WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WANETTA CRENSHAW, *Applicant*

vs.

STATE OF CALIFORNIA, DEPARTMENT OF CORRECTIONS & REHABILITATION, NORTH KERN STATE PRISON, legally uninsured; administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ9685172 (MF), ADJ9685205
Bakersfield District Office

OPINION AND ORDER GRANTING PETITIONS FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant and applicant each filed a Petition for Reconsideration (Petition) in response to the Findings of Fact and Award (F&A) dated May 28, 2026, in which the presiding workers' compensation administrative law judge (PWCJ) found in pertinent part that applicant, while employed on September 28, 2009 (ADJ9685172) as a case records technician, claims she sustained injury arising out of and in the course of employment (AOE/COE) to multiple body parts that did not result in permanent disability. In addition, the PWCJ found that applicant while employed during the period from September 28, 2009 to August 31, 2011 (ADJ9685205) as a case records technician sustained an injury AOE/COE to her right shoulder and left wrist and claimed to have sustained injury to multiple other body parts, and that applicant sustained 19% permanent disability.

Defendant contends the PWCJ used the 2014 permanent disability rates but that the 2011 rates apply, that the permanent disability start date used by the PWCJ is incorrect, and that the awarded attorney's fees should be reduced based on the proper permanent disability rate.

Applicant contends the agreed medical examiner (AME) was biased, the AME's opinions are inconsistent with the findings of a previous evaluator, that the 2011 permanent disability rate applies, and that future medical care should be awarded.

Neither party filed an Answer.

In the Report and Recommendation (Report) the PWCJ recommends that both Petitions for Reconsideration should granted to correct the permanent disability compensation rate and the attorney's fees, and to award future medical care, and that otherwise the Petitions should be denied.

We have reviewed the allegations in both Petitions and the contents of the Report. After review of the record and for the reasons discussed below, we will grant applicant's Petition for Reconsideration, grant defendant's Petition for Reconsideration, amend the F&A to correct the permanent disability rate, correct the attorney's fees, find the permanent disability awarded all due and payable, all in the cumulative injury case ADJ9685205, also find that applicant is entitled to further medical treatment in ADJ9685205, defer the injury arising out of and in the course of employment in the specific injury case ADJ9685172, otherwise affirm the F&A, and return the cases to the trial level for further proceedings consistent with this decision.

I.

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

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

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
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> (b)
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> (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 section 5909(a) (in effect from July 2, 2024 through June 30, 2026), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management

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

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 August 19, 2026 and 60 days from the date of transmission is Sunday, October 18, 2026. The next business day that is 60 days from the date of transmission is Monday, October 19, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, October 19, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on August 19, 2026, and the case was transmitted to the Appeals Board on August 19, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on August 19, 2026.

II.

As found by the WCJ, applicant, while employed on September 28, 2009 (ADJ9685172) as a case records technician, claimed injury to multiple body parts arising out of and in the course of employment; and while employed during the period from September 28, 2009 to August 31,

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

2011 (ADJ9685205) as a case records technician sustained an injury arising out of and in the course of employment to her right shoulder and left wrist resulting in 19% permanent disability and claimed injury to multiple other body parts.

At trial on January 23, 2026, the issues in applicant's specific claim of injury on September 28, 2009 (ADJ9685172) were listed as permanent disability, apportionment, and attorney fees, while in her cumulative injury claim through August 31, 2022 (ADJ9685205) the issues were permanent disability, apportionment, attorney fees, and defendant's claim for "credit against future settlement." (Minutes of Hearing and Order of Consolidation (MOH), January 23, 2026. p. 3, lns 7-12; p. 4, lns 17-26.) Both cases were ordered consolidated with ADJ9685172 ordered to be the master file (MF). (*Id*. p. 2, lns 1-10.)

On May 28, 2026, the PWCJ issued the F&A, finding in part that applicant did not sustain permanent impairment from the claimed specific injury of September 28, 2009 (ADJ9685172) and that she did sustain 19% permanent partial disability as a result of the cumulative injury through August 31, 2011 (ADJ9685205). In the cumulative injury, the PWCJ awarded permanent partial disability indemnity, payable at the rate of $290.00 per week, beginning October 16, 2018, less approved attorneys' fees, and credit to defendant for advances of permanent disability indemnity.

