WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ROBERT COCKING, *Applicant*

vs.

MILLER GLASS, INCORPORATED; INSURANCE COMPANY OF WEST, *Defendants*

Adjudication Number: ADJ19686963
Redding District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant filed a Petition for Reconsideration (Petition) in response to the Findings and Award with Orders (F&A) dated June 29, 2026 in which the presiding workers' compensation administrative law judge (PWCJ) found in pertinent part that applicant, while employed by defendants on May 7, 2014, sustained injury arising out of and in the course of employment (AOE/COE) to the head, neck and stroke resulting in 97% permanent disability. The PWCJ also ordered in part that the record be developed as to whether future medical care is needed.

Applicant contends he met his burden to show total permanent disability based on both the medical evidence and/or the vocational evidence.

Defendant filed an Answer. The WCJ's Report and Recommendation (Report) recommends that reconsideration be denied.

We have reviewed the allegations in the Petition, the Answer, and the contents of the Report. After review of the record and for the reasons discussed below, we will grant the Petition for Reconsideration, rescind the F&A and substitute findings, awards and orders to defer the issues of permanent disability and its related issues [1] and otherwise restate the WCJ's findings. We will return this matter to the trial level for further proceedings consistent with this decision.

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[1] We note that defendant did not challenge the permanent and stationary date, apportionment, or the applicability of Vigil and that we generally agreed with the WCJ's conclusion on these matters. However, because we are deferring the issue of permanent disability, also it was not appropriate to leave those findings intact.

I.

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

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

Under Labor Code 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 July 23, 2026, and 60 days from the date of transmission is September 21, 2026. This decision is issued by or on September 21, 2026, so that we have timely acted on the Petition as required by Labor Code section 5909(a).

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

Here, according to the proof of service for the Report, the Report was served on July 23, 2026, and the case was transmitted to the Appeals Board on July 23, 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 Labor Code section

5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 23, 2026.

II.

As found by the WCJ, applicant, while employed by defendants on May 7, 2014, sustained injury AOE/COE to the head, neck and stroke.

The Petition and Answer only raise the issue of the substantial nature of the evidence concerning whether applicant is permanently and totally disabled. No other issues are raised by the parties.

In a November 4, 2024 treatment report, Timothy Lo, M.D., M.P.H., noted that applicant "does require further rehabilitation therapy, as he clearly has occupational and physical therapy needs for his weakness in his right leg, poor gait and balance, and poor coordination in the right arm," that "his primary treating physician requested for additional occupational therapy and physical therapy, which may include vestibular therapy," and that "[h]e can follow up with me as needed." (Exhibit H, Timothy Lo, M.D., November 4, 2024, p. 4.)

Next there is a February 3, 2025 Panel Qualified Medical Examination (PQME) report from Lawrence Richman, M.D., which provides in part:

> [Applicant] sustained blunt head trauma during his course of employment on May 7, 2024 by an overhanging bar which fell. This caused him to jerk his head abruptly resulting in dissection of the right vertebral artery causing an occlusion of the posterior/inferior cerebellar artery.
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> He developed a stroke of the right cerebellum, as well as potential ischemic damage to the visual cortex, given his visual complaints, which should be further addressed by octopus telemetry. He has since experienced headaches following the stroke, para cognition, questionable visual problems, sensory loss on the right, incoordination on the right, weakness on the right and gait disturbance.

(Exhibit 2, PQME Dr. Richman, February 3, 2025, pp. 16-17.)

The last treating record digested in Dr. Richman's report is the December 10, 2024 report from treater John Alchemy, M.D., with the treatment plan providing that applicant had started physical therapy, which was going well, Gabapentin was dispensed, and that applicant would like to consider a traumatic brain injury (TBI) program. (*Id.* at pp. 15-16.)

In his report, Dr. Richman found that applicant had reached maximum medical improvement with 25% whole person impairment (WPI) for gait impairment requiring the use of

a cane, 7% WPI for incoordination of the right hand, 8% WPI for cognitive complaints, and 3% for headache complaints, all without apportionment. Visual complaints were deferred pending formal octopus telemetry testing. The doctor stated that the impact on applicant's activities of daily living were without overlap and should be added rather than combined. (*Id.* at p. 19.) Dr. Richman concluded:

> In my opinion, Mr. Cocking would not be able to return to his prior employment. In my opinion, it is questionable if he could compete in the open labor market. Based on my examination of the patient, he is permanently and totally disabled. I would be agreeable to review a vocational analysis, if provided by the parties to comment upon.
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> He should avoid abrupt movements to either side, as this causes disequilibrium, and he represents a fall risk. In addition, abrupt movements of the neck and neck can cause further dissection of the same or other vessels of the cervical region supplying blood to the brain.

