WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KAREN ROBASCIOTTI, ***Applicant***

vs.

MAXIM HEALTHCARE; ACE AMERICAN INSURANCE COMPANY, c/o ESIS, ***Defendants***

Adjudication Number: ADJ12265574
Santa Barbara District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the July 12, 2024 Findings and Award, wherein the presiding workers' compensation administrative law judge (PWCJ) found that applicant, while employed as a psyche technician on January 16, 2019, sustained industrial injury to her mouth/teeth, cranial nerve, digestive tract, psyche, and in the form of headaches. The PWCJ found, in relevant part, that applicant's earning capacity supported average weekly wage of $1,750, and that applicant's disability was permanent and total without apportionment.

Defendant contends that the PWCJ erred in applying a wage capacity analysis, that the disability arising of applicant's facial/dental injury should be combined rather than added, and that applicant's disability is subject to nonindustrial apportionment.

We have received an Answer from applicant. The PWCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the PWCJ with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and rescind the F&A. We will then restate the PWCJ's Findings of Fact to correctly identify the injured body parts except that we will substitute

new findings that applicant's average weekly wages were $1,050 per week, and defer the issues of permanent disability, apportionment and attorney fees.

FACTS

Applicant sustained injury to her mouth/teeth, headaches, cranial nerve, lumbar spine, cervical spine, digestive tract, and psyche while employed as a psyche technician by defendant Maxim Healthcare on January 16, 2019.

The parties have selected Jamie Rotnofsky, Ph.D., as the Qualified Medical Evaluator (QME) in psychology, William Gabriel, DDS, as the QME in dentistry, Richard Rosenberg, M.D., as the QME in orthopedic medicine, and James Sherman, M.D., as the QME in internal medicine.

On April 24, 2024, the parties proceeded to trial and placed in issue, in relevant part, applicant's earnings and the corresponding temporary total disability (TTD) rate, permanent disability, apportionment and attorney fees. (Minutes of Hearing and Summary of Evidence (Minutes), dated April 24, 2024, at p. 3:4.) The PWCJ heard applicant's testimony, and ordered the matter submitted for decision as of June 1, 2024.

On July 12, 2024, the PWCJ issued his F&A, determining in relevant part that applicant's wage capacity was $1,750.00 per week, with a corresponding TTD rate of $1,166.67 per week. (Findings of Fact Nos. 6 & 7.) The PWCJ determined that applicant's disability was permanent and total, without legal basis for apportionment. (Findings of Fact Nos. 7 & 8.)

Defendant's Petition contends the evidentiary record does not support the determination of applicant's wage capacity; that the dental QME did not adequately describe the rationale for the addition of applicant's dental, head, and facial disabilities; and that the PWCJ erred in finding that defendant had not met its burden of establishing apportionment to nonindustrial factors.

Applicant's Answer contends the PWCJ correctly determined applicant's earning capacity, and that substantial evidence supports the finding of permanent and total disability without apportionment pursuant to the findings of the psychology QME and under the "*Kite* doctrine." (Answer, at p. 6:2.)

DISCUSSION

I.

Former Labor Code[1] 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 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 14, 2024, and the next business day that is 60 days from the date of transmission is October 14, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on the next business day after October 14, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

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

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[1] All further 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.

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 August 14, 2024, and the case was transmitted to the Appeals Board on August 14, 2024. 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 Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 14, 2024.

II.

We begin our discussion with the issue of average weekly earnings. The parties offered disparate assessments of applicant's wages at trial, with applicant asserting $1,560.50 per week based on a wage capacity analysis, and defendant asserting $624.10 per week based on the average of her weekly wages in the year prior to injury. (Minutes, at p. 2:4.) The PWCJ applied the wage capacity analysis described in section 4453(c)(4) and concluded that applicant's capacity was $1,750 per week. (Finding of Fact No. 6.) The PWCJ relied on applicant's testimony that "there were times when she worked as many as 60 hours per week," and based thereon, calculated applicant's capacity at 40 hours at $25.00/hour, with an additional 20 hours at the overtime rate of $37.50/hour, for a total weekly wage capacity of $1,750.00.