It is from this May 28, 2026 F&A that both defendant and applicant seek reconsideration.

The summary of the cases and relevant analysis is well set out in the PWCJ's Report as follows:

> II. Facts: The two cases involved in the pending petitions are the second and third California workers compensation cases between these parties. Applicant, then known as Wanetta Cheatham, sustained a specific industrial injury to her neck, mid back and right upper extremity on August 18, 1999 while employed by Defendant State of California: California Department of Corrections and Rehabilitation albeit at Defendant's Wasco State Prison facility. This prior case was heard as case BAK 134504, now designated case ADJ 939184. Primary proceedings were resolved via a Stipulated Award approved on August 20, 2001 at 41% permanent partial disability with future medical care. Applicant thereafter reported systems [*sic*] in her left upper extremity and brought a timely Petition to Reopen on February 28, 2003. [Fn. 3: It does not appear from the available records that the Petition to Reopen of February 28, 2003 has every [*sic*] been formally resolved. Arguably, case BAK 134504/ADJ929184 is still pending.]
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> William J. Previte, M.D. served as an orthopedic Qualifed Medical Examiner in the prior case and continued into the present cases. The admitted evidence in these cases begins with Dr. Previte's re-evaluation report of April 10, 2010. Dr. Previte reported a history including the original August 18, 1999 injury, the Petition to

Reopen that case, and a prior evaluation by him in that case on March 4, 2005 (not in evidence in the present cases). Applicant disclosed a motor vehicle accident in 1997 for which she obtained emergency room care and follow-up treatment from which she denied any residuals. *Applicant's Exhibit 01: PQME Report of William Previte, M.D. 4/10/2010 pp. 1-2*.

Dr. Previte's August [*sic*] 10, 2010 re-examination post-dates the September 28, 2009 specific injury in the current cases, but does not include that injury claim in its interim history. Dr. Previte reported that Applicant was provided with alternative work (resulting in her transfer to North Kern State Prison), was doing primarily secretarial work for Defendant as well as a side job for Rutger's Mortuary arranging funerals. She was not in active treatment and was limiting her use of prescription medications to avoid side effect. Dr. Previte opined that she remained permanent and stationary from the August 18, 1999 injury. *Applicant's Exhibit 01: PQME Report of William Previte, M.D. 4/10/2010 p. 6*. On the other hand, Dr. Previte identified a potential cumulative trauma from the alternative secretarial work for Defendant and mortuary side job. He recommended diagnostic testing to explore that possibility. *Applicant's Exhibit 01: PQME Report of William Previte, M.D. 4/10/2010 pp. 6-7*.

Dr. Previte continued to serve as an orthopedic QME. He provided a supplemental report on May 30, 2010. He reported his receipt and review of electro-diagnostic studies and an MR arthrogram. A C7-8 active moderate-to-severe right sided polyradiculopathy with mild left carpal tunnel syndrome with degeneration and a labial tear on the right AC joint were identified. Dr. Previte opined that these diagnostic results confirmed a cumulative trauma injury with Defendants and Rutgers Mortuary with a need for treatment likely to include surgery. *Applicant's Exhibit 02: PQME report of William Previte, M.D. 5/30/2010 p. 3*.

Medical treatment including surgical procedures of the right shoulder and left wrist were provided. Applicant was returned to Dr. Previte for re-examination. He provided a report dated August 3, 2013. He noted that Ms. Crenshaw was formerly examined by him as Ms. Cheatum. Dr. Previte opined that Applicant was temporarily partially disabled and had sustained additional disability from cumulative trauma at her alternative work for Defendant and concurrent work. *Applicant's Exhibit 03: PQME report of William Previte, M.D. 8/03/2013 p. 22*.

