

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

**RICKY ARREDONDO, *Applicant***

**vs.**

**RIVERSIDE COUNTY SHERIFF'S DEPARTMENT, permissibly self-insured, *Defendant***

**Adjudication Numbers: ADJ15346443, ADJ17190195, ADJ17509439 (MF)  
Riverside District Office**

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

Applicant seeks reconsideration of the Joint Findings and Award (F&A) issued on March 6, 2026, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant sustained industrial injury during the cumulative trauma period from September 1, 2010, through January 14, 2023, to his cervical spine, lumbar spine, bilateral shoulders, bilateral elbows, bilateral wrists, bilateral feet, heart, psyche, and in the forms of tinnitus, headaches, and sleep disorder. (ADJ17509439)<sup>1</sup> The WCJ further found that applicant sustained an injury to his psyche on January 13, 2023 (ADJ17190195), and a separate injury on July 16, 2020, to his right shoulder, right elbow, left thumb, and bilateral knees (ADJ15346443). With respect to the cumulative injury, the WCJ found that applicant sustained 87% permanent disability. The WCJ also determined that "*Kite*" did not apply and the medical evidence did not support it.

Applicant contends that the reporting of Agreed Medical Evaluator (AME) Micah Hoffman, M.D., constitutes substantial medical evidence supporting the synergistic addition of impairments pursuant to *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc) (*Vigil*) and *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ denied). Applicant maintains that the WCJ improperly rejected AME Dr. Hoffman's opinion by requiring a degree of mathematical precision regarding activities of daily living (ADLs) that neither *Vigil* nor *Kite* demands. According to applicant, AME Dr. Hoffman adequately explained

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<sup>1</sup> Applicant claims that he was aggrieved only in ADJ17509439.

how chronic pain and psychiatric symptoms interact and mutually reinforce one another, resulting in a greater overall diminution of functioning than would be reflected through application of the Combined Values Chart (CVC) alone.

Applicant further argues anticipatorily that the WCJ's reliance on *Applied Materials v. Workers' Comp. Appeals Bd. (Chadburn)* (2021) 64 Cal.App.5th 1042 [86 Cal.Comp.Cases 331], in concluding that AME Dr. Hoffman, as a psychiatrist, could not provide a substantial medical basis for adding orthopedic and psychiatric impairments, would be unfounded. Applicant asserts that AME Dr. Hoffman appropriately limited his opinions to the psychiatric domain and relied upon his expertise to explain how applicant's psychiatric condition magnifies the functional impact of his orthopedic injuries, thereby supporting addition rather than the CVC.

Applicant also contends that the WCJ's Joint Opinion on Decision fails to comply with Labor Code section 5313<sup>2</sup> because it does not meaningfully address or reconcile applicant's testimony concerning his functional limitations with the medical evidence. Finally, applicant argues that the WCJ improperly relied upon the opinion of orthopedic AME Steven Brouman, M.D., to reject addition of impairments, because he evaluated potential synergy only among the orthopedic impairments and did not address the alleged cross-system interaction between applicant's orthopedic and psychiatric conditions. Applicant maintains that the orthopedic and psychiatric impairments warrant addition rather than combination under the CVC and therefore support a finding of 100% permanent disability.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations in the Petition and the Answer and the contents of the WCJ's Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the WCJ's decision in ADJ17509439 and ADJ17190195 and substitute a new decision deferring permanent disability, apportionment and attorney's fees in both cases. We otherwise make no other substantive changes to the decision.

## **BACKGROUND**

The parties stipulated that applicant, while employed as a Deputy Sheriff, sustained industrial injuries during the period September 1, 2010 to January 14, 2023 to his cervical spine, lumbar spine,

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<sup>2</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

both shoulders, both elbows, both wrists, both feet, heart, psyche, and in the forms of tinnitus, headache and sleep (ADJ17509439); on January 13, 2023 to his psyche (ADJ17190195); and on July 16, 2020 to his right shoulder, right elbow, left thumb and both knees. (ADJ15346443). (Minutes of Hearing and Summary of Evidence and Order of Consolidation (MOH/SOE), 12/16/2025, 2:21-25 to 3:1, 4:3-6, 4:24-25 to 5:1-3.)

The parties jointly submitted into evidence the AME reports of Dr. Brouman (Joint Exs. H, J, K), Lawrence Richman, M.D., (Joint Ex. F), Andrew Berman, M.D., (Joint Ex. E), and Jeffrey Hirsch, M.D. (Joint Exs. D, I), as well as the AME reports and the transcript of the deposition of Dr. Hoffman (Joint Exs. A-C, G, L.) (MOH/SOE, 12/16/2025, 5:22-25 to 6:1-17.)

