accurate and appropriate, based on the totality of the evidence, review of medical records, and deposition discussion.

The claimant's preexisting spondylotic changes in the cervical spine were associated with left-sided radiculopathy, whereas the industrial injury resulted in predominantly right-sided symptoms. Given this distinction, it is medically probable that 60% of her cervical spine condition is industrially related.

Cervical spondylosis (spinal spondylosis) represents a stepwise degenerative process characterized by uncovertebral osteophyte formation, degenerative disc disease, and the potential development of neuroforaminal central canal stenosis. The claimant's pre-injury imaging demonstrated left-sided spondylotic changes, which likely progressed gradually over time. Therefore, it remains medically probable that 40% of her cervical spine impairment is attributable to nonindustrial, preexisting degenerative changes, while 60% is due to the industrial injury.

(Exhibit EE, Sean Robinson, M.D., November 13, 2025, PDF pp. 4-5.)

2.

In both the Pre-Trial Conference Statement (PTCS) and Amended PTCS which were filed on January 23, 2026, the employer is listed in the caption as Memorial Medical Center and it is stipulated the employer is: “breaking up a fight between a nurse and a patient.” (PTCS and Amended PTCS, January 23, 2026, pp. 1-2.)

On March 4, 2026, the parties proceeded to trial. The resulting Minutes of Hearing (MOH) reflect that no testimony was taken, that stipulations and issues were identified, and that exhibits were admitted. The stipulations include that applicant was employed by “Memorial Medical Center” and that the employer’s workers’ compensation carrier was “Sutter Health Sacramento,” but also that the “employer was permissibly self-insured.” (MOH, March 4, 2026, p. 2, lns 4-9.)

III.

We observe that a grant of reconsideration has the effect of causing “the whole subject matter [to be] reopened for further consideration and determination” (*Great Western Power Co. v. I.A.C. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of “[throwing] the entire record open for review.” (*State Comp. Ins. Fund v. I.A.C. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Here, the FFA&O caption lists defendants as “Memorial Medical Center; Sutter Health Sacramento.” The caption is presumably based on the parties’ representations in the PTCS, Amended PTCS and at trial. The representation is that Memorial Medical Center is either permissibly self-insured and adjusted by Sutter Health or is insured by Sutter Health.

All parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (Cal.

Code Regs., tit. 8, §10390; and see *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Bd. en banc) [defendant attorneys must disclose proper legal names for the employer, insurance company and any third-party administrator and failure to do so may subject the offending party to sanctions].)

It appears from defendant's Notice of Representation that the employer is actually "Sutter Valley Hospitals dba Memorial Medical Center," permissibly self-insured, "adjusted by Sutter Sacramento Health WC." As such, we will amend the FFA&O to reflect defendants' representation of the correct employer in this matter. This action is taken to avoid any undue delay in the provision of benefits to the injured worker. Should defendant's representation be incorrect, defendant should immediately seek to have the amended FFA&O corrected.

IV.

Under the constitutional mandate for the workers' compensation system the Legislature is "expressly vested with plenary power" . . . "to create and enforce a liability on the part of any or all persons *to compensate any or all of their workers for injury or disability*" and to "accomplish substantial justice in all cases *expeditiously, inexpensively, and without incumbrance of any character*". (Cal Const, Art. XIV § 4, emphasis added.)

The Permanent Disability Ratings Schedule (PDRS) is prima facie evidence of applicant's level of permanent disability. (Lab. Code, §§ 4660(c), 4660.1(d).) Section 4660.1 states in the 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.

(Lab. Code, § 4660.1(a) and (b), emphasis added.)

Section 4663 provides in part:

(a) Apportionment of permanent disability shall be based on causation.

(b) A physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall address in that report the issue of causation of the permanent disability.

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment *and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury*, including prior industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(Lab. Code § 4663, emphasis added.)

The focus of apportionment, therefore, is on the non-industrial factors.

Section 4664 provides as relevant here that the “employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment.” (Lab. Code § 4664.)

It has long been established the burden of proving apportionment of permanent disability falls on the employer because it is the employer that benefits from apportionment. (*Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 613 (Appeals Board en banc).)