(*Id.* at p. 20.)

In an April 28, 2025 supplemental report, Dr. Richman confirmed that there was no connection between carotid artery stenosis and the injury. (Exhibit F, PQME Dr. Richman, April 28, 2025, p. 3.)

In a May 27, 2025 vocational report by Evan Oemcke, M.ED., CRC, CVE, IPEC, the vocational expert (VE) concluded: "Opinions regarding employability, apportionment, earning capacity, and vocational feasibility and amenability to rehabilitation are deferred while awaiting the results of additional discovery. Specifically, additional clarification from Dr. Richman regarding Mr. Cocking's work restrictions is necessary in this case." (Exhibit 4, Vocational Report by Evan Oemcke, M.ED., CRC, CVE, IPEC, May 27, 2025, p. 22.)

In his August 25, 2025 supplemental report, Dr. Richman noted he did not have the entire VE report to review but had "been requested to provide work restrictions to assist the vocational expert in formulating his/her opinions." (Exhibit 5, PQME Dr. Richman, M.D., August 25, 2026, p. 1.)[2] The doctor concluded:

> In reality, in my opinion, [applicant] is incapable of returning to work, as abrupt motion of the head and neck, within a reasonable degree of medical probability, could cause a recurrent dehiscence / dissection of the same or opposite vertebral artery, as the patient exhibits an inherent weakness of the arterial wall, which was abruptly jerked when struck in the head causing a stroke.

[2] Exhibit 5 and Exhibit E are effectively the same exhibit and are hereafter referred to only by their numeric identifier.

> If the patient's head were in a fixed position, wearing a brace, it is conceivable that he would have been able to work on a computer keyboard with the left hand, but he has incoordination of the right hand. He has an impairment of gait. He does have cognitive complaints.
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> Realistically, upon further consideration, I do not see how the patient would be able to return to work.
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> Upon further consideration, it is my opinion that the patient is permanently / totally disabled.

(Exhibit 5, PQME Dr. Richman, M.D., August 25, 2026, p. 2.)

VE Oemcke then issued a September 5, 2025 report and under the heading "Work Preclusions, Functional Limitations, and Whole Person Impairments" states simply:

> The opinions of Dr. Richman as the neurology panel qualified medical evaluator and Dr. Alchemy as the primary treating physician were considered for this analysis of Mr. Cocking's medical labor market access, placeability, and sustainability.

(Exhibit 6, p. 27.)

When providing a transferable skills analysis the VE states:

> Among other things, I assumed an ability to lift, carry, push, and pull up to 10 lbs. on occasion; no or an occasional ability to stand, walk, climb, bend, stoop, crouch, squat, kneel, reach, handle, finger, and write phone messages; and a frequent to constant ability to sit, feel, talk, hear, write orders, and see.

(*Id.* at p. 14.)

At the end of the report the VE concludes:

> When considering the opinions of Dr. Richman and Dr. Alchemy together with the vocational factors, [applicant's] diminished future earning capacity is 100%. Additionally, [applicant] is not able to benefit from vocational rehabilitation services and lacks the capacity to be amenable to rehabilitation for jobs in the open labor market when considering the opinions of Dr. Richman and Dr. Alchemy in combination with the vocational factors.

(*Id.* at p. 55.)