On December 16, 2025, the parties proceeded to trial, applicant testified in relevant part as follows:

His bilateral knee and hip pain restricts his ability to walk for extended periods, and orthopedic discomfort interrupts his sleep approximately once per night. (MOH/SOE, 12/16/2025, 7:9-11.) Despite these orthopedic challenges, he maintains the ability to perform basic self-care, reporting no difficulties with walking, dressing, or bathroom functions. (MOH/SOE, 12/16/2025, 7:22-23.) He currently limits physical hobbies to occasional bicycle rides in his neighborhood, having ceased running and swimming. (MOH/SOE, 12/16/2025, 7:14-16.) Furthermore, he clarified that his orthopedic complaints do not impede his ability to drive, and he noted that treating his physical pain with ibuprofen fails to restore his functional capacity because his limitations predominantly originate from psychological distress. (MOH/SOE, 12/16/2025, 7:13; 8:16-18.)

He attributed his profound disruptions in his daily functioning to his psychiatric condition. (MOH/SOE, 12/16/2025, 7:6-8.) He testified that fluctuating medications and psychiatric issues cause severe sleep disturbances, resulting in sleepless nights and frequent awakenings ranging from three to four times a night to once or twice a week. (MOH/SOE, 12/16/2025, 7:19-22.) Applicant further noted that he and his spouse sleep in separate rooms because he suffers nightmares concerning home intruders, attributing the intimacy and sleeping arrangements strictly to psychiatric rather than orthopedic issues. (MOH/SOE, 12/16/2025, 8:3-5.) In social contexts, applicant tends toward isolation, experiencing irritability, depression, and a general inability to enjoy activities. (MOH/SOE, 12/16/2025, 7:25 to 8:3.) He has abstained from visiting extended family in recent years and avoids family sporting events to escape crowds. (MOH/SOE, 12/16/2025, 7:24-25; 9:1-3.) While he resides with his wife and seven-year-old son, applicant's wife assumes primary caregiving

duties, though he watches his son ride a bicycle when his condition permits. (MOH/SOE, 12/16/2025, 8:20-23.). Public environments and crowds induce hypervigilance, panic attacks, erratic heart rates, and flashbacks, which compelled him to abandon public hobbies and vacations. (MOH/SOE, 12/16/2025, 7:7-8, 16-18; 8:6-8, 12-15.) Traffic congestion similarly provokes severe anxiety while driving. (MOH/SOE, 12/16/2025, 7:11-13.) Finally, the compounding cycle of mood disturbances, depression, anxiety, sleep deprivation, and medication side effects suppresses his appetite, reducing his meals to one or two per day and causing weight loss. (MOH/SOE, 12/16/2025, 8:9-12.)

In his report dated August 15, 2023, AME Dr. Brouman, after evaluating applicant in the field of orthopedic medicine, documented cumulative injury caused by strenuous patrol duties, a heavy-duty Sam Browne duty belt, and numerous severe altercations while restraining suspects. (Joint Ex. K, pp. 2-4.) Applicant described severe daily pain, complete sleep disruption, significant driving limitations, and severe emotional distress. (*Id.* at pp. 7-12.) Initial clinical examination findings demonstrated restricted cervical range of motion, including occipital flexion limited to 36° and extension limited to 23°, alongside positive Neer's Impingement Tests and the Hawkins-Kennedy Impingement Tests bilaterally. (*Id.* at pp. 17-18.)

In his supplemental report dated October 17, 2023, AME Dr. Brouman recorded clinical findings that demonstrated right hand dominance, a normal gait, perfect motor strength across all extremities, intact dermatomal sensation, and symmetrical reflexes (Joint Ex. J, pp. pages 3, 7, 11, 12). Physical inspection revealed localized muscle spasms in the thoracic trapezius and the bilateral lumbar paraspinal musculature at L4-L5, right wrist tenderness along the flexion crease, and positive bilateral shoulder impingement signs during Neer and Hawkins-Kennedy testing (*Id.* at pp. 5-8.) Objective diagnostic testing reveals multilevel cervical disc protrusions up to 3.7 mm with neural foraminal stenosis at C6-C7, multilevel lumbar disc protrusions up to 3.8 mm with focal central annular tears at L5-S1, bilateral partial rotator cuff tears exceeding 25%, bilateral cubital tunnel ulnar neuritis, and electrophysiological evidence of mild bilateral carpal tunnel syndrome. (*Id.* at pp. 12-13, 15-17.)

AME Dr. Brouman assessed 37% whole person impairment (WPI) under the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides). (*Id.* at p. 18.) This rating included 5% WPI for the cervical spine under DRE Category II (AMA Guides, Table 15-5, p. 392). (*Id.* at p. 18.) He assigned 11% WPI for the lumbar spine under the range-of-motion (ROM) method, consisting of 5% WPI for 46° of lumbar flexion and 3% WPI for 15° of extension. (AMA Guides,

Table 15-8, p. 407.) He further assigned 2% WPI for 16° of right lateral bending and 1% WPI for 18° of left lateral bending. (AMA Guides, Table 15-9, p. 409.) He further assigned 6% WPI under Table 15-7 for unoperated multilevel disc lesions with medically documented injury, pain, and rigidity, consisting of 5% WPI for the first level and 1% WPI for an additional level. (AMA Guides, Table 15-7, p. 404.) Combining the ROM and specific-spine-disorder impairments yielded 16% WPI for the lumbar spine. (*Id.* at p. 20.)