To be substantial evidence on the issue of the approximate percentage of permanent disability due to other factors, 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. Furthermore, if a physician opines that a percentage of disability is caused by a degenerative disease, the physician must explain the nature of the disease and “how and why” it is causing disability at the time of the evaluation. (*Escobedo, supra*, at pp. 620-621.)

The phrase “how and why” from *Escobedo* has come to be used as a shorthand statement to summarize apportionment in the workers' compensation community. Unfortunately, this use

has led to confusion as physicians and participants struggle to explain both the “how” and the “why” of apportionment, often leading to circular reasoning.

The word “why” is commonly defined as “for what cause, reason, or purpose” or “for what reason,” while “how” is defined as “in what manner or way” or “in what way, or by what methods.”²

The “why” of apportionment should not be mysterious as it is the result of the legislative mandate. Apportionment is the clear result of explicit statutory direction. In most cases, by referencing and discussing sections 4663 and 4664 a medical expert not only provides the “why” for apportionment, but the medical expert also discloses familiarity with the concept of apportionment. This discussion provides the foundational “why” of apportionment and supports later conclusions. This first step of acknowledging the legislative mandate should be relatively easy for a medical expert familiar with the workers’ compensation benefit system.

The crucial part for most medical experts is in providing the “how” reasoning. Specifically, how a non-industrial factor results in disability, and by what approximate percentage. Through explaining the “how” the medical expert allows the trier of fact to determine if the apportionment opinion is substantial evidence. Through explaining the “how,” an applicant receives appropriate compensation for the industrial disability, and a defendant is protected from paying for non-industrial disability. In this way, an applicant is provided with the approximate percentage of industrial disability, no more and no less, as provided by the workers’ compensation system set up by the Legislature through its plenary power.

Therefore, a medical opinion concerning apportionment must explain the facts relied on and the reasoning resulting in its conclusions. This is important because it allows the lay trier of fact to evaluate the substantial nature of medical evidence.

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].)

² See: <https://dictionary.cambridge.org/dictionary/english/how>; <https://www.merriam-webster.com/dictionary/how>; and see <https://dictionary.cambridge.org/dictionary/english/why>; <https://www.merriam-webster.com/dictionary/why>.

As discussed above, once an applicant has established an industrial link to disability, a defendant must then establish apportionment. In meeting the burden on apportionment, a defendant must produce substantial expert medical opinion in support of that apportionment. This is because:

Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [citations] Expert testimony is necessary “where the truth is occult and can be found only by resorting to the sciences.” [citation].

(Peter Kiewit Sons v. I.A.C. (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Further, a defendant is charged with the ongoing duty of developing such evidence as part of adjusting a claim. The “duty to investigate requires further investigation if the claims administrator receives later information, not covered in an earlier investigation, which might affect benefits due.” (Cal. Code Reg., tit. 8, § 10109(c).) As discussed above, defendant’s duty to investigate is rooted in the constitutional mandate to provide benefits. (See Cal Const, Art. XIV § 4.) If a defendant has concerns about benefits due it must conduct timely investigation. Such investigation not only assures timely provision of benefits when due, it protects defendant from providing benefits that are not due. A defendant is in the best position to explore and develop evidence of disability and its causes. Defendants are expected to have fully prepared and presented substantial evidence supporting apportionment at time of trial. Failure to do so violates the constitutional requirement to provide benefits expeditiously. Instead of allowing delay for further investigation, where apportionment is not based on substantial medical evidence the disability is provided to the injured worker without apportionment.

Because apportionment is usually based on impairment described in the AMA Guides, it is the described AMA Guide impairment that is the proper focus of apportionment. After full consideration of the AMA Guides, there may be instances where the disability described by a medical expert is not found in the AMA Guides. Correspondingly, in such cases, the medical expert should provide reasoning as to “how” apportionment of the actual disability described is medically reasonable.

With these principles in mind, we now turn to the record before us.

As relevant here, applicant’s impairment is found under the AMA Guides. Dr. Robinson found industrial impairment, and hence disability, for the cervical spine in his March 4, 2025,

report of DRE Category IV resulting in 25% whole person impairment with a 1% add on for pain. (Exhibit CC, Sean Robinson, M.D., March 4, 2025, PDF pp. 63-64.)

Next, Dr. Robinson's acknowledged the "why" of apportionment by stating that "permanent disability should be based on causation." (Exhibit CC, Sean Robinson, M.D., March 4, 2025, PDF p. 64.)