PQME Dr. Richman's deposition was taken on September 30, 2025 during which he reduced the WPI for gait impairment for use of a cane from 25% to 19%. (Exhibit J, Deposition of PQME Dr. Richman, September 30, 2025, p. 20, ln 11 to p. 22, ln 12.) For employability the doctor stated:

> So I think -- is he potentially employable? Yes. I'm not sure his cognitive functioning is that way off because basically the brain's cognition -- connection is more with things we do with our hands by memory, whether it's keyboarding or coordination testing or soldering or circuit board or things like that. It's more that type of memory than I think -- his other memory complaints, I'm uncertain where that came from. Let's say it was watershed, which means all blood vessels have loss of blood flow.
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> But I guess my concern is that he is a mild fall risk, that's all. So I think if he goes back to work, he has to be in a sedentary environment and he can't jerk his head to either side abruptly. He should have some means by which -- where he just learns not to move his head abruptly. I mean not many of us could do that if a bee flies by us, for example. So I don't know whether a cervical collar or something of that nature would be something that he could use. But we just don't want him turning his head abruptly.
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> That also would apply to transportation because we have to be mindful -- we all do to drive in traffic. And, you know, looking at your blind spot, as we – most of us do, I think that's also a concern.
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> So if he's going to be working maybe Uber, maybe some type of transportation service would be applicable. I don't think he should be driving in traffic. I think driving -- not traffic hours, potentially is something he could do. But I think driving in traffic would eventually cause a problem for him. That's my cautious estimate.
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> I think a vocational expert, he could work at home, which would be not a bad situation for him. But yeah, I think a vocation analysis would be appropriate.

(*Id.* at p. 31, ln 12 to p. 33, ln 1.)

When asked on cross examination if he still believed applicant was medically not employable the doctor answered: "Well, I testified earlier that potentially some accommodations might be made." (*Id.* at p. 37, ln 18 to p. 38, ln 10.) In terms of applicant turning his head, the doctor stated: "My guess, he's somewhere between fairly restricted to not being able to, which is -- I'm not certain about that, to be quite honest." (*Id.* at p. 39, lns 6-8.)

In a November 5, 2025 supplemental report, PQME Dr. Richman notes that "[i]t is also explained that per Labor Code Section 4662(a)(4) and 4662(b) together, the parties state that the applicant is vocationally infeasible and that the applicant is permanently / totally disabled 100% without regard to apportionment." (Exhibit D, PQME Dr. Richman, M.D., November 5, 2025, p. 2.)

Finally, in his December 29, 2025 supplemental report, PQME Dr. Richman reviewed personnel records and the VE reporting before concluding:

> In my opinion the vocational analysis conclusions also fit with the patient's cognitive impairment also known as Schmahmann's Syndrome in which damage to the cerebellum impacts executive function, language function, mood, abstract reasoning, spatial orientation and personality changes. In summary the analysis provided is consistent and in my opinion based on the information provided the patient is permanently and totally disabled. All of the patient's neurological deficits are from the patient's stroke and have rendered the patient incapable of competing in the Open Labor Market.

(Exhibit 7, PQME Dr. Richman, M.D., December 29, 2025, p. 9.)

The case was tried on April 12, 2026, and the trial Minutes of Hearing (MOH) reflected that exhibits were admitted and no testimony was taken.

On June 29, 2026, the F&A issued, which found in part that "[t]he permanent disability suffered by the applicant as a result of this industrial injury is 97%" and "[t]here is insufficient evidence on which a determination can be made on the question of the need for future medical treatment." The parties were ordered to develop the record on future medical treatment.

It is from this June 29, 2026 F&A that applicant seeks reconsideration.

III.

Because the parties only raise the issue of the substantial nature of the evidence of permanent total disability, we first consider that issue.

The State Legislature has set the foundation for establishing disability as the Permanent Disability Ratings Schedule (PDRS), which is prima facie evidence of applicant's level of permanent disability. (Lab. Code, §§ 4660(c), 4660.1(d).) Further, the Legislature has incorporated the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (AMA Guides) into the PDRS for evaluating physical injury or disfigurement. Labor Code section 4660.1[3] 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.

[3] Unless otherwise stated, all further statutory references are to the Labor Code.

> (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.)

The use of the AMA Guides, however, is rebuttable. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) If the physician finds the straight AMA Guides impairment to be lacking:

> The physician should be free to acknowledge his or her reliance on standard texts or recent research data as a basis for his or her medical conclusions, and the WCJ should be permitted to hear that evidence. If the explanation fails to convince the WCJ or WCAB that departure from strict application of the applicable tables and measurements in the Guides is warranted in the current situation, the physician's opinion will properly be rejected.

(*Id*. at 829.)

Essentially, a physician may deviate from the AMA Guides when providing an opinion as to impairment but must explain and document such variance.