For each wrist, AME Dr. Brouman assigned 3% WPI based on median nerve motor and sensory deficits. A grade 4 motor deficit corresponded to 11% under Table 16-11. Multiplying 11% by the 10% maximum upper extremity (UE) impairment for a median nerve motor deficit below the mid-forearm yielded 1% UE impairment. (AMA Guides, Tables 16-11 and 16-15, pp. 484, 492.) A grade 4 sensory deficit/pain likewise corresponded to 11% under Table 16-10. Multiplying 11% by the 39% maximum UE impairment for a median nerve sensory deficit below the mid-forearm yielded 4% UE impairment. (AMA Guides, Tables 16-10 and 16-15, pp. 482, 492.) The resulting 1% and 4% UE impairments combined to 5% UE impairment, which converted to 3% WPI for each wrist. (*Id.* at pp. 19-20.)

Utilizing *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) (*Almaraz/Guzman II*), AME Dr. Brouman assigned 3% WPI for right acromioclavicular joint arthrosis, 3% WPI for left acromioclavicular joint arthrosis, 3% WPI for right shoulder impingement, and 3% WPI for left shoulder impingement (AMA Guides, Table 16-18, p. 499). (*Id.* at pp. 18-19.) He further assigned 3% WPI for right lateral epicondylitis and 3% WPI for left lateral epicondylitis. (*Id.* at p. 19.) Finally, he assigned a 2% WPI pain add-on for bilateral plantar fasciitis affecting the feet. (*Id.* at p 20.)

Using the CVC, the calculation results in 37% WPI. AME Dr. Brouman rejected an additive method, concluding that the distinct orthopedic injuries fail to demonstrate a synergistic effect or an extraordinary loss of function that would alter standard rating practices. (*Id.* at p. 22.)

AME Dr. Brouman stated:

#### **KITE and LA COUNT ANALYSIS**

The Kite decision affirms that the 2005 Permanent Disability Rating Schedule provides that impairments are generally combined using the reduction formula, but the AMA Guides don't mandate the use of the Combined Values Chart. A medical opinion is valid as to whether impairment resulting from multiple injuries is most

accurately reflected by adding the impairments instead of using the Combined Values Chart.

In [*Los Angeles County Metropolitan Transportation Authority v. Workers' Comp. Appeals Bd. (LaCount)* (2015) 80 Cal.Comp.Cases 470 (writ denied)], the court held that the orthopedic AME's opinion of a synergistic effect between the orthopedic injuries and injuries found to Applicant's internal and psyche was sound and thus his decision to add the impairment ratings, rather than combining them using the Combined Values Chart, was an appropriate method of determining the Applicant's overall impairment.

In this patient's case, I do not find it appropriate to add impairments due to synergistic effects and increased loss of function due to the various injuries.

(*Id.* at pp. 21-22.)

Based on these conditions, AME Dr. Brouman outlined work restrictions requiring applicant to avoid lifting over 20 pounds, avoid repetitive bending or twisting at the waist, forceful suspect contact, repetitive work at or above shoulder level, and repetitive lifting over 20 pounds with the elbows. He should also have 10-minute breaks per hour from repetitive hand activities. (*Ibid.*)

With respect to apportionment, AME Dr. Brouman apportioned 85% of the permanent disability for the cervical spine, lumbar spine, and shoulders to the September 1, 2010 to January 4, 2023 injury with 15% to the underlying degenerative process. For the bilateral carpal tunnel and bilateral lateral epicondylitis, 100% of the permanent disability relates to the September 1, 2010 to January 4, 2023 injury. Finally, for the feet, 85% of the permanent disability relates to the September 1, 2010 to January 4, 2023 injury with 15% due to weight-bearing activities outside of the workforce. (*Id.* at pp. 24-25.)

In his supplemental report dated January 12, 2024, AME Dr. Brouman reviewed documentation includes a permanent and stationary report from Gregory Heinen, M.D., dated October 26, 2020, which evaluated an industrial altercation from July 16, 2020, where a noncompliant suspect threw applicant into furniture. Dr. Heinen previously diagnosed a right shoulder SLAP lesion, right shoulder impingement, right elbow lateral epicondylitis, a left thumb strain, and bilateral knee derangement, resulting in 4% WPI. This prior injury concluded with a formal award on February 2, 2022, which granted applicant a 10% permanent disability rating based on the stipulations of the parties. (Joint Ex. H, p. 2.) AME Dr. Brouman opined:

In reviewing the medical records, it appears that the patient did have a prior settlement regarding the right shoulder, right elbow, left thumb, right knee and left knee as noted in the Stipulation with Request for Award on January 10, 2022. I do not have that

prior information, but the total disability was 10% for all those body parts. Consequently, any disability for the right elbow and right shoulder noted in that stipulation should be subtracted from the disability calculated in my October 17, 2023 report.