Dr. Robinson then transitioned through possible apportionment factors beginning with "notable degenerative changes which did not occur in a single event, rather over time, and also associated with genetics outside activities." (Exhibit CC, Sean Robinson, M.D., March 4, 2025, PDF p. 64.)

After reviewing additional records, Dr. Robinson then identified apportionment factors of "nonindustrial and pre-existing causes" and "advanced cervical spine degenerative disc disease dating back to 2014 in bilateral foramina." (Exhibit DD, Sean Robinson, M.D., August 27, 2025, PDF p. 24.) During deposition, the doctor identified as factors the "findings of severe neural foraminal stenosis found back in 2014." (Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 45, lns 19-24.)

In his most recent supplemental report, Dr. Robinson settled on factors of "preexisting spondylotic changes in the cervical spine" and "left-sided spondylotic changes, which likely progressed gradually over time." (Exhibit EE, Sean Robinson, M.D., November 13, 2025, PDF pp. 4-5.)

Dr. Robison's apportionment factors and reasoning evolved over time and were not finalized until his November 13, 2025, supplemental report. (Exhibit EE.) As a result, we consider his final opinions contained in the last supplemental report in which he apportioned to factors of "preexisting spondylotic changes in the cervical spine" and "left-sided spondylotic changes, which likely progressed gradually over time."

When explaining "how" these factors caused disability the doctor stated: "Cervical spondylosis (spinal spondylosis) represents a stepwise degenerative process characterized by uncovertebral osteophyte formation, degenerative disc disease, and the potential development of neuroforaminal central canal stenosis. The claimant's pre-injury imaging demonstrated left-sided spondylotic changes, which likely progressed gradually over time." (Exhibit EE, Sean Robinson, M.D., November 13, 2025, PDF p. 5.)

While these statements provide a helpful explanation of what “cervical spondylosis” is and how it “likely progressed gradually over time,” there is simply no explanation of how cervical spondylosis caused applicant’s DRE IV impairment or pain add on. It is not enough to simply state a factor was the cause of a percentage of disability. Without the required linking of the reasoning and explanation, Dr. Robinson’s opinions on apportionment are simply not substantial medical evidence. As such, apportionment of cervical disability fails.

The conclusion that Dr. Robinson’s opinions on apportionment are not substantial medical evidence is only reinforced by further review of the longitudinal record.

For example, in his March 4, 2025, report Dr. Robinson stated:

I find it medically appropriate to associate 10% with non-industrial causes, largely due to the fact that she did have notable degenerative changes which did not occur in a single event, rather over time, and also associated with genetics outside activities. Given this, there is evidence of non-industrial cause that would be *causing some degree of difficulty* at this time, regardless of the work injury.

(Exhibit CC, Sean Robinson, M.D., March 4, 2025, PDF p. 64, emphasis added.)

The statements provided do not explain how the identified factors caused applicant’s disability. At most, the factors could be seen as *causing some degree of difficulty*, but the reader is left to infer how causing difficulty would in turn cause applicant’s *impairment or disability*, let alone at what percentage.

Further, in the August 27, 2025, supplemental report Dr. Robinson stated in part “*that 45% of disability is apportioned to nonindustrial and pre-existing causes,*” but in the very next paragraph states, “*I find 55% of her disability is due to a nonindustrial cause.*” (Exhibit DD, Sean Robinson, M.D., August 27, 2025, PDF p. 24, emphasis added.) It appears this discrepancy is not further discussed by Dr. Robinson. We are unable to determine if the change in percentages reflects a change in medical reasoning or is simply a typographical error. The report’s opinion also fails to describe how any identified factor caused disability.

Perhaps most significantly, Dr. Robinson acknowledged using speculation when providing apportionment opinions. For example, at his deposition he testified that: “Q. Right. Okay. So you're agreeing, right, that in doing your apportionment, there's going to be a fair amount of speculation that's going to occur here, correct? A. *There is always a degree, yes* –“ (Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 73, ln 19-23, emphasis added.) And in addition, he testified that:

A. I can *speculate more to the cervical spine* than I can the shoulder. Actually, I have imaging of the cervical spine for 2014. I don't have imaging of the shoulder. *So if you want to call in speculation in which one's more or most accurate, then it would be the cervical spine.*

(Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 75, lns 19-22, emphasis added.)³

Speculation is, of course, antithetical to a substantial medical opinion.