Dr. Previte thereafter provided additional reports which were not regarded as models of clarity. Defendants estimated Dr. Previte's reporting as consistent with as much 56% permanent partial disability and made advances accordingly. *Petition for Reconsideration (Applicant) 6/12/2026 p. 4 lines 10-12*.

However, the parties were unwilling to settle these cases based on Dr. Previte's reporting. The parties jointly sought the expert opinion of Mitchel Silverman, M.D. as an Agreed Medical Evaluator. Dr. Silverman reported no impairment from the new specific injury and impairment from the cumulative injury consistent with 19%

permanent partial disability after applicable adjustment and apportionment. [Fn. 4: This 19% rating is not disputed in either of the pending petitions, although Applicant alleges that Dr. Silverman's analysis suggests bias against her.] *Applicant's Exhibit 13/Defendant's Exhibit D: AME Report of Mitchel Silverman 7/24/2024 pp. 36-38; Findings of Fact and Award 5/28/2026 p. 4 (Finding of Fact #6), p. 6 (Opinion on Decision)*.

Even after obtaining the guidance of an agreed evaluator, the parties were unable to settle these cases. After Trial and submission for decision, Findings of Fact and Award issued on May 28, 2026. It was found that Applicant had not been shown to have sustained any permanent impairment from the specific injury of September 28, 2009, but to have sustained 19% permanent partial disability from the cumulative injury. Applicant was awarded permanent partial disability indemnity in the amount of $20,445.00, payable at the rate of $290.00 per week less approved attorneys' fees in the amount of $3,066.75. The undersigned PWCJ relied on the expert opinion of Dr. Silverman as the AME. *Findings of Fact & Award 5/28/2026 p. 4 (Findings of Fact #5 & #6), p. 4 (Award), p. 5 (Opinion on Decision)*.

Whereupon both parties seek reconsideration.

III. Discussion: The first problem presented by the pending petitions for [*sic*] is the proper indemnity for 19% permanent partial disability arising from a 2011 cumulative injury. $20,445.00 was awarded, which is consistent with injury on or after 2014. It is recommended that both petitions be granted in part to that extent and the corrected figure of $16,215.00 be included in an Amended Award. [Fn. 5: Indemnity for a 2011 injury is potentially subject to adjustment for the presence or absence of a Return to Work Offer, sometimes called the 15% bump up/down. Neither party present applicable evidence at Trial and neither discusses the issue in their pending petitions. The "un-bumped" neutral figure is recommended.]

The second problem is the starting date for permanent disability indemnity. Defendant alleges that there was a stipulated starting date which was overlooked by the undersigned PWCJ. Actually, the parties stipulated as to when PDAs were made, not when payments should have begun. But, be that as it may, time has spared us this problem. Regardless of which starting date is used, the award is already fully due and payable.

The third problem is adjusting the approved attorneys' fees to reflect the lower award of permanent partial disability indemnity. The requested adjustment is proper and is reflected in the proposed amended Award.

The fourth problem is further medical treatment. The parties did not put medical treatment as issue at Trial. However, the AME did recommend further care. The proposed Amended Award includes a general award of further medical treatment.

> The fifth problem is Applicant's request for appointment of an Independent Medical Evaluator. In all seriousness, this is a request for a re-start of medical-legal discovery in progress since April 2010 on basis that Applicant perceived the potential for some bias in Dr. Silverman's medical-legal analysis and that AME Dr. Silverman found less permanent disability than QME Dr. Previte. Defendant is correct that neither concern trumps the public policy interest in following the expert opinion of Agreed Evaluators.
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> IV. Recommendation: Granting both petitions in part to correct the permanent disability compensation rate with adjustment to the approved attorneys' fees is recommended. The pending petitions should be otherwise denied.

(Report, pp. 5-10, emphasis in the original.)

III.

We follow the outline of the issues in the PWCJ's Report in addressing the contentions raised in both Petitions.

1.

In their Petitions, each party acknowledges the permanent partial disability should be paid at the 2011 rates, not the rates for injuries on or after 2014 as found by the PWCJ. When recommending that reconsideration be granted to correct the permanent disability rate, the PWCJ in footnote five of the Report recommended that the section 4658(d)(2) fifteen percent increase not be applied because neither party presented evidence on its applicability at trial nor raised it in their Petitions.