(*Id.* at p. 3).

In his report dated November 11, 2024, AME Dr. Richman, after evaluating applicant in the field of neurology, recorded that his subjective complaints of occasional frontal headaches rated a 4 out of 10, anxiety, and sleep disturbance. (Joint Ex. F, pp. 2, 32.) He had normal resting respiratory rate and recorded that the patient did not become lightheaded upon hyperventilation. He had normal objective findings across the cranial nerve, motor, sensory, and coordination examinations. (*Id.* at p. 3.) He had a normal gait, normal tandem walking, and a negative Romberg maneuver. (*Id.* at p. 4.) Regarding his ADLs, applicant reported experiencing urinary frequency, impaired sexual function, and visual difficulty, alongside averaging four hours of sleep per night due to anxiety. His Epworth Sleepiness Scale scored 9 out of 24. (*Id.* at pp. 3, 32.) AME Dr. Richman assigned 3% WPI for the headache complaints and 6% WPI for the sleep-related complaints (AMA Guides, Table 13-4, p. 317), totaling 9% WPI, and attributing 100% of the permanent disability to industrial factors for both conditions. (*Id.* at p. 33.)

In his report dated November 21, 2023, AME Dr. Hirsch, after evaluating applicant in the field of internal medicine, detailed clinical examination findings revealing elevated blood pressure readings of 146/84 in the right arm and 146/86 in the left arm, alongside an overweight body mass index of 31. (Joint Ex. I, pp. 5, 8.) Objective diagnostic testing detailed outlines borderline concentric left ventricular hypertrophy and diastolic dysfunction via an echocardiogram, a mild-slight scattering of atrioventricular ectopic beats via an ambulatory Holter monitor, a reduced maximum voluntary ventilation capacity of 32% on pulmonary function testing and an expenditure of 7 METs on a modified Bruce protocol without inducing cardiac arrhythmias or chest pain. (*Id.* at p. 7.) Regarding ADLs, he independently dresses himself, combs his hair, brushes his teeth, showers without assistance, while maintaining the ability to drive, shop for light groceries, and perform light housework, noting difficulty specifically with sleep fragmentation. (*Id.* at p. 5.) AME Dr. Hirsch assigned 20% WPI based on Class 2 hypertension (AMA Guides, Table 4-2, p. 66), relying on the magnitude of the blood pressure with anti-hypertensive regimen and objective end-organ damage in the form of left ventricular hypertrophy. (*Id.* at pp. 14-15.) Furthermore, he assessed 5% WPI based on Class 1 symptomatic arrhythmia, benign in nature, relying on abnormal Holter monitor results.

(AMA Guides, Table 3-11, p. 56). (*Id.* at p. 15.) From an internal medicine standpoint, applicant requires no work restrictions and possesses the capacity to perform his usual and customary occupation as a deputy sheriff. (*Id.* at p. 16.)

In his supplemental report dated December 11, 2024, AME Dr. Hirsch did not believe adding the internal WPIs was appropriate because he did not identify any synergy between applicant's benign arrhythmia and untreated chronic hypertension. (Joint Ex. D, p. 2.)

In his report dated November 29, 2024, AME Dr. Berman, after evaluating applicant in the field of otolaryngology, detailed clinical findings of bilateral hearing thresholds within normal limits, recording identical speech discrimination scores of 92% in both the right and left ears. A diagnostic tinnitus pitch match confirmed constant bilateral ringing at a frequency of 4000 hertz and an intensity of 20 dBHL, while a tympanogram verifies normal middle ear function without fluid, obstruction, or perforation. AME Dr. Berman found no ratable WPI because the decibel sum of the hearing threshold levels totals 45 dB in each ear, failing to meet the 100-decibel threshold required to establish a ratable hearing loss impairment. (Joint Ex. E, p. 5.) He maintains the capacity to drive without limitation and perform his ADLs without significant interference from his intermittent dizziness, although his auditory deficits impede his conversational comprehension in ambient public environments and necessitate an elevated television volume. (*Id.* at p. 6.)

In his report dated June 11, 2023, AME Dr. Hoffman, after evaluating applicant in the field of psychiatry, determined that he met the diagnostic criteria for chronic posttraumatic stress disorder. (Joint Ex. L, pp. 23, 29.) AME Dr. Hoffman noted that applicant developed these psychiatric symptoms due to regular exposure to traumatic events during his employment as a deputy sheriff. (*Id.* at pp. 9, 13, 30.)

