WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

WILLIAM PAREDES, *Applicant*

vs.

SANTA BARBARA METROPOLITAN TRANSIT DISTRICT, permissibly self-insured, administered by ADMINSURE, INC., *Defendant*

Adjudication Number: ADJ12549012
Goleta District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on February 26, 2026, by the workers' compensation judge (WCJ). The WCJ found, in pertinent part, that applicant sustained injury arising out of and in the course of employment to his lumbar spine, heart, and internal system in the forms of hypertension and gastroesophageal reflux disease (GERD), resulting in an award of 84% permanent disability without apportionment.

Defendant contends that it met its burden of proving apportionment under Labor Code sections 4663 and 4664.[1] It relies on the Panel Qualified Medical Evaluation (PQME) report of Eshan Saadat, M.D., dated December 16, 2023, who opined that 50% of the lumbar spine disability stems from a 1991 injury and a pre-existing L4 pars defect. (App. Ex. 1, p. 20.) Defendant also relies on the PQME reports of Michael Levey, M.D., dated February 2, 2022, who opined that 90% of the hypertension and 80% of the GERD disabilities stem from nonindustrial risk factors. (App. Ex. 6, p. 2.) Alternatively, if the WCJ found the medical reporting deficient, defendant contends that he had a duty to develop the record rather than issue an award without apportionment.

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

We have considered the allegations in the Petition and the Answer and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for the reasons discussed

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

below as well as the WCJ's Report, which we adopt and incorporate,[2] we affirm the WCJ's February 26, 2026 decision.

DISCUSSION

I.

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, the Legislature amended section 5909 to state in relevant part that:

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

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

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

Here, according to Case Events, the district office transmitted this case to the Appeals Board on March 20, 2026, and 60 days from the date of transmission is May 19, 2026. This decision issues on May 19, 2026, so that we have timely acted on the petition as required by section 5909(a).

Here, the proof of service for the Report demonstrated service and transmission to the Appeals Board on March 20, 2026. Thus, we conclude that the parties were provided with the

[2] We note that the WCJ's caption incorrectly identifies defendant as Oakridge Landscape, administered by Oak River Insurance Company.

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 March 20, 2026.

II.

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 v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565]; *Marsh v. Workers' Comp. Appeals Bd.* (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787.].)

To comply with section 4663, a physician must do more than simply state the cause of disability and assign approximate percentages of industrial and nonindustrial contribution. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 927-928 [71 Cal.Comp.Cases 1687]; *Mills v. State Comp. Ins. Fund* (2025) 91 Cal.Comp.Cases 64, 68 [2025 Cal. Wrk. Comp. P.D. LEXIS 305]; *Anaya v. State Dep't of Corr.* [2022 Cal. Wrk.Comp. P.D. LEXIS 262, *23].)[3] A proper apportionment analysis requires the physician to first identify all factors contributing to applicant's permanent disability, both prior to and following the industrial injury, and then determine the approximate percentage of overall permanent disability attributable to each factor. (*Mills*, *supra*, 91 Cal.Comp.Cases at p. 69.)

A physician must determine apportionment based on causation, because an employer is liable solely for the portion of permanent disability directly attributable to an 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.

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

Pursuant to *Escobedo*, a physician's opinion must constitute reasonable medical probability, must not be speculative, rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of the conclusions. (*Id.* at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Ibid.; Benson v. Permanente Med. Group* (2007) 72 Cal.Comp.Cases 1620, 1622 (Appeals Board en banc).)

In explaining the "how and why" of apportionment to a preexisting condition, a physician must demonstrate that, even absent the industrial injury, a portion of the disability would have resulted from the natural progression of the underlying condition. (See *Pullman Kellogg v. Workers' Comp. Appeals Bd.* (*Normand*) (1980) 26 Cal.3d 450, 454 [45 Cal.Comp.Cases 170].)

Ultimately, the burden of proof to establish apportionment falls on defendant. (*Id.* at p. 456; *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].)

