

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

**TINA LABRIEL, *Applicant***

**vs.**

**LOS ANGELES UNIFIED SCHOOL DISTRICT; permissibly self-insured, administered by  
Sedgwick Claims Management Services, Inc., *Defendants***

**Adjudication Numbers: ADJ108951 (LAO 0852733) (MF); ADJ3590497  
(LAO 0852732); ADJ2549459 (LAO 0836064)  
Los Angeles District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

We previously granted reconsideration to allow us time to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.<sup>1</sup>

Defendant seeks reconsideration of the Joint Findings, Award & Order (FA&O) issued on August 11, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant sustained industrial injuries on November 15, 2021 to her back and psyche (ADJ3590497), on April 23, 2002 to her neck, low back, left shoulder, left knee and psyche (ADJ2549459) and on February 21, 2003 to her neck, back, left shoulder and psyche (ADJ108951). The WCJ issued an award of temporary disability for (ADJ108951) from October 29, 2012 to April 6, 2016 and a joint award of 100% permanent disability with no basis for orthopedic apportionment.

Defendant contends that the WCJ erred in awarding temporary disability benefits for the period from October 29, 2012 to April 6, 2016, because Labor Code section 4656(b)<sup>2</sup> limits benefits to a maximum of 240 compensable weeks within five years of the date of injury. Defendant further contends that the WCJ failed to apportion applicant's permanent disability in accordance with *Benson v. The Permanente Medical Group* (2007) 72 Cal.Comp.Cases 1620 (Appeals Board en banc), affirmed sub nom. *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113] (*Benson*.) Finally, defendant contends that the absence of a finding of a

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<sup>1</sup> Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been appointed in her place.

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

back injury for the February 21, 2003 date of injury bars any award of temporary or permanent disability under section 5804.

We received an “Objection to Petition for Reconsideration” from applicant, which we treat as an Answer.

Defendant filed a supplemental pleading and requested permission to do so. Applicant filed a supplemental pleading. Under WCAB Rule 10848 (Cal. Code Regs., tit. 8, § 10848), we accept defendant’s supplemental pleading. As applicant did not seek permission to file a supplemental pleading, we do not accept it for filing and we do not consider it.

The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations in defendant’s Petition, applicant’s Answer and defendant’s supplemental pleading and the contents of the WCJ’s Report with respect thereto. Based on our review of the record and the reasons discussed below, as our Decision After Reconsideration, we will amend the Joint FA&O to defer the issues of permanent disability, apportionment and attorney fees. We will otherwise affirm the Joint FA&O.

### **BACKGROUND**

Applicant, while employed as a health care aide, sustained the following industrial injuries:

- (1) On February 21, 2003 (ADJ108951), she sustained industrial injury to her neck, back, left shoulder and psyche.
- (2) On April 23, 2002 (ADJ2549459), she sustained industrial injury to her neck, low back, psyche, left knee, and left shoulder.
- (3) On November 15, 2001 (ADJ3590497), she sustained industrial injury to her back and psyche.<sup>3</sup>

On February 25, 2010, a different WCJ issued three amended Findings and Award (F&A). On May 3, 2010, we issued our Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O), affirming the three F&As, except that we amended them to defer the issues of permanent disability and attorney’s fees, and returned the cases to the trial level. In our Opinion, we concluded that the reporting of Agreed Medical Evaluator (AME)

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<sup>3</sup> In our 2010 opinion, we affirmed the finding of injury to applicant’s neck, left shoulder and psyche in ADJ108951; applicant’s back and psyche in ADJ2549459; and applicant’s low back and psyche in ADJ3590497. At trial on May 12, 2022, defendant stipulated that applicant sustained injury to her back in ADJ108951, injury to her low back, neck and left shoulder in ADJ2549459, and injury to her back in ADJ3590497.

Steven Brouman, M.D., and treating physician Gunilla M. Karlsson, Ph.D., did not consider overlapping disabilities and failed to apportion permanent disability consistent with section 4663. (O&O, pp. 4-6.)