In his supplemental report dated March 30, 2024, AME Dr. Hoffman recorded that applicant reported constant teeth grinding, very poor sleep due to persistent nightmares, irritability, and isolation. (Joint Ex. G, pp. 8, 69.) He described ongoing hypervigilance, marital strife, regular panic attacks upon waking, a lack of appetite, and a 25-pound weight loss. (*Id.* at pp. 48-49.) He exhibited a flat mood, agitation, and a total loss of sexual desire or libido occurring two to three times per week. To manage his physical capabilities and distress, applicant attempts yoga style stretching, gardening, and reading, while experiencing neck pain rated at 7 out of 10 and wrist pain from carpal tunnel syndrome rated at 6 out of 10. (*Id.* at pp. 49-50.) He stated that his low back pain ranges from 6 to 8 out of 10, which limits his sleep to blocks of two to three hours at a time and requires him to take

daytime catnaps. (*Id.* at p. 50.) AME Dr. Hoffman assessed a Global Assessment of Function (GAF) of 56 or 21% WPI and apportioned 90% to industrial factors (80% to the September 1, 2010 to January 4, 2023 injury and 20% to the January 13, 2023 injury) and 10% to nonindustrial causes. (*Id.* at pp. 59, 67, 69, 71-72.)

In his supplemental medical report dated January 17, 2025, AME Dr. Hoffman concluded that a synergistic effect exists between the psychiatric symptoms and the physical injuries of applicant. Based on this synergistic relationship, AME Dr. Hoffman recommended adding the permanent disability impairments together rather than utilizing the CVC. This recommendation addresses the interaction between the psychiatric diagnoses and the underlying physical trauma to reflect permanent disability. (Joint Ex. C, p. 4.)

In the supplemental medical report dated March 31, 2025, AME Dr. Hoffman explained that an overlap exists because the chronic pain of the applicant undermines his mood, motivation, concentration, and anxiety symptoms related to posttraumatic stress disorder. (Joint Ex. B, p. 3.) He stated that:

This is with regard to a specific question of why the Kite decision should apply to the applicant's current situation with regard to his orthopedic injuries PTSD, panic disorder and pain disorder. Specifically, the cover letter from Ana Nabizadeh highlights that the Vigil decision requires that there either be no overlap between specific effects on ADLs for body parts rated or there is overlap, but this has increased or amplified the impact of the overlapping ADLs.

With regard to Mr. Arredondo's specific situation, there is an overlap. The applicant has chronic pain which undermines his mood, specifically motivation, concentration and anxiety symptoms related to PTSD. However, the orthopedic injuries further amplify the impact on the ADLs. In other words, if the applicant only had PTSD or panic disorder alone, the impact on his ADLs would be less than the impact that is created by the applicant's underlying orthopedic injuries and chronic pain. It is known that individuals with chronic pain have a negative impact on their mood, which amplifies their ability to function which is present in the case of Mr. Arredondo.

(*Id.* at pp. 3-4.)

In his deposition dated July 21, 2025, AME Dr. Hoffman confirmed that he did not provide any additional impairment above the GAF score for any impact on ADLs. (Joint Ex. A, p. 6:22-25 to 7:1-23.) He could not individually identify each of the ADLs listed in the AMA Guides or measure the exact degree of psychiatric impact on each one during the deposition. (*Id.* at p. 10:16-25.) He ultimately deferred the specific evaluation of how the orthopedic conditions affects ADLs to the AME Dr. Brouman. (*Id.* at p. 11:1-6.) AME Dr. Hoffman stated that no objective medical method

exists to measure the exact overlap of symptoms, meaning the conclusion relies on a clinical gestalt and clinical exposure to patients with concurrent conditions. (*Id.* at 12:3-8.) He explained that individuals with a persistent mental illness concurrent with a medical or surgical issue experience worse outcomes and amplified functional impairment compared to those with standing alone diagnoses. (*Id.* at pp. 13:24-25 to 14:1-8; 14:16-25 to 15:1-5.) AME Dr. Hoffman affirmed that the *Vigil* applies notwithstanding overlap because the conditions increase and amplify the impact on the ADLs. (*Id.* at p. 15:25 to 16:1-9.)

On March 6, 2026, the WCJ issued the Joint F&A, awarding, in ADJ17509439, 87% permanent disability; in ADJ17190195, 8% permanent disability; and, in ADJ15346443, 10% permanent disability.