Here, in addition to the reasons set forth by the WCJ in his Report, a critical analysis of the evidentiary record reveals fundamental deficiencies in the apportionment determinations provided by both PQMEs, thereby providing essential context that validates the refusal to apportion applicant's permanent disability. PQME Dr. Saadat attempted to apportion 50% of applicant's lumbar disability to a 1991 injury resulted in a diagnosed L4 pars defect and isthmic spondylolisthesis. While he experienced chronic, fluctuating pain that was "always there" following the 1991 incident, he continued to work in a strenuous capacity for decades until his condition worsened significantly around 2015 and 2016. (App. Ex. 1, p. 12.) However, PQME Dr. Saadat failed to establish a valid legal nexus between the pre-existing defect and the current impairment. His opinion lacks a reasoned explanation detailing how a previously manageable, albeit chronic, condition physiologically accounts for the specific level of disability currently awarded. Because he failed to explain how the L4 pars defect and isthmic spondylolisthesis directly contributed to the current permanent disability, his apportionment analysis amounts to an arbitrary legal conclusion rather than substantial medical evidence.

Similarly, PQME Dr. Levey's internal medicine apportionment suffers from a fundamental conflation of disease risk factors with the actual causation of permanent disability. In his February 2, 2022 report, PQME Dr. Levey justified his 90% nonindustrial apportionment for coronary artery disease by utilizing a risk factor calculator that placed applicant at a 12% 10-year risk for a cardiovascular event based on age, obesity, and family history. (App. Ex. 6, p. 2.) During his January 4, 2021 deposition, PQME Dr. Levey explicitly testified that applicant's genetics, hypertension, his probable cigarette smoking, and diabetes placed him at an extremely high risk for developing coronary artery disease. (App. Ex. 8, p. 20:11-21.) Evaluating the statistical risk of contracting a pathology does not satisfy the legal requirement to explain how that underlying pathology physiologically causes the current permanent impairment.

Furthermore, PQME Dr. Levey's deposition testimony exposes severe methodological flaws that render his conclusions speculative. He based his apportionment in part on an unverified eight-pack per year smoking history found in hospital records, despite applicant explicitly denying a smoking history during the clinical evaluation. (*Id.* at p. 23:3-16.) PQME Dr. Levey conceded this unverified history operated as a severe accelerant in his mind when formulating his nonindustrial conclusions. (*Id.* at p. 25:7-16.) Additionally, regarding his 30% industrial causation finding for coronary artery disease due to diesel exhaust exposure, PQME Dr. Levey admitted that he relied entirely on his recollection of an unrelated study involving a train engineer. (*Id.* at pp. 29:20-25 to 30:1-7.) He subsequently admitted that he did not have the research available and had not reviewed it prior to issuing his conclusions. (*Id.* at p. 31:4-11.) Such reliance on recalled, generalized industry studies without specific application to applicant's actual exposure levels epitomizes the type of speculative conjecture prohibited by established workers' compensation jurisprudence. (See *Mills v. State Comp. Ins. Fund* [2025 Cal. Wrk. Comp. P.D. LEXIS 305, *9] ("[apportionment based on] risk factors for a stroke . . . confus[es] causation of injury with causation of disability.").)

Furthermore, PQME Dr. Levey justifies his 80% nonindustrial apportionment for GERD by pointing to a sliding hiatal hernia and obesity. He asserts that the hernia is a congenital abnormality and cites an October 5, 2016 endoscopic evaluation showing small erosions and findings suggesting Barrett's esophagus to conclude the condition is a longstanding process. (App. Ex. 6, pp. 2-3.) PQME Dr. Levey bases his nonindustrial apportionment entirely on the assumption that the longstanding nature of the esophagitis and gastric erosions inherently severs these conditions from the applicant's industrial disability. However, merely noting the presence of a congenital abnormality or diagnosing a pre-existing, longstanding pathology does not satisfy the legal requirement to explain

how that underlying pathology physiologically causes the current permanent impairment. Furthermore, PQME Dr. Levey's 20% industrial causation finding for GERD, attributed to the use of non-steroidal anti-inflammatory agents for industrial orthopedic injuries, offers a rigid percentage breakdown without sufficiently bridging the medical findings to the resulting disability. (*Id.* at p. 2.)