For injuries occurring on or after January 1, 2005, and before January 1, 2013, permanent partial disability is calculated in accordance with the table set forth in section 4658(d)(1). Subsection (d)(2), however, modifies the calculation as follows:

> If, within 60 days of a disability becoming permanent and stationary, an employer does not offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director, for a period of at least 12 months, each disability payment remaining to be paid to the injured employee from the date of the end of the 60-day period shall be paid in accordance with paragraph (1) and increased by 15 percent. This paragraph shall not apply to an employer that employs fewer than 50 employees.

(Section 4658(d)(2).) In turn, and not relevant here, section 4658(d)(3)(A) provides for a fifteen percent reduction when a timely offer is made by the employer while subsection (d)(3)(B) covers the contingency of the offered work ending early.

In considering the fifteen percent increase for cases with the relevant dates of injury, "when the parties check the boxes labeled 'permanent disability' and 'apportionment' in the pretrial conference statement, the WCJ is to calculate permanent disability payment under the applicable formula and the evidence presented, which necessarily includes consideration of subdivision (d)(2) and (3) for those claims where subdivision (d) provides the applicable formula." (*Bontempo v. Workers' Comp. Appeals Bd.* (2009), 173 Cal.App.4th 689, 706 [74 Cal.Comp.Cases 419]).

Here, in the cumulative injury (ADJ9685205), the parties marked the appropriate boxes. At trial, issues in the cumulative injury included "permanent disability" and "apportionment." Therefore, we must look at the evidence presented in applying section 4658(d). (*Id*. at p. 706.)

We begin by determining if the employer in this case, North Kern State Prison, had more than fifty employees at the time of injury. In doing so we note the Appeals Board is not bound by statutory or common law rules of evidence. (*Abron v. Workers' Comp. Appeals Bd.* (1973) 34 Cal.App.3d 232, 236 [38 Cal.Comp.Cases 591].)

Here, we take judicial notice that at the time of injury the Department of Corrections and Rehabilitation, North Kern State Prison, as a matter of common knowledge had more than fifty employees. In addition, we take judicial notice that according to the records of the California State Controller's Office, in 2026, North Kern State Prison has 1,225 employees.[3] (Cal. Evidence Code § 451(f); 452(g)-(h).) The number of employees at North Kern State Prison is, and was, well above the number of employees needed to trigger section 4658(d).

While we acknowledge there may be earlier permanent and stationary dates in the medical record, for purposes of our analysis the latest date that applicant reached maximum medical improvement, which is synonymous with permanent and stationary for section 4658(d)(2) purposes, was on October 16, 2018. (Exhibit 13, p. 36.) Therefore, at most, defendant had sixty days from October 16, 2018 in which to offer the injured employee regular work, modified work, or alternative work, in the form and manner prescribed by the administrative director. In reviewing the record, we note it is devoid of such form. We therefore draw the rational inference that the form was not provided to applicant, and, as such, applicant is entitled to the fifteen percent increase of permanent partial disability provided for in section 4658(d)(2).

[3] California State Controller's Office, Demographics – Active Employees by department: https://www.sco.ca.gov/Files-PPSD/active_state_employees_by_department.pdf, at PDF p. 5, for North Kern State Prison.

For injuries between 2006 and 2012, permanent partial disability of 19% results in 70.50 weeks of compensation which, with the fifteen percent increase applied pursuant to section 4658(d)(2), results in a value of $18,351.54 for permanent partial disability. In keeping with the parties' Petitions and the PWCJ's Report we will amend the F&A to reflect permanent partial disability accordingly.

2.

In the Report, the PWCJ properly notes in the cumulative injury claim though August 31, 2011 (ADJ9685205) that:

> Defendant alleges that there was a stipulated starting date which was overlooked by the undersigned PWCJ. Actually, the parties stipulated as to when PDAs were made, not when payments should have begun. But, be that as it may, time has spared us this problem. Regardless of which starting date is used, the award is already fully due and payable.