In the Joint Opinion on Decision, the WCJ rejected adding the WPIs because the medical record failed to satisfy this standard, noting that AME Dr. Brouman in his October 17, 2023 report explicitly deemed adding impairments inappropriate and AME Dr. Hirsch in his December 1, 2024 report found no synergy. (Joint Opinion on Decision, p. 4.) Furthermore, while AME Dr. Hoffman initially recommended addition, his subsequent deposition July 21, 2025 testimony undermined that conclusion when he admitted that he did not analyze how the psychiatric injury affects ADLs. He also could not identify the ADLs listed in the AMA Guides. Additionally, he stated that no objective means exist to measure whether the overlap worsens the condition. These evidentiary deficiencies rendered his opinion insufficient to rebut the CVC. (Joint Opinion on Decision, pp. 4-5.)

It is from this Joint F&A that applicant seeks reconsideration.

## **DISCUSSION**

### **I.**

Former Labor Code section 5909<sup>3</sup> 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.) Effective July 2, 2024, the Legislature amended section 5909 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.

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<sup>3</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

(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 current section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days after the district office transmits the case to the Appeals Board. Otherwise, the petition stands denied by operation of law. Section 5909(b) requires the trial judge to notify the parties and the Appeals Board upon transmission. It further provides that service of the Report and Recommendation under section 5900(b) satisfies this notice requirement.

The Electronic Adjudication Management System (EAMS) reflects transmission through the Case Events entry labeled “Sent to Recon,” with the additional notation “The case is sent to the Recon board.”

Here, according to Case Events, the district office transmitted this case to the Appeals Board on April 16, 2026, and 60 days from the date of transmission is June 12, 2026. This decision issues on June 12, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, the proof of service for the Report demonstrated service and transmission to the Appeals Board on April 16, 2026. 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 April 16, 2026.

## II.

Permanent disability refers to the lasting, irreversible effects of an injury. It includes conditions that impair earning capacity, limit the normal use of a body part, or create a competitive disadvantage in the labor market. Permanent disability payments compensate workers for both physical loss and the reduction, partial or total, of their future earning potential. (*Brodie v. Workers’ Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565].)

In *Department of Corrections and Rehabilitation v. Workers’ Comp. Appeals Bd.* (*Fitzpatrick*) (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Court concluded that

impairments “are generally combined” using the CVC, but the “scheduled rating [under the CVC] is not absolute” and other methodologies may be used to calculate permanent disability. (*Id.* at pp. 613-614.)

For example, in *Kite*, the Appeals Board concluded that impairments resulting from a cumulative injury to the bilateral hips can be added together where substantial medical evidence supports a physician’s opinion that adding impairments will result in a more accurate rating of the level of disability than the rating that results from using the CVC. (See *De La Cerda v. Martin Selko & Co.* (2017) 83 Cal.Comp.Cases 567 (writ denied) [requires following a physician’s opinion as to the most accurate rating method if they provide a reasonably articulated medical basis for doing so and does not require use of the term “synergistic”].)

In *Vigil*, the Appeals Board held that an injured employee may rebut the CVC under the PDRS and combine impairments upon establishing the impact of each impairment on ADLs. To do so, the employee must demonstrate either that the rated body parts affect separate and distinct ADLs with no overlap, or that any overlap in the affected ADLs results in an increased or amplified overall functional impact. The Appeals Board explained that medical expertise is required:

In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant’s impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the *medical evidence* demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

(*Vigil, supra*, 89 Cal.Comp.Cases at p. 692, italics added.)

The law requires the Appeals Board to base its decisions 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].) To constitute substantial evidence, a medical opinion must state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc) (*Escobedo*).) Medical reports do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical opinion cannot support the Board’s findings if it rests on surmise,

speculation, conjecture, or guesswork. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

In other words, an employee may rebut the CVC by demonstrating that the affected body parts influence separate and distinct ADLs with no overlap, or that any overlap results in a synergistic, increased, or amplified overall functional impact. This rebuttal requires substantial medical evidence detailing the precise impact on ADLs.

Here, AME Dr. Hoffman concluded that a synergistic relationship exists between applicant's psychiatric symptoms and physical injuries. Specifically, AME Dr. Hoffman reasoned that applicant's chronic pain undermines his mood, motivation, and concentration, while his orthopedic injuries amplify the impact on his ADLs beyond what the psychiatric condition alone would cause. However, AME Dr. Hoffman could not individually identify the ADLs listed in the AMA Guides during his deposition and explicitly deferred the specific evaluation of how the orthopedic conditions affect the ADLs to AME Dr. Brouman.

AME Dr. Brouman, in turn, rejected an additive method, determining that the orthopedic injuries do not demonstrate a synergistic effect. In doing so, he relied on the analytical frameworks of *Kite* and *LaCount*. Noticeably absent from his reporting is any discussion of *Vigil*. Furthermore, he evaluated potential synergy strictly among the orthopedic impairments, without addressing the cross-system interaction between the orthopedic and psychiatric conditions alleged by AME Dr. Hoffman. While the opinion of a single evaluating specialty may theoretically constitute substantial evidence to support addition under *Vigil*, AME Dr. Hoffman's deference to AME Dr. Brouman regarding impacts on ADLs renders the current evidentiary picture unclear.