Subsequently, the parties jointly submitted into evidence the AME reports and deposition of Alexander Angerman, M.D. (Joint Exs. A-G.) Applicant submitted the treating physician reports of Dr. Karlsson (App. Ex. 2) and Khristine Eroshevich, M.D., Ph.D. (App. Ex. 3); and the vocational expert (VE) report of Laura Wilson, B.S., MBA dated November 30, 2018 (App. Ex. 9). Defendant submitted into evidence the VE report of Christopher Meyers, MRC dated January 21, 2020. (Def. Ex. H.)

In his report dated April 6, 2016, AME Dr. Angerman, after evaluating applicant, stated that, on November 15, 2001, she sustained a low back injury on November 15, 2001, when she was walking while holding the hand of an eight-year-old male student, who experienced a “drop seizure,” causing both of them to fall to the floor. (Joint Ex. G, p. 3.) While she received medical treatment, she did not miss any time from work and continued to perform her regular duties. (*Id.* at p. 4.)

On April 23, 2002, applicant sustained injuries to her neck, low back, left shoulder, and left knee when another vehicle rear-ended the bus she was riding (*Id.* at p. 4). After receiving treatment and missing a few days of work, Igor Boyarsky, M.D., restricted her from lifting more than five pounds and prohibited her from repetitive bending, stooping, twisting, or turning. (*Id.* at p. 6.)

On February 21, 2003, applicant sustained injuries to her neck, low back, and left shoulder when she lifted an 86-pound male student, exceeding her work restrictions, and the student experienced a seizure. (*Id.* at p. 6.)

On December 15, 2003, applicant underwent a right transforaminal discectomy with nerve root decompression and hemilaminectomy, placement of intervertebral spacers for fusion using locally harvested bone and a bone nucleating protein implant, posterolateral fusion, and percutaneous placement of bilateral L4–S1 screws with additional screws at L5–S1, performed by Serge Obukhoff, M.D. Although the surgery provided some relief, she eventually developed left foot drop, which required her to use a cane. (*Id.* at p. 7.) In 2008 or 2009, Dr. Boyarsky provided her with a wheelchair because she kept falling caused by the “nerve damage” in both legs. (*Ibid.*) On June 18, 2015, applicant underwent a second low back surgery requiring the removal of hardware, performed by Elliot Gross, M.D., resulting in no change in her low back condition. (*Ibid.*) In October 2015, she

underwent the implantation of a spinal cord stimulator, performed by F. Marina Russman, M.D., but it malfunctioned requiring its removal. (*Id.* at p. 8.)

AME Dr. Angerman diagnosed applicant with a cervical bulging disc at C5-C6 with an annular tear, with right upper extremity radiculopathy and a left shoulder strain and sprain. (*Id.* at pp. 50-51.)

In his supplemental report dated April 26, 2017, AME Dr. Angerman opined that applicant reached maximum medical improvement. He further found that she remained temporarily totally disabled from October 29, 2012, when her treating physician, Daniel A. Capen, M.D., recommended L3–L4 posterior lumbar interbody fusion with removal of the L4–S1 hardware, to April 6, 2016, when Dr. Angerman last evaluated her. (App. Ex. 5, Joint Ex. D, p. 12.)

With respect to permanent disability, AME Dr. Angerman found that applicant's cervical spine condition precludes very heavy lifting and prolonged cervical motion, resulting in a 30% loss of pre-injury capacity for those activities. (*Id.* at p. 13.) Regarding the left shoulder, he found that she cannot perform heavy lifting, forceful pushing or pulling, or repetitive activities of the left upper extremity at or above shoulder level, reflecting a 50% loss of pre-injury capacity. (*Id.* at p. 14.) With respect to the lumbosacral spine, he limited her to sedentary work (*Id.* at p. 16.) With respect to the left knee, he imposed no work restrictions but noted subjective complaints of intermittent minimal to slight discomfort that increases with repetitive kneeling, squatting, crouching, crawling, stair or ladder climbing, walking on uneven surfaces, and similar activities. (*Id.* at p. 16.)