Here, PQME Dr. Richman provided AMA Guide impairment percentages for applicant's injury in his February 3, 2025 report. (Exhibit 2, p. 19.) In deposition, the doctor later reduced the WPI for gait impairment for use of a cane from 25% to 19%. (Exhibit J, p. 20, ln 11 to p. 22, ln 12.) Dr. Richman did not, however, provide an opinion in his reporting or deposition proposing that the AMA Guides impairment he described was lacking. Nor did Dr. Richman provide reference to any standard texts or recent research data challenging the impairment he provided.

PQME Dr. Richman did make numerous statements that applicant was not employable. (See Exhibit 2, p. 20: "[H]e is permanently and totally disabled"; Exhibit 5, p. 2: "I do not see how the patient would be able to return to work" and "the patient is permanently / totally disabled."; and Exhibit 7, p. 9: "patient is permanently and totally disabled.")

These opinions on employability, however, are not provided on a medical basis and appear to instead rely on vocational factors. (See Exhibit 2, p. 20, "I would be agreeable to review a vocational analysis"; Exhibit J, p. 31, ln 12; p. 32, lns 23-24; p. 38, lns 9-10: "is he potentially employable? Yes," "I think a vocational expert, he could work at home," and "potentially some accommodations might be made."; Exhibit 7, p. 9: The VE "analysis provided is consistent.")

Because Dr. Richman does not question the validity of the provided impairment nor provide references to any standard texts or recent research data to challenge the impairment as prima facie evidence of disability, it appears his opinion on employability improperly ventures from that of a medical expert into the realm of vocational expertise. PQME Dr. Richman's assessment of vocational permanent total disability is therefore not substantial as being offered outside his area of expertise.

Further confounding Dr. Richman's opinion on permanent total disability is his statement "*the parties state* that the applicant is vocationally infeasible and that *the applicant is permanently / totally disabled 100%*." (Exhibit D, 2, emphasis added.) Although permanent disability is clearly disputed by defendant in this matter, it is unclear to what extent PQME Dr. Richman may have been under the misapprehension that permanent total disability was agreed to by the parties. Such misapprehension may have led PQME Dr. Richman to put forth opinions without full consideration or explanation because he considered the issue of disability settled.

Thus, without further clarification PQME Dr. Richman's opinions are not substantial.

Turning to the vocational opinions we observe:

> Another way the cases have long recognized that a scheduled rating has been effectively rebutted is when the injury to the employee impairs his or her rehabilitation, and for that reason, the employee's diminished future earning capacity is greater than reflected in the employee's scheduled rating. This is the rule expressed in *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [193 Cal. Rptr. 547, 666 P.2d 989].

(*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1274, [76 Cal.Comp.Cases 624].)

It is therefore necessary to determine how the injury to an employee impairs their rehabilitation.

Typically, feasibility for rehabilitation is evaluated by considering medical work restrictions. Here, however, the record lacks clarity regarding the medical work restrictions considered by the VE.

The VE originally deferred vocational opinions pending clarification of work restrictions from PQME Dr. Richman. (Exhibit 4, p. 22.) Dr. Richman later acknowledged in a supplemental report that he was being "requested to provide work restrictions to assist the vocational expert," but he did not actually provide the requested work restrictions. (Exhibit 5, pp. 1-2.)

The lack of identifiable work restrictions from PQME Dr. Richman apparently led the VE to extrapolate from the medical record by stating:

> Among other things, *I assumed* an ability to lift, carry, push, and pull up to 10 lbs. on occasion; no or an occasional ability to stand, walk, climb, bend, stoop, crouch, squat, kneel, reach, handle, finger, and write phone messages; and a frequent to constant ability to sit, feel, talk, hear, write orders, and see.

(Exhibit 6, p. 5, emphasis added.)

Such assumption of work restrictions impermissibly placed the VE in the untenable position of substituting the VE's lay opinion for the missing required expert medical opinion. The result is not substantial evidence.

Curiously, although the VE apparently digested and relied on at least some of treating physician Dr. Alchemy's reporting in reaching his opinions, none of Dr. Alchemy's reports were entered into evidence. The VE's digest of Dr. Alchemy's June 17, 2025 report includes the restatement of prior work restrictions from Dr. Alchemy of: "Sedentary work. No cognitive complex work, no work at heights, handrails with stairs limited to 1 flight/day." (Exhibit 6, pp. 5.) These limited work restrictions from Dr. Alchemy are incongruous with the VE's work restrictions, even when considered in conjunction with PQME Dr. Richman's opinions.