Defendant's Petition avers the PWCJ erred in applying a wage capacity analysis rather than by using an average of applicant's weekly wages. Defendant points out that applicant's testimony was "that in 2017 she worked 60 hours in one week, or possibly two, due to an employee shortage following the Montecito Floods in Santa Barbara County." (Petition, at p. 5:17.) Thus, the unusual occasions on which applicant worked 60 or more hours were outliers, and not reasonable reflections of applicant's earnings capacity. Defendant submits that applicant's wage history, which provides an average weekly wage of $624.15 for the 52 weeks prior to her date of injury is the more accurate reflection of applicant's earnings.

Section 4453(c) provides four methods to calculate average weekly earnings. (Lab. Code, § 4453(c)(1)-(4).) As relevant here, section 4453(c) provides as follows:

> (1) Where the employment is for 30 or more hours a week and for five or more working days a week, the average weekly earnings shall be the number of working days a week times the daily earnings at the time of the injury.
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> …
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> (3) If the earnings are at an irregular rate, such as piecework, or on a commission basis, or are specified to be by week, month, or other period, then the average weekly earnings mentioned in subdivision (a) shall be taken as the actual weekly earnings averaged for this period of time, not exceeding one year, as may conveniently be taken to determine an average weekly rate of pay.
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> (4) Where the employment is for less than 30 hours per week, or where for any reason the foregoing methods of arriving at the average weekly earnings cannot reasonably and fairly be applied, the average weekly earnings shall be taken at 100 percent of the sum which reasonably represents the average weekly earning capacity of the injured employee at the time of his or her injury, due consideration being given to his or her actual earnings from all sources and employments.
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> (Lab. Code, § 4453(c)(1) and (c)(4).)

Subdivision (c)(1) thus provides for temporary disability calculations where the applicant is regularly employed on a full-time basis, and the subdivision uses the applicant's regular earnings at the time of injury as the metric for temporary disability calculation. Subdivision (c)(4) on the other hand provides an alternative calculation where the work at the time of injury is part-time, irregular, or the applicant's earnings at the time of injury "cannot reasonably and fairly be applied."

In *Goytia v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 889 [35 Cal.Comp.Cases 27] (*Goytia*), the California Supreme Court distinguished between the various approaches to calculating average earnings as follows:

> The language of the statute leads to two conclusions: first, average weekly earnings under subdivision [(c)(4)][3] differs from average weekly earnings under the other three subdivisions; subdivision [(c)(4)] applies "where the employment is for less than 30 hours per week, *or* where for any reason the foregoing methods . . . cannot reasonably and fairly be applied." (Italics added.) Since the prior three subdivisions calculate average weekly earnings solely on the basis of prior earnings, the statute apparently contemplated that prior earnings are not the sole basis for the determination of earning capacity or average weekly earnings under subdivision [(c)(4)].

[3] The original text in *Goytia* refers to former Labor Code section 4453, subdivision (d), which has since been redesignated as subdivision (c)(4).

> Secondly, subdivision [(c)(4)] states that in determining average weekly earning capacity the appeals board should give "due consideration" to actual earnings "from all sources and employments." Pre-injury earnings constitute one factor, but not the exclusive factor, in determining such earnings. The subdivision in alluding to earning "capacity" must necessarily refer to earning potential which may not, and probably will not, be reflected by prior part-time earnings.
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> (*Id.* at p. 895.)

The Supreme Court further discussed its prior decision in *Argonaut Ins. Co. v. Indus. Acc. Comm.* (*Montana*) (1962) 57 Cal.2d 589 [371 P.2d 281] (*Montana*) wherein it observed that in arriving at a realistic appraisal of earnings:

> An estimate of earning capacity is a prediction of what an employee's earnings would have been had he not been injured … In making a permanent award, long-term earning history is a reliable guide in predicting earning capacity, although in a variety of fact situations earning history alone may be misleading … [All] facts relevant and helpful to making the estimate must be considered [citations]. The applicant's ability to work, his age and health, his willingness and opportunities to work, his skill and education, the general condition of the labor market, and employment opportunities for persons similarly situated are all relevant."
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> (*Id.* at p. 594-595.)