“[I]n order to ensure reliance on substantial evidence, and a complete adjudication of the issues consistent with due process,” the WCJ and the Appeals Board both have a duty to develop the record where there is an absence of, or insufficient evidence to determine the issues raised for trial. (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal. App.4th 389, 393-395 [62 Cal.Comp.Cases 924] (*Tyler*); *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see Lab. Code, §§ 5701 and 5906; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 139 (Appeals Board en banc).) Indeed, the Appeals Board has a constitutional mandate to “ensure substantial justice in all cases,” and is therefore “clearly permitted” to admit evidence even after the discovery cut-off under section 5502(d)(3). (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-405 [65 Cal.Comp.Cases 264].) “[A]llowing full development of the evidentiary record to enable a

complete adjudication of the issues is consistent with due process in connection with workers' compensation claims" and militates in favor of our presuming the continued vitality of sections 5701 and 5906, absent a clear legislative intention to the contrary. (*Tyler, supra*, 56 Cal.App.4th at p. 394.) An adequately developed record affords all parties due process of law and further provides for meaningful review by the Appeals Board of a WCJ's decision. [*Evans v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]; *Hernandez v. Staff Leasing* (2011) 76 Cal.Comp.Cases 343, 346-347 (Appeals Board significant panel decision).]

Pursuant to sections 5701 and 5906, a WCJ or the Appeals Board may not leave undeveloped issues that, through the exercise of its specialized knowledge, recognizes as requiring further evidentiary development. (*Kuykendall, supra*, 79 Cal.App.4th at p. 404.)

Because the parties did not forward AME Dr. Hoffman's opinions to AME Dr. Brouman for review, the record lacks a comprehensive evaluation of whether the psychiatric condition magnifies the functional impact of the orthopedic injuries. Consequently, the evidentiary record is insufficient to support a final determination on this issue, necessitating remand for the AMEs to review each other's reporting and address the *Vigil* standard collectively.

### 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 having granted reconsideration, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. I.A.C.* (1958) 50 Cal. 2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time,

upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

Apportionment is the process utilized to segregate permanent disability or the residuals caused by an industrial injury from those attributable to other industrial injuries or to nonindustrial factors, to allocate legal responsibility fairly. (*Brodie, supra*, 40 Cal.4th at p. 1321; *Marsh v. Workers' Comp. Appeals Bd.* (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787].)

Although section 4663 generally mandates apportionment to pre-existing or non-industrial causes, subdivision (e) provides a specific exception, precluding apportionment for enumerated classes of employees with presumed compensable injuries. Applicant, employed as a deputy sheriff, falls within this protected class. Specifically, section 3213.2(a) establishes a presumption of compensability for low back impairments sustained by peace officers who have served full-time for at least five years and are required to wear a duty belt as a condition of employment. For these qualifying injuries, provision of the awarded compensation, including full medical treatment, disability indemnity, and death benefits, are immune from apportionment.

In addition, when analyzing prior injuries under section 4664, an employer's liability is strictly limited to the percentage of permanent disability directly caused by the subsequent industrial injury. While section 4664(b) establishes a conclusive presumption that a previously awarded permanent disability continues to exist, an employer seeking apportionment must satisfy a two-pronged evidentiary burden. As articulated in *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099 [71 Cal.Comp.Cases 1229] (*Kopping*), an employer must prove both the existence of a prior permanent disability award and a functional overlap between the prior and subsequent disabilities. Crucially, it cannot establish overlap by the mere identity of the injured body part. Rather, it necessitates a comparative analysis of the specific factors of disability resulting from both injuries. (*Guedea v. Foley Family Wines, Inc.* [2024 Cal. Wrk. Comp. P.D. LEXIS 164, \*20].)<sup>4</sup>

Furthermore, overlap is demonstrated when the subsequent impairment represents a straightforward progression of the initial impairment, rated using the exact same chart or table within the *AMA Guides*. Conversely, when not rating disabilities using a strict progression within the same

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<sup>4</sup> Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

chart, such as when an evaluating physician rates by analogy or utilizes disparate rating methodologies for the same body part, overlap becomes a factual inquiry. In these instances, the medical evidence must affirmatively establish that the impacts on ADLs from the current disability overlap with the impacts on ADLs measured in the prior disability, within the same body region. (*Canto Shadoan v. City of San Diego* [2025 Cal. Wrk. Comp. P.D. LEXIS 435, \*16].)

Applying these statutory and jurisprudential standards to the present record reveals significant defects in the apportionment analysis. In his supplemental report dated October 17, 2023, AME Dr. Brouman apportioned 15% of applicant's lumbar spine permanent disability to an underlying degenerative process. However, the medical record explicitly documents that he wore a heavy-duty Sam Browne duty belt while performing his strenuous patrol duties. Because he qualifies for the statutory presumption against apportionment for low back impairments under sections 3213.2 and 4663(e), AME Dr. Brouman's apportionment of the lumbar spine to nonindustrial degeneration is legally untenable.