More fundamentally, however, the problem with the VE's opinions is that in "assuming" work restrictions the VE usurps the role of the medical expert. It is the medical expert that must provide the substantial medical opinion as to work restrictions. Here, that evidence is lacking and without it, the VE's opinions are not substantial evidence.

After the VE issued an opinion on employability, PQME Dr. Richman made an attempt to describe work restrictions in deposition by stating "he has to be in a sedentary environment and he can't jerk his head to either side abruptly." The doctor, however, also states regarding turning the neck that "[*m*]*y guess*, he's somewhere between fairly restricted to not being able to, which is -- *I'm not certain about that, to be quite honest*." (Exhibit J, p. 31, ln 23-35; p. 39, lns 6-8, emphasis added.) At this juncture PQME Dr. Richman has yet to articulate industrial work restrictions that are not speculative guesses but instead are based on medical reasonable probability.

What is also clear, however, is that despite providing straight AMA Guides impairment, PQME Dr. Richman is of the opinion applicant is not employable. (See Exhibit 2, p. 20, "he is permanently and totally disabled"; Exhibit 5, p. 2, "the patient is permanently / totally disabled"; Exhibit 7, p. 9, "the patient incapable of competing in the Open Labor Market.")

If PQME Dr. Richman believes applicant is permanently and totally disabled on a medical basis sufficient to rebut the prima facie AMA Guides impairment, the doctor should state so and describe how such AMA Guides impairment is lacking while providing references to any standard texts or recent research data that provide a basis for what he considers to be the correct impairment.

A medical opinion must explain the facts relied on and the reasoning resulting in its conclusions in order to allow a lay trier of fact to evaluate the substantial nature of medical evidence. This is because:

> 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].

Alternatively, if PQME Dr. Richman believes applicant may be permanently and totally disabled on a vocational basis, the doctor should provide the industrial work restrictions and their medical basis so that a vocational expert may determine if the industrial work restriction(s) "impairs [applicant's] rehabilitation." (*Ogilvie*, *supra*, at p. 1274, citing *LeBoeuf*.) Any resulting expert vocational opinion will, of course, need to identify the specific work restrictions considered as well as their medical source.

Because it appears clear applicant has potentially significant industrial work preclusions and further that PQME Dr. Richman has repeatedly stated the applicant is permanently totally disabled, the record must be developed on the issue of permanent disability. This is not a case where a party has simply failed to meet the burden of proof. (Lab. Code, §§3202.5, 5705.) This is, instead, a case where *there is evidence on an issue, but it is not substantial*. Here, substantial evidence is required as decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to

"ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall*, *supra*, at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

If the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, the selection of an agreed medical evaluator (AME) by the parties should be considered. If none of the procedures outlined above is possible, the WCJ may resort to the appointment of a regular physician, as authorized by section 5701. (*McDuffie*, *supra*, at pp. 142-143.)

We express no opinion as to the determination of applicant's ultimate level of permanent disability.

We will defer the issue of permanent disability as well as the derivative apportionment issues and return this matter to the district office so that the record may be developed as described above and, if necessary, further proceedings may be held.

IV.

"The petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration." (Lab. Code § 5904.) Even an objection to the Appeals Board failure to adjudicate an issue is waived unless raised in the reconsideration petition. (See generally: *Alford v I.A.C.* (1946) 28 Cal.2d 198, 206 [11 Cal.Comp.Cases 127]; *New Amsterdam Cas. Co. v I.A.C.* (*Stacy*) (1934) 137 Cal.App. 719, 724-5 [20 IAC 229].)

Although deferral of an award of medical care was not raised as an issue by the parties on reconsideration, after independent review of the record we see no meaningful question that the record does indeed support such award. We will therefore amend the F&A to find that applicant is entitled to medical care and to award medical care.

We take this action because 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. (See Lab.

