WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RAYMUNDO BARRERA, ***Applicant***

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, ***Defendant***

Adjudication Number: ADJ16012097
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings of Fact and Order (F&O) issued on April 30, 2024, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as an investigator by the County of Los Angeles during the period of May 21, 1991 through November 5, 2021, applicant sustained injury to the cervical spine, lumbar spine, and left knee, with Whole Person Impairment (WPI) before application of the Labor Code Section 4660.1(b)[1] 1.4 adjustment factor, adjustment for occupation and age of 7 percent for the cervical spine, 7 percent for the lumbar spine, and 12 percent for the left knee, and WPI after application of the adjustment factor of 10 percent for the cervical spine, 10 percent for the lumbar spine, and 17 percent for the left knee, and with apportionment of the neck disability of 10 percent and the left knee disability of 75 percent; (2) applicant's subsequent permanent disability excluding apportionment amounts to 10 percent for the cervical spine, 10 percent for the lumbar spine, and 17 percent for the left knee; and (3) the subsequent permanent disability of the cervical spine, lumbar spine, and left knee are added and amount to 37 percent, establishing the 35 percent threshold for entitlement to SIBTF benefits under section 4751(b).

The WCJ ordered all other issues off calendar.

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

Defendant contends that the WCJ erroneously found that applicant's permanent disability resulting from subsequent injury meets the 35 percent threshold under section 4751(b). Specifically, defendant argues that the WCJ erred by (1) excluding apportionment to non-industrial disability from the calculation of the permanent disability; and (2) adding applicant's impairments from the subsequent injury instead of combining them using the Combined Values Chart (CVC).

We received an Answer from applicant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition be denied.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration and, as our Decision After Reconsideration, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On December 7, 2022, applicant and the County of Los Angeles entered Stipulations with Request for Award regarding applicant's cumulative injury for the period of May 21, 1991 through November 05, 202l. (Signed Stipulations with Request for Award, December 7, 2022, p. 1.) The Stipulations include an addendum, which provides:

> The settlement is based on the AME reports of Dr. James Sherman dated 3/11/22, and 5/6/21, as well as the AME reports of Dr. Steven Silbart dated 10/17 /22, 9/6/22, 3/7 /22, and 12/13/21. The rating is as follows:
>
> Left Knee: 25% (17.05.06.0.- 12%[1.4]- 17- 4901- 23- 27) 7%
> Cervical: 90% (15.01.01.00- 7%[1.4]- 10- 4901- 15- 18) 16%
> Lumbar: 15.03.01.00- 7% [1.4]- 10- 4901- 15- 18%
> Right Knee: No ratable impairment
> GERD: 100% - (06.01.00.00 - 15 - [1.4] 21 - 490F- 21 - 25%) 25%
> CVC: 53%PD
> (*Id.*, pp. 7, 9.)

The WCJ admitted an exhibit entitled AME of Dr. Silbart dated September 6, 2022 into evidence. (Ex. Y2, AME of Dr. Silbart dated September 6, 2022.) In it, Dr. Silbart states:

> Mr. Barrera's impairment as per the AMA Guides, 5th Edition, is calculated as follows:
>
> > For the left knee, for decreased muscle strength in flexion, the patient demonstrates 5% Whole Person Impairment; for decreased muscle strength in extension, the patient demonstrates 5% Whole Person Impairment (Table 17-8). For history of patellofemoral trauma with patellofemoral pain and crepitus on physical examination, the patient demonstrates 2% Whole Person Impairment (Caption, Table 17-31), for a total of 12% Whole Person Impairment for the left knee.
> >
> > For the cervical and lumbar spine, the patient's impairment falls into the DRE Cervical and Lumbar Category II for findings that may include asymmetric loss of range of motion . . . , a mid-range 7% Whole Person for the cervical spine (Table 15-5) and a mid-range 7% Whole Person for the lumbar spine (Table 15-3).
>
> (*Id*., p. 10.)