(Report, p. 9.)

We agree the award is fully due and payable. We have previously held:

> When a defendant stops paying temporary disability indemnity pursuant to section 4656(c) before an injured worker is determined to be permanent and stationary, the defendant shall commence paying permanent disability indemnity based on a reasonable estimate of the injured worker's ultimate level of permanent disability.

(*Brower v. David Jones Constr.* (2014) 79 Cal.Comp.Cases 550, 552 (Appeals Board en banc), emphasis added.)

Here, the parties stipulated at trial that in the cumulative injury case (ADJ9685205), defendant stopped paying temporary disability on January 2, 2013, and again on October 13, 2013. (MOH, p. 3, lns 4-45.) As is essentially noted by the PWCJ, whether January 2, 2013 or October 13, 2013 is used as a starting date is of little matter as either way the permanent partial disability is now all due and payable. We amend the F&A accordingly.

3.

In the F&A, the PWCJ awarded applicant's attorney a fee in the cumulative injury claim though August 31, 2011 (ADJ9685205), which represented 15% of the original permanent partial disability total. We affirm the PWCJ's finding of 15% of the permanent partial disability as the reasonable attorney fee and amend the F&A to reflect a fee of 15% of the corrected $18,351.54 permanent partial disability, which yields an attorney fee of $2,752.73.

4.

In applicant's Petition, applicant seeks an award of future medical treatment and in the Report, the PWCJ proposes that an amended award should include a general award of future medical treatment.

In his last report, AME Dr. Silverman notes under the heading Future Medical Treatment that he "would greatly urge no further treatment to this claimant in terms of any of her orthopedic maladies, in particular the right shoulder and left wrist." (Exhibit 13, p. 37.) The doctor also states, however, applicant "appears to be needing further treatment including injections in the neck or left shoulder area." (*Id*. at p. 35.) It would appear on this record that applicant is entitled to an award of medical care for her cumulative injury (ADJ9685205).

Section 4600 defines medical treatment broadly, as "[m]edical, surgical, chiropractic, acupuncture, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches, and apparatuses, including orthotic and prosthetic devices and services, that is reasonably required to cure or relieve the injured worker from the effects of his or her injury[.]" (Lab. Code, § 4600(a).) Section 4610 requires employers to establish an utilization review (UR) process by which it can, "[R]eview and approve, modify, delay, or deny, based in whole or in part on medical necessity to cure and relieve, treatment recommendations by physicians, as defined in Section 3209.3, prior to, retrospectively, or concurrent with the provision of medical treatment services pursuant to section 4600." (Lab. Code, § 4610(a).) Irrespective of the presence of nonindustrial conditions, section 4600 requires that a defendant provide medical treatment "reasonably required to cure or relieve the injured worker from the effects of his or her injury." (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399, 406 [33 Cal.Comp.Cases 647, 652] ["So long as the treatment is reasonably required to cure or relieve from the effects of the industrial injury, the employer is required to provide the treatment"].)

In *Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393 (Appeals Board en banc), the Appeals Board opined as follows regarding causation of a compensable consequence injury: "Causation of an injury may be either direct or as a compensable consequence of a prior injury. . . [A] subsequent injury is a compensable consequence of the first injury where it "is not a new and independent injury but rather the direct and natural consequence of the" first injury. (*Carter v. County of Los Angeles* (1986) 51 Cal.Comp.Cases 255, 258 (Appeals Board en banc).) The "first injury need not be the exclusive cause of the second but only a contributing factor to it…So long

as the original injury operates even in part as a contributing factor it establishes liability." (*State Compensation Ins. Fund v. I.A.C.* (*Wallin*) (1959) 176 Cal.App.2d 10, 17 [24 Cal.Comp.Cases 302].) In other words, if the first injury is a contributing cause of the second injury, the second injury is a compensable consequence of the first injury. Whereas the first injury is directly caused by the employment, a compensable consequence injury is indirectly caused by the employment via the first injury." (*Id.* at pp. 403-404, footnotes omitted.) This means that if medical evidence supports that applicant sustained a compensable consequence injury, an applicant will be entitled to medical treatment for that body part.