Regarding apportionment, with respect to applicant's cervical spine and left shoulder, 95% of her permanent disability related to the April 23, 2002 date of injury and 5% related to the February 21, 2003 date of injury. With respect to her lumbosacral spine and left knee, 5% of her permanent disability related to preexisting factors, 5% related to the November 15, 2001 date of injury, 5% related to the April 23, 2002 industrial injury and 85% related to the February 21, 2003 date of injury. (*Id.* at pp. 17-18.)

In his deposition dated July 21, 2017, AME Dr. Angerman stated that she would probably need a wheelchair when she goes outside or, if she did not have one, she should have a walker. (Joint Ex. B, p. 6:5-15.) In addition, he amended his opinion on apportionment to reflect that, for applicant's lumbosacral spine, 5% of her permanent disability related to preexisting factors, 5% related to the April 23, 2002 industrial injury and 90% related to the February 21, 2003 date of

injury. (*Id.* at pp. 14:23-25 to 16:1-12.) With respect to her left knee, 100% of the permanent disability related to the April 23, 2002 date of injury. (*Id.*, at p. 19:1-14.)

In his report dated September 8, 2017, AME Dr. Angerman opined that, with respect to apportionment, for applicant's lumbosacral spine, 10% of her permanent disability related to pre-existing factors, 5% related to the April 23, 2002 date of injury and 85% related to the February 21, 2003 date of injury. (Joint Ex. C, at pp. 3-4.)

Finally, in his July 8, 2020 deposition, AME Dr. Angerman amended his apportionment opinion for the left shoulder, attributing 90% of the permanent disability to the April 23, 2002 date of injury and 10% to preexisting factors (Joint Ex. A, pp. 26:18-25; 19:1-25). He further testified that the permanent disabilities were separable and that he apportioned them between the April 23, 2002 and February 21, 2003 dates of injury. (*Id.* at p. 30:9-15).

In her report dated November 30, 2018, VE Ms. Wilson, after evaluating applicant, stated as follows:

Since her injury, Ms. Labriel has had difficulties conducting activities of daily living such as driving, shopping, cleaning, and cooking. Ms. Labriel noted that she can stand for 15-20 minutes while using a walker. Ms. Labriel noted being able to sit down for 10-15 minutes then she needs to lay down. Ms. Labriel reported that while laying down she must turn around and change positions. Ms. Labriel stated she uses a walker, and she can walk for 5 minutes. Ms. Labriel stated that she requires constant assistance while walking due to spasms. Ms Labriel stated that she has not driven since 2006 because she is in a wheelchair. Since her industrial injury, Ms. Labriel has had 4 surgeries. Ms. Labriel receives 140.15 hours a month of in-home support services. In addition, when Ms. Labriel's in-home support service workers are not working, her brother, granddaughter, and son assist her.

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Since her industrial injury when showering Ms. Labriel stated that she uses a shower chair and requires assistance from her in-home support service worker. Because of her physical limitations caused by her industrial injury, Ms. Labrie) has difficulty with dressing, she commented needing assistance due to having no feeling in her leg and foot. When toileting Ms. Labriel stated having difficulties, and she has her commode on the side of her bed.

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Because of the physical limitations caused by her industrial injury, Ms. Labriel expressed she cannot function 5 days out of a 5-day work week. Ms. Labriel requires the use of additional assistive devices such as a walker and a wheelchair. Because of the medications that Ms. Labriel is taking she

commented that she experiences side effects such as difficulties with memory and concentration.

(App. Ex. 9, pp. 26-27, 35.)

VE Ms. Wilson concluded that, solely due to applicant's industrial impairments and her limitations, she was unable to sustain gainful employment, could not compete in the open labor market and had no consistent and stable future earning capacity. (*Id.* at pp. 36-38.) With respect to apportionment, VE Ms. Wilson apportioned 100% of the permanent disability to the industrial injury, opining that applicant's multiple impairments caused an overlapping and "synergistic" effect on her capability of performing within the open labor market. (*Id.* at pp. 24-25.)

In his report dated January 21, 2020, VE Mr. Meyers concluded, after evaluating applicant, that her use of a wheelchair and work restrictions limiting her to sedentary duties with no repetitive use of the left shoulder at or above shoulder level did not preclude vocational rehabilitation or interfere with her ability to compete in the open labor market. (Def. Ex. H, pp. 50, 59.)