In the Report, the WCJ states:

> [T]he parties stipulated that Raymundo Barrera, age 54 on the date of injury, while employed during the period May 21, 1991 through November 5, 2021 as an investigator, Occupational Group Number 490, at County of Los Angeles, by the County of Los Angeles, permissibly self-insured, sustained injury arising out of and in the course of employment to his cervical spine, lumbar spine, and left knee. . . . Applicant's counsel contended that the permanent disability as outlined by AME Silbart for these body parts should be added without regard to apportionment. The SIBTF contended the permanent disability outlined by Dr. Silbart for these body parts should be combined on the Combined Values Chart after apportionment.
> . . .
> In this case the parties stipulated that Orthopedic Agreed Medical Evaluator Steven Silbart, MD, outlined Whole Person Impairment (before multiplication by the adjustment factor of 1.4, and before adjustment for occupation or age) of 7% for the cervical spine, 7% for the lumbar spine, and 12% for the left knee. They further stipulated that, and that pursuant to Labor Code § 4660.1(b), these Whole Person Impairments are to be multiplied by an adjustment factor of 1.4. Thus, for the purpose of determining whether the 35% threshold has been met, applicant's permanent disability is considered at 10% for the cervical spine, 10% for the lumbar spine, and 17% for the left knee. (See Minutes of Hearing and Summary of Evidence dated March 5, 2024, page 2, lines 9 through 12).
> . . .

The 2005 permanent disability rating schedule provides that ". . . all impairments are converted to the whole person scale, adjusted, and then combined[.]" (2005 PDRS, p. 1–11(emphasis added)). Labor Code § 4751 expressly prohibits adjustment for occupation and age. Therefore, the Combined Values Chart cannot be applied to the determination of permanent disability for the purpose of determining whether applicant has met the statutory threshold of 35% permanent disability to qualify for SIBTF benefits. Thus, ". . . the proper method of computing permanent disability pursuant to section 4751 is to adjust the disabilities for diminished future earning capacity and then add the disabilities." Ryder v. City of Los Angeles, 2016 Cal. Wrk. Comp. P.D. LEXIS 212 (Cal. Workers' Comp. App. Bd. May 4, 2016).

In this case, after application of the 1.4 adjustment factor, applicant's cervical spine disability is 10%, his lumbar spine disability is 10%, and his left knee disability is 17%. When added together they total 37%.
(Report, p. 1-4.)

DISCUSSION

Section 4751 provides:

If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total.
(§ 4751.)

In *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581-582 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc), we stated that an employee must prove the following elements to recover subsequent injuries fund benefits:

> (1) a preexisting permanent partial disability;
>
> (2) a subsequent compensable injury resulting in additional permanent partial disability:
>
> (a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or
>
> (b) the subsequent permanent disability must equal to 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;
>
> (3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and
>
> (4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. ([Lab. Code] § 4751.)
> (*Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581-582 (Appeals Board en banc).)

Defendant first contends that the WCJ erroneously found that applicant's permanent disability resulting from the subsequent injury meets the 35 percent threshold under section 4751(b) by reading *Bookout v. Workmen's Comp. Appeals Bd. (*1976) 62 Cal.App.3d 214 [41 Cal.Comp.Cases 595] and its progeny to exclude apportionment from the calculation of permanent disability resulting from subsequent injury.

In *Bookout*, the applicant was employed as an oil refinery operator and sustained a compensable injury to his back, which was rated at 65 percent permanent disability. (*Bookout, supra*, 62 Cal.App.3d at pp. 219–220.) The back disability included a limitation to semi-sedentary work. (*Id.*, p. 219.) Prior to his industrial injury, the applicant had a nonindustrial heart condition. (*Id*.) The heart condition contained two work preclusions: preclusion of heavy work activity and preclusion from excessive emotional stress. (*Id*., pp. 220–221.) The preclusion of heavy work

activity was rated at 34.5 percent permanent disability. (*Id*., p. 220.) The preclusion from excessive emotional stress was rated at 12 percent permanent disability. (*Id*., pp. 220–221.)

At the trial level, the referee concluded that the heart condition precluding heavy work activity completely overlapped with the back disability limitation to semi-sedentary work. (*Bookout, supra*, 62 Cal.App.3d at p. 224.) The referee, thus, subtracted the preclusion of heavy work activity of 34.5 percent permanent disability from the 65 percent unapportioned permanent back disability and awarded applicant permanent disability of 30.5 percent for the industrial back injury. (*Id.*, pp. 219–221.) The referee then found that the applicant was not eligible for SIBTF benefits based on the finding of 30.5 percent after apportionment, which was less than the requisite minimum of 35 percent for a subsequent disability under section 4751(b). (*Id*., p. 221.) The Appeals Board affirmed both the 30.5 percent permanent disability award for the industrial back injury and the finding that applicant was not eligible for SIBTF benefits. (*Id*., pp. 218–219.)