Moreover, it is well settled that an employer will be liable even for the cost of treatment for a non-industrial condition, if that treatment is reasonably required to cure or relieve the effects of the industrial injury. (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 165-166 [48 Cal.Comp.Cases 566, 570].) It is for this reason that "treatment for nonindustrial conditions may be required of the employer where it becomes essential in curing or relieving from the effects of the industrial injury itself." (*Granado*, *supra*, 69 Cal.2d at p. 406.)

Therefore, an applicant is entitled to reasonable and necessary medical treatment, and a defendant has the ability to seek review of a request for treatment by way of UR. Since it is not possible to know now what treatment an applicant may need in the future, it is not necessary for the WCJ at the time of the decision to attempt to predict what an applicant's future need for medical treatment will be.

Thus, here, we will find that applicant is entitled to future medical treatment.

5.

The PWCJ next addressed and denied applicant's assertion that AME Dr. Silverman is biased. Although not explicitly stated, it appears applicant is asserting that AME Dr. Silverman should be found biased with the result that the opinions of previous evaluator PQME Dr. Previte be followed or that a regular physician should be appointed.

In denying these assertions, the PWCJ properly relied upon the opinions of the AME, who the parties presumably chose because of the AME's expertise and neutrality. Therefore, the AME's opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive. The PWCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 786 [51 Cal.Comp.Cases 114].)

As to PQME Dr. Previte, at this point his opinions are clearly stale as he last reported over eight years ago. (Exhibit 9.) Also, as noted by the PWCJ the latest reports of PQME Dr. Previte were not "models of clarity." (Report, p.7.) Here, we are unable to rely on PQME Dr. Previte as substantial evidence.

Finally, we note that while applicant alleges bias on the part of the AME Dr. Silverman, applicant has not made a prima facie offer of proof to meet the evidentiary requirements of good cause to replace an AME. For example, there is no evidence of AME Dr. Silverman engaging in the type of conduct sufficient to discontinue an evaluation for good cause, which may include:

> (A) discriminatory conduct by the evaluator towards the worker based on race, sex, national origin, religion, or sexual preference, (B) abusive, hostile or rude behavior including behavior that clearly demonstrates a bias against injured workers, and (C) instances where the evaluator requests the worker to submit to an unnecessary exam or procedure.

(Cal. Code Reg., title 8, § 40(a)(2).)

Applicant makes various allegations in the Petition through which the reader is invited to draw an inference of bias, but the statements provided instead project nothing more than conjecture onto what appears to be medical reasoning. For example, in the Petition applicant makes statements that include:

> He addressed causation to the cervical spine by saying, her presentation is discordant with virtually any claimant that I have ever seen in thirty years of medical-legal evaluations. Dr. Silverman accused the applicant of not just exaggerating her symptoms, but of actually making them up as a product of a potential factitious disorder. This was based in part on her presentation, as "she is wearing makeup, well dressed, and has her hair braided in long braids." Dr. Silverman indicated that the defendant should see sub rosa before he could issue an impairment rating.
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> Sub rosa was captured and provided to Dr. Silverman for review, resulting in a Supplemental Report dated February 14, 2023. Again, the applicant's physical appearance was a concern for Dr. Silverman, who noted that the applicant wore high heeled shoes in the videos.
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> Dr. Silverman also makes note of the applicant's ability to get into the seat of her SUV. If the applicant's vehicle is an SUV, what choice does she have but to get into the vehicle to commute?

(Applicant Petition, p. 2, lns 20-27; p. 3 lns 10-12; 21-22.) What is missing here is a link between AME Dr. Silverman's observations and bias against the applicant.

Applicant as the moving party bears the burden of proving by a preponderance of the evidence that bias exists. (Lab. Code, §§ 3202.5, 5705.) Here, we find no such evidence in the record.