By failing to anchor their apportionment findings in the specific "how and why" that reflect the realities of applicant's current disability, the PQMEs' opinions do not constitute substantial medical evidence. (*Normand*, *supra*, 26 Cal.3d at pp. 454-456; *Calhoun v. Workers' Comp. Appeals Bd.* (1981) 127 Cal.App.3d 1, 9–10 [46 Cal.Comp.Cases 1333]; *Gay v. Workers Comp. Appeals Bd.* (1979) 96 Cal.App.3d 555, 562 [44 Cal.Comp.Cases 817]; *Duthie v. Workers Comp. Appeals Bd.* (1978) 86 Cal.App.3d 721, 728 [43 Cal.Comp.Cases 1214].) Because defendant bears the burden of proving apportionment and had ample opportunity to cure these exact evidentiary deficiencies during the deposition and supplemental reporting phases, the record requires no further development, firmly mandating an award without apportionment

Accordingly, we affirm the WCJ's decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued on February 26, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 19, 2026

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

WILLIAM PAREDES
STOUT, KAUFMAN, HOLZMAN & SPRAGUE, APLC
TOBIN LUCKS, LLP

DLP/*pm*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION AND
NOTICE OF TRANSMITTAL

I.
INTRODUCTION

1.	Applicant's Occupation:	Bus Driver
	Age of Applicant:	60
	Date(s) of Injury:	CT Oct. 5, 2017 – Oct. 5, 2018
	Parts of Body Injured:	Lumbar spine, heart, intestinal; system in the Form of hypertension and GERD.
	Manner in Which Injury Occurred:	Not in dispute
2.	Identity of Petitioner:	Defendant
	Timeliness:	The Petition is timely
	Verification:	The Petition is verified
	Services:	The Petition was served on all parties
	Date of Issuance of Order:	February 26, 2026
	Petitioner's Contention:	WCJ erred in not finding apportionment and/or not developing the record.

II.
FACTS

The facts in this case are not in dispute. Applicant sustained a continuous trauma industrial injury to the body parts listed hereinabove.

He was evaluated by Eshan Saadat, M.D., and Michael Levey, M.D., both reporting in the capacity of a PQME.

The matter proceeded to trial on numerous issues, including temporary disability, permanent disability, apportionment, and others.

Following trial, a Findings of Fact and Award issued without any apportionment.

That is the sole issue Defendant raises in this instant reconsideration petition.

III.
DISCUSSION

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cure those defects.

Defendant has two points of contention. The first is the WCJ erred in not finding any apportionment. The second is if the physicians' opinion on apportionment is not valid, development of the record should have been ordered.

Eshan Saadat, M.D., evaluated Applicant's orthopedic complaints. He wrote five (5) medical reports and was not deposed.

On page 20 of his December 16, 2023, medical report (exhibit 1) he wrote,

> **"APPORTIONMENT**
>
> Mr. Paredes is noted to have had pre-existing bilateral pars defects at L4 .. He also has a prior specific industrial injury to the lumbar spine in 1991, from which he recovered and was able to return to work. It is my opinion that 50% of Mr. Paredes' current impairment is due to his repetitive job duties, and 50% of his current impairment is due· to his pre-existing bilateral pars defects at L4 and his previous industrial injury."

In his earlier report (exhibit 2) dated October 22, 2022, on page 19 he wrote,

> **"APPORTIONMENT**
> Clearly, given Mr. Parades's preexisting L4 bilateral pars defects, and prior specific injury, apportionment is an important issue and will be addressed after reviewing his updated imaging studies and once he is found to have reached MMI."

In his prior report of May 14, 2022 (exhibit 3) on page 17, Dr. Saadat wrote,

> **"APPORTIONMENT**
> Clearly, given Mr. Parades's preexisting L4 bilateral pars defects, and prior specific injury, apportionment is an important issue. At this point, I believe an in-person reevaluation in order to perform a motor/sensory examination, and to question him a out his activities of daily living would be indicated. In addition updated radiographic studies consisting of x-rays of the lumbar spine, a CT scan and MRI of the lumbar spine are indicated to determine the levels of involvement for impairment and apportionment , as well as, comment on a provision for future medical care would be indicated."

And on page 11 of his January 14, 2022, supplemental report (exhibit 4), we find the same language.

> **"APPORTIONMENT**
> Clearly, given Mr. Parades's preexisting L4 bilateral pars defects, and prior specific injury, apportionment is an important issue. At this point, I believe an in-person reevaluation in order to perform a motor/sensory examination, and to question him about his activities of daily living would be indicated. In addition updated radiographic s dies consisting of x-rays of the lumbar spine, a CT scan and MRI of the lumbar spine are indicated to determine the levels of involvement for impairment and apportionment, as well as comment on a provision for future medical care would be indicated."

Apportionment was deferred by Dr. Saadat in his initial report of March 20, 2021.