Thus, our inquiry in this matter is necessarily factual in nature and must account for applicant's past earnings as a "reliable guide" in predicting earning capacity. However, a determination of what an employee's earnings would have been had he not been injured also requires consideration of additional factors, including applicant's age and health, willingness to work, skill and education, and the general condition of the labor market. (*Goytia, supra*, 1 Cal.3d at p. 895.)

Here, applicant testified that she was hired to work three days per week, although her weekly hours have fluctuated depending on the amount of work available. (Minutes, at p. 6:3, 8:13.) Applicant's three days of work each week precluded the analysis of section 4453(c)(1), which requires 30 or more hours over five days each week. Similarly, subdivision (c)(3) is inapplicable given that applicant's hourly rate of pay was not irregular or commission-based, and was not specified by the week, month or other period. We thus turn to the wage capacity analysis of section 4453(c)(4).

We agree with the defendant that the calculation of applicant's wages based on 60 hours worked each week does not reasonably reflect a "prediction of what an employee's earnings would have been had he not been injured," as applicant testified to only two occasions during which she worked 60 or more hours in a single week. (*Montana, supra*, at p. 594-595.) Applicant also testified that "there were also times when she worked less than 36 hours and three days a week due to lack of need by the employer." (Minutes, at p. 8:15.) This variability in hours worked is reflected in applicant's wage statement, which includes 11 weeks for which applicant worked no hours, but also several instances of more than 40 hours, and in one instance, 50 hours worked per week. (Ex. A, Wage Statement, dated January 19, 2019.) We also note applicant's testimony that she was hired to work three twelve-hours days each week, comprised of 24 hours of regular time and an additional 12 hours of overtime. (Minutes, at p. 7:3.) The PWCJ deemed applicant's testimony to be fully credible, and we accord great weight to that determination. (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317-319 [35 Cal.Comp.Cases 500]; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].)

Bearing in mind the Supreme Court's admonition that we evaluate what the applicant's earnings would have been had she not been injured, we are persuaded that the most reasonable assessment of wages is 36 hours weekly, as per applicant's credible testimony. (*Montana, supra*, 57 Cal.2d at p. 595; Minutes, at p. 7:3.) Given the wide disparity in weekly hours evidenced in the wage statement, we conclude that the more accurate assessment of applicant's reasonable work capacity is the 24 hours of regular pay plus 12 hours of weekly overtime that applicant agreed to at the time she was hired. While subsequent weekly hours have varied greatly, this amount reflects both a reasonable approximation of applicant's averaged weekly hours and applicant's capacity to exceed the average weekly hours worked when necessary. Applying 24 hours of regular time pay at $25.00/hour, and an additional 12 hours at overtime pay of $37.50, we conclude that applicant's average weekly wages as reflected in her wage capacity were $600 of regular pay plus $450 of overtime pay, for a total weekly wage of $1,050. We will amend Finding of Fact No. 6, accordingly.

Defendant's Petition also contends that the medical record does not substantiate the award of permanent and total disability. The F&A found applicant's industrial disability to be both permanent and total. (Finding of Fact No. 7.) The accompanying Opinion on Decision notes that psychology QME Dr. Rotnofsky opined that applicant no longer had the ability to compete in the

open labor market. (Opinion on Decision, at pp. 1-2, citing Ex. 4, Transcript of Deposition of Jamie Rotnofsky, Ph.D., dated June 22, 2023, at p. 41:5.) In addition, dental QME Dr. Gabriel opined that the disability resulting from applicant's dental, head and face injuries should be added rather than combined under the Combined Values Chart (CVC). (Opinion on Decision, at p. 2.) The PWCJ noted that the addition of the dental, head, and facial disabilities resulted in 118 percent disability, prior to combination with the psychological, orthopedic and internal medicine disability percentages. (*Id.* at p. 3.) Thus, applicant's disability was both permanent and total.

Defendant asserts, however, that the rationale for adding the dental, head and face disability as described by QME Dr. Gabriel is analytically incomplete. Defendant asserts, "[i]n this matter, Dr. Gabriel failed in his reporting and during his deposition to discuss the Applicant's ADL's. Accordingly, and without a discussion of ADL's, there was no discussion of overlap." (Petition, at p. 11:13.)