Furthermore, in his supplemental report dated January 12, 2024, he recommended subtraction from the current disability calculation 10% permanent disability awarded in ADJ15346443 for the July 16, 2020 injury. However, he failed to provide the necessary evidentiary support to establish functional overlap under *Kopping*. Absent a critical, comparative analysis of the specific factors of disability and impacts to ADLs resulting from each respective injury, a mere mathematical reduction is impermissible.

While we remand this matter to the trial level for further development of the record pursuant to Section II, we note that the WCJ erred in adopting these apportionment findings. Permitting apportionment to the lumbar spine directly contravenes the legislative mandates of sections 3213.2 and 4663(e), just as allowing apportionment by subtraction under section 4664 violates *Kopping* by omitting the requisite factual analysis of overlapping disability.

Accordingly, we grant reconsideration, rescind the WCJ's decision in ADJ17509439 and ADJ17190195 and substitute a new decision deferring permanent disability, apportionment and attorney's fees in both cases. We otherwise make no other substantive changes to the decision.

For the foregoing reasons,

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

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 6, 2026 Joint Findings and Award is **RESCINDED** with the following **SUBSTITUTED** therefor:

**FINDINGS OF FACT (ADJ17509439 (MF))**

1. Ricky Arredondo, while employed during the period September 1, 2010 to January 14, 2023 as a Deputy Sheriff, Occupational Group 490, at County of Riverside, California, by Riverside County Sheriff's Department, sustained injury arising out of and occurring in the course of employment to his tinnitus, headache, sleep, cervical spine, left shoulder, right shoulder, left elbow, right elbow, left wrist, right wrist, lumbar spine, left foot, right foot, heart and psyche.
2. Applicant's earnings at the time of injury were \$2,309.16 per week producing a temporary disability rate of \$1,539.44 per week and a permanent disability indemnity rate of \$290.00 per week.
3. Permanent disability is deferred.
4. Apportionment is deferred.
5. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
6. Attorney fees are deferred.

**AWARD (ADJ17509439 (MF))**

**AWARD IS MADE** in favor of Ricky Arredondo against Riverside County Sheriff's Department, permissibly self-insured, as follows:

1. Further medical treatment in accordance with Findings of Fact 5 above.

**FINDINGS OF FACT (ADJ17190195)**

1. Ricky Arredondo, while employed on January 13, 2023 as a Deputy Sheriff, Occupational Group 490, at County of Riverside, California, by Riverside County Sheriff's Department, sustained injury arising out of and occurring in the course of employment to his psyche.
2. Applicant's earnings at the time of injury were \$2,199.20 per week producing a temporary disability rate of \$1,466.13 per week and a permanent disability indemnity rate of \$290.00 per week.

3. Permanent disability is deferred.
4. Apportionment is deferred.
5. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
6. Attorney fees are deferred.

**AWARD (ADJ17190195)**

**AWARD IS MADE** in favor of Ricky Arredondo against Riverside County Sheriff's Department, permissibly self-insured, as follows:

1. Further medical treatment in accordance with Findings of Fact 5 above.

**FINDINGS OF FACT (ADJ15346443)**

1. Ricky Arredondo, while employed on July 6, 2020 as a Deputy Sheriff, Occupational Group 490, at County of Riverside, California, by Riverside County Sheriff's Department, sustained injury arising out of and occurring in the course of employment to his right elbow left thumb, right shoulder and knees.
2. Applicant's earnings at the time of injury were \$1,955.20 per week producing a temporary disability rate of \$1,299.43 per week and a Permanent Disability indemnity rate of \$290.00 per week.
3. Applicant's injury caused 10% permanent disability, entitling applicant to 30.25 weeks of disability indemnity payable at the rate of \$290.00 per week in the total sum of \$8,772.50 commencing on October 6, 2021, less amounts previously paid.
4. The parties Stipulated that this case was settled by Stipulation with Request for Award and the Award issued on February 2, 2022.
5. Applicant will require further medical treatment to cure or relieve from the effects of this injury.
6. No attorney fees are found as this case settled prior to representation by applicant's attorney who stipulated to the permanent disability in the Award of February 2, 2022.

**AWARD (ADJ15346443)**

**AWARD IS MADE** in favor of Ricky Arredondo against Riverside County Sheriff's Department, permissibly self-insured, as follows:

1. Permanent disability in accordance with Findings of Fact 3 above.
2. Further medical treatment in accordance with Findings of Fact 5 above.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**/s/ PAUL F. KELLY, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JUNE 12, 2026**

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

**RICKY ARREDONDO  
NABI LAW GROUP, PC  
LAW OFFICES OF PARKER & IRWIN, APC**

**DLP/md**

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