The Court of Appeal concluded that the Appeals Board had properly determined applicant's permanent disability rating of 30.5 percent as a result of his compensable back injury, and that the disability resulting from the subsequent injury was compensable to the extent that it caused a decrease in applicant's earning capacity, citing former section 4750 and *State Compensation Ins. Fund v. Industrial Acci. Com*. (*Hutchinson*) (1963) 59 Cal.2d 45, 48–49 (an employer is only liable for the portion of disability caused by the subsequent industrial injury) and *Mercier v. Workers' Comp. Appeals Bd.* (1976) 16 Cal.3d 711, 715–716 [41 Cal.Comp.Cases 205] (the fact that injuries are to two different parts of the body does not in itself preclude apportionment). (*Bookout, supra*, 62 Cal.App.3d at pp. 222–227.)

However, the Court of Appeal held that applicant was erroneously denied SIBTF benefits under section 4751(b). (*Bookout, supra*, 62 Cal.App.3d at p. 228.) It explained that the referee incorrectly instructed the rating specialist to apportion 34.5 percent for the preexisting nonindustrial heart disability (based on a standard rating of 30 percent) from the total subsequent injury disability of 65 percent (based on a standard rating of 60 percent), rather than utilizing the total disability for the subsequent injury "standing alone and without regard to or adjustment for the occupation or age of the employee" as required by section 4751(b). (*Id*.; § 4751(b).) It interpreted the language of this requirement as excluding apportionment. Thus, the court held that the permanent disability attributable to applicant's subsequent injury for the purpose of meeting

the 35 percent threshold requirement under the statute was the standard rating of 60 percent. (*Bookout, supra*, 62 Cal.App.3d at p. 228; § 4751(b).)

We are therefore persuaded that *Bookout* excludes apportionment from the determination of whether applicant meets the 35 percent permanent disability threshold from the subsequent industrial injury alone.

Our reading of *Bookout* is further supported by *Anguiano v. Subsequent Injuries Benefits Trust Fund*, 2023 Cal. Wrk. Comp. P.D. LEXIS 310 (Cal. Workers' Comp. App. Bd. November 7, 2023.[2] There an Appeals Board panel affirmed its prior decision that the applicant met the 35 percent threshold requirement based upon on *Bookout's* holding that the calculation of permanent disability attributable to the applicant's subsequent injury for the purpose of meeting the threshold excludes apportionment—and the Court of Appeal for the Second District denied defendant's petition for writ of review thereon.

Nonetheless, we address defendant's argument that section 4751(b) should be interpreted in accordance with *Reina v. Workers' Comp. Appeals Bd.* (1998) 63 Cal.Comp.Cases 101 (writ den.), *McMahan v. Workers' Comp. Appeals Bd*. (1984) 49 Cal.Comp.Cases 95 (writ den.), *Workman v. St. Theresa*, 2019 Cal. Wrk. Comp. P.D. LEXIS 362 (Cal. Workers' Comp. App. Bd. September 4, 2019), and *Whisnant v. Subsequent Injs. Bens. Trust Fund*, 2022 Cal. Wrk. Comp. P.D. LEXIS 57 (Cal. Workers' Comp. App. Bd. January 3, 2022).

In *Reina*, the court found that an applicant with a subsequent industrial injury disability that rated on a stipulated, unadjusted basis at less than the statutory criteria does not qualify for SIBTF benefits. We therefore do not view *Reina* as in conflict with *Bookout*.

In *McMahan*, the applicant received an award that he had sustained permanent disability of 37 percent as a result of a specific injury and that his cumulative injury resulted in permanent disability of 31½ percent after apportionment of 50 percent—and neither party sought reconsideration. Nonetheless, the applicant sought SIBTF benefits based upon the same cumulative injury and, though the cumulative injury was deemed a subsequent injury, the WCJ concluded that it did not meet the 35 percent threshold for SIBTF benefits and the Appeals Board

[2] 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 [118 Cal. Rptr. 2d 105, 67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we may consider these decisions to the extent that we find their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

affirmed on the grounds that the previous disability did not equal 70 percent or more of the total as required by section 4751. Hence, because the applicant's subsequent injury claim was barred on grounds separate from the issue of whether apportionment may be included in the calculation of subsequent permanent disability, we conclude that *McMahan* does not stand for the proposition that apportionment must be included in the evaluation of whether the 35 percent threshold has been met.

In *Workman*, an Appeals Board panel held that that an applicant who had sustained subsequent injury to both shoulders and had a preexisting right shoulder impairment was entitled to SIBTF benefits based upon case authority allowing the impairments from the subsequent work injury that affected an opposite and corresponding member to a preexisting impairment be combined to establish the 5 percent threshold under section 4751(a) without addressing the question of whether apportionment should be included in the calculation of subsequent permanent disability. We therefore do not view *Workman* as in conflict with *Bookout*.