We are also concerned that Dr. Robinson twice stated during exchanges in deposition “I don't change opinions on depositions.” (Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 45, ln 17, to p. 46, ln 21.) While we can understand it may be preferential for an expert to consider forming opinions “outside of a deposition without someone speaking and looking directly at me and asking continued on-and-on questions,” (*Ibid.*), such a blanket denial effectively nullifies the ability of a party to cross-examine a medical expert. This position by the medical expert may implicate the parties’ due process rights and may also impair the expeditious application of substantial justice.

It may be correct that cervical spondylosis and/or other factors in part caused applicant’s disability. We may not however, as lay reviewers, provide that causal connection. This is because “[w]here an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence.” (*Peter Kiewit Sons, supra*, 234 Cal.App.2d at p. 838.) It is clear that the issue of apportionment is “occult and can be found only by resorting to the sciences.” (*Id.*)

Again, to support apportionment a medical opinion must provide the reasoning connecting the “other factors” to the impairment, not just to the injury in vague and general terms. Here there is no discussion of how any listed factor causes the approximate percentage of applicant’s cervical disability. When defendants do not develop the relevant medical evidence linking non-industrial factors to applicant’s impairment or disability, it is incumbent under the constitutional mandate to allow no further delay in the provision of benefits to the injured worker.

³ It also appears Dr. Robinson may have based his apportionment opinions, at least in part, on applicant having had cervical spine injections in 2014. The doctor later agreed the injections did not occur. (Exhibit FF, deposition Sean Robinson, M.D., October 14, 2025, p. 74, ln 6, to p. 75, ln 4.) As we reject his opinions on apportionment on other grounds, we do not further discuss the effect of this incorrect history on Dr. Robinson’s apportionment opinions.

As noted by the parties in the PTCS, Amended PTCS, and MOH at trial, as well as by the WCJ in the Opinion on Decision, applicant's disability without apportionment rates as follows:

Cervical spine: 15.01.01.00-26-[1.4]36-311G-39-41%
Thoracic spine: 15.03.01.00-5-[1.4]7-311G-8-9%
Lumbar spine: 15.03.01.00-5-[1.4]7-311G-8-9%
Combined Value Chart: 41c9c9 = 51%

(MOH, March 4, 2026, p. 3; Opinion on Decision, p. 4.)

Accordingly, we grant the Petition for Reconsideration, amend the FFA&O to correctly identify the employer, find 51% permanent disability with no apportionment, and amend the award of attorney's fees in accordance with the finding of permanent disability.

For the foregoing reasons,

IT IS ORDERED that the Applicant's April 17, 2026, Petition for Reconsideration of the Findings of Fact, Awards & Orders issued by the WCJ on March 30, 2026, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact, Awards & Orders issued by the WCJ on March 30, 2026, is **AFFIRMED** except that it is **AMENDED** as follows:

FINDINGS OF FACT

1. Regina Armstrong (Applicant) was forty-six (46) years old and employed as a Registered Nurse, Occupational Group Number 311, at Modesto, California by Sutter Valley Hospitals dba Memorial Medical Center (Employer/Defendant) on October 24, 2021 when she sustained an injury arising out of and occurring in the course of her employment to her lumbar spine, thoracic spine, cervical spine and right shoulder.

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5. Applicant has 51% permanent partial disability after appropriate adjustments as a result of her industrial injury.

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AWARDS AND ORDERS

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2. Applicant is Awarded \$80,932.50 in permanent disability indemnity payable at \$290.00 per week commencing June 5, 2024, less a reasonable attorney fee of \$12,147.37 to be commuted from the far end of the Award and less \$1,197.10 allowed on the lien of EDD/SDI to be commuted from the far end of the Award. Thereafter, Defendant is entitled to assert credit for permanent disability indemnity advances.

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4. Applicant's Attorney's fee lien is allowed in the amount of \$12,147.37 to be paid from the permanent disability indemnity awarded in paragraph 2.

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WORKERS' COMPENSATION APPEALS BOARD

/s/ PAUL F. KELLY, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 26, 2026

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

**REGINA ARMSTRONG
EASON & TAMBORNINI
LENAHAN, SLATER, PEARSE & MAJERNIK**

PS/oo

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