Finally, while we acknowledge the ability in appropriate cases to appoint a "regular physician" pursuant to section 5701 to evaluate and report, here, the parties utilized an AME to provide expert medical opinion. We see no reason on this record to appoint a "regular physician" pursuant to section 5701.

6.

Although not identified as an issue by the PWCJ in the report, the PWCJ found in the specific injury of September 28, 2009 (ADJ9685172) that applicant has "not shown to have sustained permanent impairment from the claimed injury." (F&A, p. 4.)

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

"Permanent disability is the impairment of earning capacity, impairment of the normal use of a body member or function or a competitive handicap in the open labor market." (*Genlyte Group, LLC v. Workers' Comp. Appeals Bd.*, (*Zavala*) (2008) 158 Cal. App. 4th 705, 719 [73 Cal.Comp.Cases 6].) Implicit in *any* finding regarding permanent disability is the assumption that an injured body part or parts have been identified. The California Supreme Court long ago confirmed the "Constitution, in our opinion, authorizes compensation for injury to the body of the workman, including every part thereof, natural or artificial, which is essential to its proper functioning." (*Pacific Indem. Co. v. I.A.C.* (*Driscoll*) (1932) 215 Cal. 461, 465, emphasis added.)

In the specific injury case, the parties stipulated only that applicant *claimed* injury to multiple body parts. The PWCJ provided a finding consistent with the parties' stipulation of *claimed injury*. However, without the predicate findings on injury AOE/COE and identifying at least one body part, any finding on permanent disability is premature, even a finding that there is no permanent disability.

For this reason, we will amend the F&A to defer the issue of injury AOE/COE in the specific injury case (ADJ9685172).

IV.

Following our independent review of the record occasioned by both applicant's and defendant's Petitions, we affirm the F&A, except we amend it to correct the permanent disability rate and attorney's fees and to find and award future medical treatment in the cumulative injury case (ADJ9685205), and to defer the issue of injury AOE/COE in the specific injury case (ADJ9685172).

Accordingly, we grant defendant's Petition for Reconsideration, grant applicant's Petition for Reconsideration, affirm the May 28, 2026 F&A except as hereby amended, and return this case to the trial level for further proceedings consistent with our discussion herein.

For the foregoing reasons,

IT IS ORDERED that defendant's June 8, 2026 Petition for Reconsideration is **GRANTED**.

IT IS ORDERED that applicant's June 8, 2026 Petition for Reconsideration is **GRANTED**.

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the May 28, 2026 Findings of Fact and Award issued by the PWCJ is **AFFIRMED**, except it is **AMENDED** as follows:

Findings of Fact

1. In ADJ9685172, Applicant Wanetta Crenshaw, then 40 years old, claims to have sustained an injury arising out of and in the course of employment to her neck, back, bilateral elbows, bilateral wrists, bilateral hands, bilateral fingers and in the forms of depression and a dysthymic disorder while employed in Delano, California on September 28, 2009 as a Case Records Technician (Occupational Group 211) by Defendant State of California: California Department of Corrections and Rehabilitation: North Kern State Prison. The issue of whether applicant sustained injury arising out of and in the course of employment is deferred.

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5. Applicant is entitled to further medical treatment to cure or relieve from the effects of her industrial injury in ADJ9685205.

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Award
ADJ9685205

Award is made in favor of Applicant Wanetta Crenshaw and against Defendant State of California, California Department of Corrections and Rehabilitation, North Kern State Prison, as follows:

A} Applicant Wanetta Crenshaw is awarded permanent partial disability indemnity in the total amount of $18,351.54, which is all due and payable, less approved attorneys' fees in the amount of $2,752.73, and less credit to defendant for advances of permanent disability indemnity paid as such subject to proof.

B} Approved attorneys' fees are payable to J. Smith Law, whose lien claim is allowed.

C} Further medical treatment to cure or relieve from the effects of her industrial injury.

IT IS FURTHER ORDERED the cases are **RETURNED** to the trial level for further proceedings consistent herewith.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,



/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 19, 2026

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

WANETTA CRENSHAW
J SMITH LAW, PC
STATE COMPENSATION INSURANCE FUND

PS/*cs*

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