We agree. In *Kite v. East Bay Municipality Util. Dist.* (December 5, 2012, ADJ6719136) [2012 Cal. Wrk. Comp. P.D. LEXIS 640) (writ den. sub nom. *Athens Administrators v. Workers' Comp. Appeals Bd.* (*Kite*) (2013) 78 Cal.Comp.Cases 213 [2013 Cal. Wrk. Comp. LEXIS 34] (*Kite*)), applicant underwent industrial bilateral hip replacement surgeries. The evaluating orthopedic QME opined that "there is a synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," and that "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, the WCJ determined that the most accurate rating of applicant's permanent disability would be achieved by adding the impairment for each hip, rather than by combining the respective impairment percentages under the CVC. Following defendant's petition for reconsideration, we affirmed the WCJ's decision that the "QME has appropriately determined that the impairment resulting from applicant's left and right hip injuries is most accurately combined using simple addition than by use of the combined-values formula." (*Id.* at p. 10.)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc), we discussed the two primary ways in which the *Kite* analysis had been applied to permanent disability disputes:

> In the first approach, the CVC has been rebutted where there was evidence showing no actual overlap between the effects on ADLs as between the body

parts rated. In the second approach, the CVC has also been rebutted where there is overlap, but the overlap creates a synergistic effect upon the ADLs.

a. No overlap of ADLs.

The first method for rebuttal of the CVC is to show that the multiple impairments, in fact, have no overlap upon the effects of the ADLs. (See e.g., *Devereux v. State Comp. Ins. Fund*, 2018 Cal.Wrk.Comp. P.D. LEXIS 592; *Guandique v. State of California*, 2019 Cal.Wrk.Comp. P.D. LEXIS 53.) We believe that one significant point of confusion on the issue of overlap is that the analysis should focus on overlapping ADLs, not body parts. Although the formula for the CVC is from the AMA Guides, the chart used to calculate the CVC is from the PDRS.

In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the medical evidence demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

…

b. Overlapping ADLs with a Synergistic Effect

The next method for rebutting the CVC was first discussed in *Kite*, where applicant was awarded permanent disability by adding the impairment to each hip and not by combining the impairments as ordinarily required by the PDRS under the CVC. (*Kite, supra*, 78 Cal.Comp.Cases 213.) In *Kite*, the CVC was rebutted by substantial medical evidence showing the synergistic effect of the two impairments on applicant.

'Synergy' is "(1) the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects; or (2) Cooperative interaction among groups. . . that creates an enhanced combined effect." (American Heritage Dict. (Fifth Edition, 2022).) In some cases, two impairments overlap with one another in their effect on ADLs to the extent that they amplify one another to cause further impairment than what is anticipated in the AMA Guides. Thus, it is permissible to add impairments where a synergistic amplification of ADLs is shown. For example, if applicant had an impairment in the dominant hand, an evaluator might find that the impairment impacts the ADL of non-specialized hand activities, such as being able to button a shirt. If applicant's impairment was to both hands, one might expect the ability to button a shirt to be even more difficult. The purpose of the CVC, avoiding duplication, does not apply in such cases as the impairments are not duplicative,

because the two impairments together are worse than having a single impairment.

We cannot emphasize enough that 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), (emphasis added).) The term 'synergy' is not a "magic word" that immediately rebuts the use of the CVC. Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in Escobedo to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of ADLs and how those ADLs interact.

(*Vigil, supra*, at pp. 691-693.)

We thus held in *Vigil* that where an applicant seeks to rebut the CVC, they must establish the following:

1. The ADLs impacted by each impairment to be added, and
2. Either:
    a. The ADLs do not overlap, or

    b. The ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs.

(*Id.* at pp. 688-689.)

Our en banc decision in *Vigil* issued on June 10, 2024, 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, 313, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Board* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236]; see also Govt. Code, § 11425.60(b).)