Dr. Saadat's opinion on apportionment, and his rationale for it, stayed the same throughout his medical reporting. However, his findings do not constitute substantial medical evidence. He never explains the how and why the prior injury and the L4 bilateral pars defects contributed or caused his current level of permanent disability.

As the WCAB has written,

> "In order to comply with section 4663, a physician's report in which permanent disability is addressed must also address apportionment of that permanent disability. (Escobedo v. Marshalls (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc) (Escobedo).) However, the mere fact that a physician's report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and non-industrial causation does not necessarily render the report substantial evidence upon which we may rely. Rather, the report must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion that factors other than the industrial injury at issue caused permanent disability. (Id. at p. 621.) Our decision in Escobedo summarized the minimum requirements for an apportionment analysis as follows:
>
> [T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, 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.

For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, how and why it is causing permanent disability at the time of the evaluation, and how and why it is responsible for approximately 50% of the disability."

Almost classically, Dr. Saadat never explained the how and why the 50% he apportions caused or contributed to the permanent disability.

Applicant was also evaluated by Michael Levey, M.D., in the capacity of a PQME, and he authored two (2) medical reports, and he was deposed on one occasion.

On page 1, and continuing page 2 of his report, dated February 2, 2022, which was issued after his first report- and after he was deposed, and upon review of additional medical records- he opined, as follows:

> "The medical records which were reviewed and are attached consisted principally of multiple orthopedic evaluations. You did correctly point out that in one instance in 1991, he was found to have er tension and complained of heartburn at that time. Thes two findings would support my previous opinion that the applicant had longstanding hypertension as well as gastroesophageal reflux disease due to congenital relaxation of the gastroesophageal sphincter as well as a small sliding hiatal hernia.
>
> With regards to further clarification of my apportionment analysis, I felt that my report dated 10/16/20 discussed these factors, however, I will review them once again for you.
>
> Regarding the diagnosis of atherosclerotic coronary artery disease for which I provided a 20% WPI disability rating and apportioned this 30% to employment-related factors and 70% to other factor, I made it quite clear in my dictation of March 2, 2021 that the aggravation or acceleration of his pre-

existing illness was related to his exposure to diesel exhaust and other products of combustion for which I attached and referred to various publications. with regards to other factors, those include his family history of coronary artery disease, his history of hypertension, severe hyper lipidemia, diabetes mellitus and obesity along with minimal cigarette smoking . Utilizing a risk factor calculator dating back to the age of 50 for this individual, he at that time demonstrated a 23% 10-year risk of a cardiovascular event as compared to a .8% risk of the normal population.

In conclusion as stated, this applicant is and was always at risk for the development of coronary artery disease, however, exposure to diesel exhaust fumes as well as other product combustion in the course of his employment had been prove aggravate this pre-existing condition.

Regarding the applicant's hypertension, I supplied a disability rating of 30% WPI and apportioned 90% to non-industrial causation and 10% to industrial causation. I feel that I discussed in significant detail the factors that aggravated his pre-exiting hypertensive disease in my report dated March 2, 2021 on page 6 with regards to other factors which were non-industrial were causative in the development of his hypertensive disease. These included bis family history of hypertension, his obesity and his. sleep apnea.

Regarding gastroesophageal reflux disease, I designated a 5 WPI with apportionment of 80% causation due to non-industrial other factors and 20% to industrial causation. The industrial causation was in response to the use of non-steroidal anti-inflammatory agents to treat his industrially related orthopedic injuries. With regards to the other factors, an endoscopic evaluation on 10/05/2016 demonstrated small erosions in the distal third of the esophagus, suggestive of acid reflux along with findings suggesting Barrett's esophagus. Also identified was a small hiatal hernia which was sliding at the gastroesophageal junction."

The problem is the same for Dr. Levey. Risk factors are not enough, and studies comparing Applicant to the general population provide little clarity. The doctor must explain how and why these factors were present and how and why those factors caused or contributed to Applicant's overall permanent disability.

Being at high risk; using a risk factor calculator dating back to the age of 50, does not address this Applicant's condition.

Dr. Levey's opinion on apportionment does not constitute substantial medical evidence on the issue of apportionment.

This is Defendant's burden; and given the conclusion and opinions of the doctors, development of the record would not be appropriate.

IV.

RECOMMENDATION

For the reasons stated, it is respectfully recommended that Defendant's Petition for Reconsideration be denied based on the arguments and merits addressed herein.

DATE: March 20, 2026

Scott J. Seiden
PRESIDING WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE