WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

WILLIAM MEZA, ***Applicant***

vs.

SOLTEK PACIFIC CONSTRUCTION COMPANY;
ZURICH AMERICAN INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ12781361
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant and defendant each seeks reconsideration of the Amended Findings and Award issued by the workers' compensation administrative law judge (WCJ) on November 19, 2025. Therein, the WCJ found that applicant sustained admitted injury arising out of and in the course of employment (AOE/COE) to his lumbar spine, right arm/elbow, right knee, left knee, left foot/toes, and left lower extremity while employed as a carpenter on December 3, 2018. The WCJ further found that the injury caused permanent disability of 98% permanent disability.

Applicant contends that the WCJ should have relied on the vocational expert opinion of Steve Ramirez, M.S., to find 100% permanent disability

Defendant contends the WCJ erred in finding 98% permanent disability arguing that he improperly applied the adding methodology set forth in the cases of *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.) and *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc).

We received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration recommending that we deny both Petitions for Reconsideration.

We have considered the Petitions for Reconsideration, the contents of the Report, and applicant's Answer, and have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant applicant's and defendant's Petitions for Reconsideration. Our order granting the Petitions for Reconsideration is not a final order, and we will order that a final

decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] section 5950 et seq.

I.

Preliminarily, we note that former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on December 30, 2025 and 60 days from the date of transmission is Saturday, February 28, 2026. The next business day that is 60 days from the date of transmission is Monday, March 2, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 2, 2026, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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[1] All further statutory references are to the Labor Code, unless otherwise noted.

[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.

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. Section 5909(b)(2) 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 December 30, 2025, and the case was transmitted to the Appeals Board on December 30, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 30, 2025.

II.

The WCJ stated following factual summary in the Report:

> The underlying facts are not in dispute. Petitioner A sustained injury arising out of and in the course of employment to his lumbar spine, right arm/elbow, right knee, left knee, left foot/toes, and left lower extremity on December 3, 2018 when a large U-frame fell on him. Summary of Evidence ("SOE") at page 5, lines 14-18.
>
> Petitioner A subsequently underwent a number of surgeries on his right knee, left foot, and right arm, including partial toe amputations. SOE 6:1-6. He was left with a wide range of residual impairments, including pain and decreased range of motion on both lower extremities. SOE at 6:6-8:1.
>
> However, he recovered sufficiently to be able to work piecemeal construction jobs for friends, albeit under different conditions than general construction jobs. SOE 5:19, 7:20-23. In addition, he is the de facto caretaker for his girlfriend, including cooking and cleaning functions. SOE 8:4-5, 8:13-15.
>
> The undersigned WCJ issued an Amended Findings and Award on November 17, 2025, served on November 19, 2025, indicating that the Kite/Vigil method would be used to add disabilities for the lower extremities, finding that the Petitioner A had a rating of 98% permanent disability.
>
> Both parties filed timely verified Petitions for Reconsideration in response.

….

1. The weight of evidence on vocational considerations supports the WCJ's decision.

Petitioner A challenges the Finding regarding permanent disability, asserting that the undersigned WCJ should have found 100% permanent disability based upon the vocational expert reporting of Steve Ramirez dated February 29, 2024 [Applicant's Exhibit 1], citing LeBoeuf v. Workers' Comp. Appeals Bd. (1983) 48 Cal. Comp. Cases 587. The crux of Petitioner A's argument is that despite the ability to do limited construction work, and care for his girlfriend, and use a computer, there is no ability to compete in the open labor market.

However, the undersigned was persuaded by the vocational reporting of Paul Broadus dated May 30, 2024 [Defendant's Exhibit B], who provided numerous examples of viable occupations including Project Planner, Plan Checker, Estimator, and Dispatcher. Relying on the expert opinion of Mr. Broadus, this WCJ found that difficulty competing in the open labor market was not the same a being completely unable to compete for in the market.

In addition, in order to support a finding that the Schedule for Rating Permanent Disability is rebutted by vocational evidence, it must be proven that an applicant is not amendable to rehabilitation. Contra Costa County v Workers' Comp. Appeals Bd. (Dahl) (2015) 240 Cal. App. 4th 746. The extensive skills and experience that were established by testimony and vocational reporting strongly suggest viability for vocational rehabilitation, as opined by Mr. Broadus. [Defendant's Exhibit B at p. 18].

The Court therefore weighed the evidence in favor of Defendant on this issue.

2. The WCJ properly applied the Kite/Vigil method for calculating permanent disability.

Petitioner D argues that disabilities for the lower extremities should not have been added, since the later comprehensive reporting of QME Harris in his report dated November 1, 2024 [Joint Exhibit 2] did not explicitly mention the Kite methodology, despite the QME's prior discussion of Kite in his report dated March 16, 2023 [Joint Exhibit 7]. This argument is not persuasive to the Court. The QME's findings in later reporting increased disabilities from the earlier reporting. There was no indication of any change in condition to cancel the synergistic effects of bilateral lower extremity impairments which would warrant a corresponding change in the methodology used to calculate disability.

In addition, Petitioner B asserts that the QME's reporting does not meet the standard set forth in Vigil v. County of Kern (2024) 89 Cal. Comp. Cases 686 due to insufficient analysis of the impact of activities of daily living, with only a single

paragraph being devoted to the rationale for using Kite impairment addition. However, the paragraph contains a concise justification for using the addition method:

"…there is a negative synergistic effect due to the poor surgical result on the right knee and the effects of the left toe amputations and sensory deficit. Given the lack of a strong knee to compensate for the injury to the left toes, this does cause a greater impact on Mr. Meza's ability to perform activities of daily living such as standing, walking, engaging in social activities, travel, and performing household chores…"

This paragraph sufficiently explained to the Court how and why the lower extremity impairments should be added, since there was no ability for one side to compensate for the other.

(Report, at pp. 1-4.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

Section 4660 provides that permanent disability is determined by consideration of whole person impairment within the four corners of the AMA Guides, as applied by the Permanent Disability Rating Schedule (PDRS) in light of the medical record and the effect of the injury on the worker's future earning capacity. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565] ["permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity"]; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680] (*Fitzpatrick*); *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837] (*Guzman*).)

However, the scheduled rating is not absolute. (*Fitzpatrick, supra*, at pp. 619-620.) A rating obtained pursuant to the PDRS may be rebutted by showing an applicant's diminished future earning capacity is greater than that reflected in the PDRS. (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624] (*Ogilvie*); *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 1119] (*Dahl*).) In analyzing the issue of whether and how the PDRS could be rebutted, the Court of Appeal has observed:

> 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]. In LeBoeuf, an injured worker sought to demonstrate that, due to the residual effects of his work-related injuries, he could not be retrained for suitable meaningful employment. (Id. at pp. 237-238.) Our Supreme Court concluded that it was error to preclude LeBoeuf from making such a showing, and held that "the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating."

(*Ogilvie, supra*, at p. 1274.)

Thus, "an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating.' (*Ogilvie, supra*, at p. 1277.)

Moreover, pursuant to *Fitzpatrick, supra*, impairments "are generally combined" using the combined values chart (CVC) found in the permanent disability rating schedule (PDRS). However, the "scheduled rating is not absolute" and other methodologies may be used to calculate permanent disability. (*Id*. at p. 614.) Thus, while the PDRS is prima facie evidence of an employee's permanent disability, it is rebuttable. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084, 1106 (Appeals Board en banc); see *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc); *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360, 167 Cal. Rptr. 3d 1.) Ultimately, however, the goal in rating impairments is accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].)

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater

than that reflected through use of the CVC, the impairments should be added for purposes of accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic QME opined that there was a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," and, as such, "the best way to combine the impairments to the right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment." (*Id*. at p. 5.) Accordingly, in *Kite*, the WCJ found that the impairment for the applicant's hips should be added rather than combined.

Subsequent to *Kite*, the Appeals Board issued *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688–689 (Appeals Board en banc) wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish that 1) the activities of daily living (ADLs) impacted by each impairment, and 2) the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs.

Lastly, it is well established that decisions by 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 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

Based on our review, we are not persuaded that there is substantial evidence to support the WCJ's decision on the issues of permanent disability and apportionment without additional development of the record. Where the evidence or opinion on an issue is incomplete, stale, and no longer germane, or is based on an inaccurate history, or speculation, it does not constitute

substantial evidence. (*Place v. Workers' Comp. Appeals Bd*. (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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. Industrial Acc. Com*. (*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. Industrial Acc. Com*. (*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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci*. *Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483,

491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd.* (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code sections 5950 et seq.

V.

Accordingly, we grant applicant's and defendant's Petitions for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. ***While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to*** WCABmediation@dir.ca.gov.

For the foregoing reasons,

IT IS ORDERED that applicant's and defendant's Petitions for Reconsideration are **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petitions for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 2, 2026

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

WILLIAM MEZA
THE MALDONADO FIRM
MAVREDAKIS PAIK

PAG/mt

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