Thus, any assertion that specified percentages of permanent disability corresponding to different body parts should be added rather than combined, requires an analysis of the affected activities of daily living. (*Vigil, supra*, 89 Cal.Comp.Cases at p. 688.) Here, when asked if the percentages of disability arising out of applicant's dental, facial and head injuries should be added

rather than combined, Dr. Gabriel testified: "Absolutely. Her head and face injuries are stand-alone injuries … the stand-alone injuries are severe enough to be considered a -- a separate type of injury and should not be with the CVC…." (Ex. 7, Transcript of the Deposition of William Gabriel, DDS, dated October 6, 2023, at p. 29:13.) Dr. Gabriel thus addresses the affected *body parts*, rather than the effects of the injury on applicant's ADLs. While Dr. Gabriel does testify that the injury has *generally affected* applicant's ADLs, there insufficient identification of the impacted ADLs or whether these those ADLs overlap to adequately address the issue of whether the departure from the CVC would provide a more accurate assessment of disability. (See, e.g., Ex. 7, Transcript of the Deposition of William Gabriel, DDS, dated October 6, 2023, at p. 21:20.) Thus, the present record does not support the addition of the percentages of permanent disability arising out of applicant's dental, facial and head injuries. We acknowledge, however, that both the October 6, 2023 deposition of the Dr. Gabriel and subsequent April 4, 2024 trial took place before we issued our en banc decision in *Vigil, supra*, on June 10, 2024.

Following our independent review of the record occasioned by defendant's Petition, we conclude that the current evidentiary record does not adequately address the issue of the specific ADLs impacted by each impairment to be added, and whether the ADLs do not overlap, or whether the ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs. (*Vigil, supra*, 89 Cal. Comp. Cases at pp. 688-689.)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Accordingly, we will also amend the F&A to reflect that the issues of permanent disability, apportionment, and attorney fees are deferred pending development of the record.

In summary, we agree with the PWCJ that a wage capacity analysis under section 4453(c)(4) is appropriate but are also persuaded that the most accurate reflection of applicant's

weekly hours worked is 36 hours, including 12 hours of overtime, as per applicant's credible trial testimony. We also conclude that the QME's analysis of whether applicant's percentages of disability should be added or combined is analytically incomplete and does not conform to our en banc decision in *Vigil, supra*, 89 Cal.Comp.Cases 686.

Accordingly, we will grant defendant's Petition and rescind the F&A. We will substitute new Findings of Fact that restate the PWCJ's Findings of Fact, except that we will amend Finding of Fact No. 1 to correctly identify the injured body parts, Finding of Fact No. 6 to reflect weekly wages of $1,050, and Findings of Fact Nos. 7, 8, 11 and 12, which we will amend to defer the issues of permanent disability, apportionment, and attorney fees, respectively.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 12, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 12, 2024 is **RESCINDED**, with the following substituted therefor:

FINDINGS OF FACT

1. Karen Robasciotti, while employed on January 16, 2019, as a psyche technician, Occupational Group Number 311, at Santa Barbara, California by Maxim Healthcare sustained injury arising out of and in the course of employment to her lumbar spine, cervical spine, head, mouth/teeth, cranial nerve, digestive tract, psyche, and the form of headaches and speech impairment.
2. At the time of the injury, the employer's workers' compensation carrier was Ace American Insurance Company, c/o ESIS.
3. Applicant received 104 weeks of temporary disability with the last payment paid on February 8, 2021. However, this was paid at the incorrect rate and applicant is entitled to the difference.
4. Applicant became permanent and stationary on May 14, 2021.
5. The employer has furnished some medical treatment.
6. Applicant's earning capacity provides for an average weekly wage of $1,050.00.
7. The issue of permanent disability is deferred.
8. The issue of apportionment is deferred.

9. There is a need for further medical care to cure or relieve the effects of the industrial injury.
10. Applicant is entitled to be reimbursed for all out-of-pocket medical expenses, subject to proof and in an amount to be adjusted by the parties.
11. The issue of attorney fees is deferred.

AWARD

AWARD IS MADE in favor of **KAREN ROBASCIOTTI** and against **ACE AMERICAN INSURANCE COMPANY c/o ESIS** as follows:

a. Temporary disability benefits per Finding of Fact No. 3;
b. Future medical care per Finding of Fact No. 9; and
c. Reimbursement for out-of-pocket medical expenses per Findings of Fact No 10.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2024

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

KAREN ROBASCIOTTI
LAW OFFICE OF ALAN H. FENTON
HEFLEY LAW

SAR/abs

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