Code, §§ 5907, 5908, 5908.5; *Pacific Employers Ins. Co. v I.A.C.* (*Sowell*) (1943) 58 Cal.App.2d 262, 266-7 [8 Cal.Comp.Cases 79].) In addition section 4600 "must be liberally interpreted in favor of the employee's right to reimbursement and the employer should not, without good cause, be relieved of the duty to furnish medical care and treatment. [Citations]." (*Henson v. Workmen's Comp. Appeals Bd.* (1972) 27 Cal.App.3d 452, 457 [37 Cal.Comp.Cases 564].)

Where the doctor anticipates the possibility of further examination, the possibility of future complications, and the nature of the disability suggest the possibility of future medical needs, an award of medical care is supported. (*Truck Ins. Exch. v. I.A.C.* (*Patterson*) (1957) 147 Cal.App.2d 460, 462 [22 Cal.Comp.Cases 15].)

Here, applicant's industrial injury resulted in dissection of the right vertebral artery causing an occlusion of the posterior/inferior cerebellar artery. Applicant developed a stroke of the right cerebellum, as well as potential ischemic damage to the visual cortex, which should be further addressed by octopus telemetry. (Exhibit 2, p. 16.) In his November 4, 2024 report Dr. Lo found the applicant in need of future medical care. (Exhibit H, p. 4.) On December 10, 2024, Dr. Alchemy noted applicant was in physical therapy, receiving medication, and would like to consider a program to treat traumatic brain injury. (Exhibit 2, p. 16.)

In his Opinion on Decision, the PWCJ states "Dr. Richman was silent on the question of treatment" and that Dr. Lo's opinion on medical care was issued before applicant reached maximum medical improvement (MMI). (Opinion on Decision, p. 9.) The inference raised by the PWCJ is that the applicant may no longer require medical care after having reached MMI status.

While we acknowledge the effort and quality put into the F&A, such an inference is not appropriate in this case. Given the severe nature of applicant's injury, the recommendation for further treatment by two treating physicians, and the PQME's recommendation issued after achieving MMI that applicant should undergo "octopus telemetry," an award of medical care is reasonable and well supported. (*Id*. at p. 462.) Moreover, when applicant seeks a particular treatment modality at defendant's expense, applicant must still demonstrate by way of medical evidence that the particular treatment sought is reasonable and necessary. (See Lab. Code, §§ 4600, 4610 et seq.)

We therefore find that applicant is entitled to medical care and to award medical care.

V.

Following our independent review of the record occasioned by applicant's Petition, we are persuaded that the requirement for substantial evidence requires returning this case for further proceedings to develop the record on permanent disability and to amend the F&A including to award medical care.

Accordingly, we grant applicant's Petition for Reconsideration, rescind the June 29, 2026 F&A, substitute the following findings, orders and awards, and return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's July 17, 2026 Petition for Reconsideration is **GRANTED**.

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the June 29, 2026 Findings Award and Orders issued by the PWCJ is **RESCINDED** and **SUBSTITUTED** as follows:

FINDINGS OF FACT

1. Robert Cocking, age 58, while employed on May 7, 2024 as a glazier, Occupational Group No. 380, at Chico, California, by Miller Glass, Inc., sustained injury arising out of and in the course of employment to the head, neck and stroke.

2. At the time of injury, the employer's carrier for workers' compensation was Insurance Company of the West.

3. At the time of injury, the employee's earnings were $1,150.72 per week, warranting indemnity rates of $767.15 for temporary disability and $290.00 for permanent disability.

4. Defendant has paid temporary disability at the aforementioned rate from May 11, 2024 to February 19, 2025, and is advancing permanent disability at $290.00 per week from February 20, 2025 to date and continuing.

5. The applicant's treating physician is Dr. John Alchemy.

6. The issues of permanent disability and apportionment are deferred.

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7. Applicant is in need of further medical care.

8. The issue of attorney fees is deferred.

AWARD

AWARD IS MADE in favor of **ROBERT COCKING** and against **INSURANCE COMPANY OF WEST** as follows:

1. Applicant is awarded medical care for his industrial injury.

ORDERS

1. It is ordered that the parties develop the record on the issue of permanent disability with jurisdiction reserved to the WCJ in the event of a dispute.

IT IS FURTHER ORDERED the matter is **RETURNED** to the WCJ for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,



/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 21, 2026

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

ROBERT COCKING
LAW OFFICE OF LARRY BUCKLEY
ALBERT & MACKENZIE
EMPLOYMENT DEVELOPMENT DEPARTMENT

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