On May 12, 2022, the parties returned to trial. Notably, among the issues submitted in ADJ108951 and ADJ2549459 was temporary disability from October 29, 2012 to April 6, 2016. Defendant did not raise the issue of whether section 4656(b) time-barred temporary disability.

Applicant testified that she sustained three work-related injuries while employed by defendant. The first, on November 15, 2001, occurred when a student she was assisting collapsed while they were walking with a lunch cart. As she attempted to brace him on a hard tile floor, both fell. The second, on April 23, 2002, occurred after she returned from surgery. While escorting a student prone to seizures to the nurse's office, the student collapsed. Although she had lifting restrictions, the principal instructed her to carry the student, and she later noticed blood on her clothing. (Minutes of Hearing / Summary of Evidence (MOH/SOE, 05/12/2022, 8:10-24.) The third injury, on February 21, 2003, resulted from a bus accident. While riding on a wheelchair-accessible bus, she heard loud impacts, the bus began shaking, and the doors appeared to force inward. She believes the doors struck her, causing her to fall backward with nothing to brace her fall. Following these incidents, she experienced pain in her lumbar spine and upper back. She returned to work after the first two injuries and briefly after the third but stopped working in 2006 and has not worked since. (MOH/SOE, 05/12/2022, 9:1-13.)

She has used a wheelchair since approximately January 2008 due to balance issues, numbness, and bilateral drop foot. She cannot stand for more than a few minutes or walk without

support and no longer uses a walker because it is unsafe. She primarily uses a manual wheelchair, as her home and vehicle cannot accommodate the electric one. (MOH/SOE, 05/12/2022, 10:6-20.)

She receives 156 hours per month of in-home support services, which assist with mobility, transfers, bathing, bathroom use, breathing treatments for asthma, meals, and household tasks. She has difficulty with all activities of daily living, cannot sit for extended periods due to numbness and circulation issues, and requires help navigating stairs and moving around her home. (MOH/SOE, 05/12/2022, 11:1-10.)

She spends most of her time at home reading the Bible, crocheting, and occasionally going outside to enjoy her garden. She enjoys spending time with her young granddaughter but rarely goes out in public due to negative reactions from others. Her condition has affected her overall well-being. Although lifting restrictions prevent her from returning to work, she believes she is still capable of teaching and wishes to return. She also believes a former supervisor discouraged her from working in 2006 due to competition for a position. (MOH/SOE, 05/12/2022, 11:15-24.)

She did not become fully wheelchair-bound until after the 2012 incident. She stated that her bilateral drop foot developed later and that she previously used a brace to assist with balance and mobility. She explained that additional damage to her right leg has since worsened her condition. (MOH/SOE, 05/12/2022, 13:22-25 to 14:1.)

On June 14, 2022, the WCJ issued the Joint F&A, awarding, in ADJ108951, temporary disability during the period October 29, 2012 to April 6, 2016, and a joint award of 100% permanent disability, without apportionment, and the need for further medical treatment. In the decision, the WCJ stated that, “there is a basis for apportionment to the psychological injuries . . . 60% to non-industrial factors, 32% to the injury on April 23, 2002, 4% to the injury on February 21, 2003 and 4% to the injury on November 15, 2001 . . . [but] no basis for apportionment to non-industrial factors for orthopedic injuries.” (FA&O, p. 3.)

It is from this Joint FA&O that defendant seeks reconsideration.

## **DISCUSSION**

### **I. TEMPORARY DISABILITY**

Temporary disability indemnity is a workers’ compensation benefit paid when an industrial injury prevents an employee from working and serves to replace lost wages. (*Gonzales v. Workers’ Comp. Appeals Board* (1998) 68 Cal.App.4th 843, 847 [63 Cal.Comp.Cases 1477]; *J. T. Thorp, Inc. v. Workers’ Comp. Appeals Bd. (Butler)* (1984) 153 Cal.App.3d 327, 333

[49 Cal.Comp.Cases 224].) Its purpose is to provide a steady income during the period the employee is unable to work. (*Gonzales, supra*, 68 Cal.App.4th at p. 847.) Section 4656(b) provides that, “[a]ggregate disability payments for a single injury occurring on or after January 1, 1979, and prior to April 19, 2004, causing temporary partial disability shall not extend for more than 240 compensable weeks within a period of five years from the date of the injury.” (Lab. Code, § 4656(b).)

Here, the parties raised the issue of temporary disability in ADJ108951 and in ADJ2549459 at the January 26, 2010 trial. In the WCJ’s March 1, 2010 decision in ADJ2549459, applicant was awarded temporary disability benefits from December 15, 2003 to February 21, 2007. However, the March 1, 2010 decision in ADJ108951 is silent as to temporary disability benefits, and there is no finding as to whether applicant was permanent and stationary. Since no final finding, award, or order issued as to temporary disability benefits in ADJ108951, applicant is not precluded from claiming temporary disability benefits in that case. As pointed out by the WCJ in her Report, section 4656(b) applies to temporary *partial* disability. To the extent that defendant attempts to rely on authority that discusses a petition to reopen and the WCAB’s authority to award temporary disability benefits after filing a petition to reopen, it is inapposite, as there is no finding, award or order and no petition to reopen at issue here. Moreover, defendant’s argument that applicant was already awarded temporary disability benefits is disingenuous given that the main thrust of its argument is that disability in the three cases may not be combined.

Accordingly, we do not disturb the finding as to additional temporary disability benefits from October 29, 2012 to April 6, 2016.

## II. PERMANENT DISABILITY

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].)

We first address defendant’s contention that applicant is not entitled to permanent disability in ADJ108951 for injury to her back. At trial on January 26, 2010, defendant stipulated that applicant sustained injury to her low back. Yet, the amended F&A for ADJ108951 of March 1, 2010 was silent as to whether applicant sustained an industrial back injury on February 21, 2003. Under section 5702,

a stipulation is not enforceable until it is approved by a WCJ or the Appeals Board. Thus, at the time of trial on May 12, 2022, there was no final order, decision or award with respect to whether applicant sustained injury to her back on February 21, 2003.<sup>4</sup>

At trial on May 12, 2022, defendant again stipulated that applicant sustained injury to her back. Because the medical evidence establishes a compensable back injury and the parties stipulated that applicant sustained an industrial back injury on that date of injury, we will not disturb the WCJ's finding of injury with respect to injury to applicant's back on February 23, 2003.

Nonetheless, for the reasons set forth in paragraph III, we defer any findings of permanent disability.

### III. APPORTIONMENT

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].)

The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 927-928 [71 Cal.Comp.Cases 1687].) Instead, apportionment of permanent disability is "based on causation" and 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, §§ 4663(a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc) (*Escobedo*)). Apportionment now includes pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Pursuant to *Escobedo*, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. (*Id.* at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion (*Ibid.*) and

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<sup>4</sup> Defendant's attempt to argue that section 5815 precludes the WCJ's finding is not well taken, given that it failed to raise that issue at any time, including at the time of trial on May 12, 2022. Instead, at trial, it stipulated to the injury to applicant's back of February 21, 2003.

consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson, supra*, 72 Cal.Comp.Cases at p. 1622.)

The burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, \*9]; *Moraido v. County of San Diego* [2024 Cal. Wrk. Comp. P.D. LEXIS 375, \*13, fn. 3]; *Arias v. William Roofing Co.* [2024 Cal. Wrk. Comp. P.D. LEXIS 29, \*5]; *Matias v. Naturipe Berry Growers* [2024 Cal. Wrk. Comp. P.D. LEXIS 52, \*4]; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, \*15].)

In *Benson*, we explained that limited situations may justify a joint and several award of permanent disability across multiple dates of injury. (*Benson, supra*, 72 Cal.Comp.Cases at p. 1634.) Where the reporting physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the overall permanent disability, the employee is entitled to a combined award. (*Id.* at pp. 1622-1623; see, e.g., *Alea North American Insurance Co. v. Workers' Comp. Appeals Bd. (Herrera)* (2018) 84 Cal.Comp.Cases 17 (writ denied); *Flowserve Corp. v. Workers' Comp. Appeals Bd. (Espinoza)* (2016) 81 Cal.Comp.Cases 812 (writ denied); *Northrop Grumman Systems v. Workers' Comp. Appeals Bd. (Dileva)* (2015) 80 Cal.Comp.Cases 749 (writ denied); *Christiansen v. Facey Med. Foundation* [2024 Cal. Wrk. Comp. P.D. LEXIS 2, \*12].) While *Benson* dealt with apportionment between successive industrial injuries, it remains defendant's burden to prove apportionment, whether it be to non-industrial causes or to other industrial injuries. (*James v. Pacific Bell Tel. Co.* [2010 Cal. Wrk. Comp. P.D. LEXIS 188, \*11-12].)

With respect to vocational expert evidence, pursuant to *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (Appeals Board en banc) (*Nunes I*), the Appeals Board held as follows:

1. Section 4663 requires a reporting physician to make an apportionment determination and prescribes the standard for apportionment. The Labor Code makes no statutory provision for "vocational apportionment."
2. Vocational evidence may address issues relevant to the determination of permanent disability.

3. Vocational evidence must address apportionment, and may not substitute impermissible “vocational apportionment” in place of otherwise valid medical apportionment.

(*Id.* at pp. 743-744.)

In addition, “[v]ocational evidence may also be used to parse permanent disability caused by multiple body parts or systems” to determine if applicant’s permanent total disability was related to a single body part. (*Id.* at pp. 751-752.)

Our en banc decision in *Nunes I* issued on June 22, 2023, after our Opinion and Order Granting Petition for Reconsideration dated October 13, 2022, and is mandatory authority on all WCJs and WCAB panels. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6; see also Govt. Code, § 11425.60(b).)

Accordingly, to constitute substantial evidence, the opinions of both the evaluating physician and the vocational expert must set forth the history and evidentiary basis for their conclusions, including an explanation of “how and why” a condition or factor results in permanent disability. (*Nunes I, supra*, 88 Cal.Comp.Cases 894, 896.)

Here, AME Dr. Angerman concluded that the permanent disabilities were separable and apportioned them between two dates of injury and preexisting factors. For the cervical spine, he apportioned 95% to the April 23, 2002 injury and 5% to the February 21, 2003 injury. For the lumbosacral spine, he apportioned 5% to the April 23, 2002 injury, 85% to the February 21, 2003 injury, and 10% to preexisting factors. He apportioned to the left shoulder 90% to the April 23, 2002 injury and 10% to preexisting factors, and apportioned the left knee entirely to the April 23, 2002 injury.

However, VE Ms. Wilson introduced the concept of “vocational apportionment,” opining that applicant’s impairments produced overlapping and “synergistic” effects on her ability to compete in the open labor market, thereby warranting a combined award of 100% permanent disability. Under our controlling precedent in *Nunes I*, this opinion does not constitute substantial evidence. Accordingly, VE Ms. Wilson must issue a supplemental report reassessing her opinion and determining medical apportionment consistent with that decision.

Accordingly, as our Decision After Reconsideration, we amend the Joint FA&O to defer the issues of permanent disability, apportionment, and attorney fees. We otherwise affirm the Joint FA&O.

For the foregoing reasons,

**IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings, Award & Order dated August 11, 2022 is **AFFIRMED** except that it is **AMENDED** as follows:

**JOINT FINDINGS OF FACT**

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6. The issue of permanent disability in ADJ108951, ADJ2549459, and ADJ3590497 is deferred.
7. The issue of apportionment in ADJ108951, ADJ2549459, and ADJ3590497 is deferred.

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10. The issue of attorney's fees in ADJ108951, ADJ2549459, and ADJ3590497 is deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**MARCH 6, 2026**

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

**TINA LABRIEL  
LAW OFFICE OF ALEXANDER BLACKFORD  
TOBIN LUCKS, LLP**

**DLP/md**

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