In *Whisnant*, an Appeals Board panel rescinded the WCJ's decision finding that the applicant, who suffered industrial injury on previous dates and alleged subsequent cumulative injury to multiple body parts, including both hands, did not submit sufficient evidence to establish eligibility for SIBTF benefits because he did not meet either the 5 percent (for opposite and corresponding body parts) or 35 percent permanent disability threshold for subsequent injury. The panel then returned the matter to trial level for development of the issue of whether the 35 percent permanent disability threshold was met though the applicant had been rated at 31 percent after removal of adjustments of occupation and age and without apportionment. Thus *Whisnant* does not suggest that apportionment must be included in the calculation of permanent disability resulting from subsequent injury.

Accordingly, we are unable to discern merit to defendant's argument that the WCJ erroneously relied on the holding in *Bookout* to find that applicant meets the 35 percent permanent disability threshold from the subsequent industrial injury alone as required by section 4751(b).

Defendant also contends that the WCJ erroneously found that applicant's permanent disability resulting from subsequent injury meets the 35 percent threshold under section 4751(b) by adding applicant's impairments from the subsequent injury instead of combining them using the CVC.

Defendant first argues that applicant stipulated "to use the CVC to combine his subsequent injury impairments" when he entered the Stipulations with Request for Award. (Petition, p. 12:25.) This argument is unsupported by the record. In particular, applicant stipulated that the settlement between himself and the County of Los Angeles is "based on the AME reports of Dr. James Sherman dated 3/11/22, and 5/6/21, as well as the AME reports of Dr. Steven Silbart dated 10/17/22, 9/6/22, 3/7 /22, and 12/13/21 . . . [and] that [t]he rating is as follows: . . . CVC: 53%PD." (Signed Stipulations with Request for Award, December 7, 2022, pp. 7, 9.)

The Stipulations with Request for Award thus memorializes the medical evidence on which the parties relied upon to settle their dispute and does not purport to waive, release or otherwise limit the grounds upon which applicant might seek SIBTF benefits. Applicant is therefore not precluded by the Stipulations with Request for Award from seeking SIBTF benefits by adding impairments instead of combining them using the CVC.

Defendant further argues that the medical record fails to support the finding that applicant's impairments must be added instead of combined.

In *Department of Corrections and Rehabilitation v. Workers' Comp. Appeals Bd*. (*Fitzpatrick*) (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Court of Appeals found that the impairments "are generally combined" using the CVC, though the "scheduled rating [under the CVC] is not absolute" and other methodologies may be used to calculate permanent disability. (*Id*., p. 614.) Thus, while the scheduled rating is prima facie evidence of an employee's permanent disability, the scheduled rating 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.) The overarching goal of rating permanent impairment is to achieve 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].) (*Almaraz-Guzman III, supra,* at p. 822.)

For example, in *Athens Administrators v. Workers' Comp. Appeals. Bd.* (*Kite*) (2013) 78 Cal.Comp.Cases 213 (writ denied), the Court concluded that impairments resulting from cumulative injury to the bilateral hips may be added where substantial medical evidence supports a physician's opinion that adding impairments will result in a more accurate rating of the level of disability than the rating that results from using the CVC. (See also *De La Cerda v. Martin Selko & Co*. (2017) 83 Cal.Comp.Cases 567 (writ den.) (stating that a physician's opinion as to the most accurate rating method should be followed if she or he provides a reasonably articulated medical basis for doing so); *Johnson v. Wayman Ranches*, 2016 Cal.Wrk.Comp. P.D. LEXIS 235.)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases __ , 2024 Cal. Wrk. Comp. LEXIS 23 (en banc), the Appeals Board recently held that application of the CVC may be rebutted where the medical evidence shows that there is no overlap between the effects on the activities of daily living (ADLs) between the rated body parts, or, if there is overlap, where the overlap increases or amplifies the impact of the overlapping ADLs.

In the present case, Dr Silbart combined applicant's impairments without expressing an opinion as to whether combining them using the CVC or adding them would result in a more accurate rating of the level of disability—and without otherwise providing grounds to rebut the use of the CVC. (Ex. Y2, AME of Dr. Silbart dated September 6, 2022, p. 2.) The WCJ nonetheless determined that the impairments must be added pursuant to *Ryder v. City of Los Angeles*, 2016 Cal.Wrk.Comp. P.D. LEXIS 212 (*Ryder I*). (Report, p. 4.)

However, we are not persuaded by *Ryder I* that the question of whether impairments should be combined or added for the purpose of establishing the level of permanent disability resulting from subsequent injury is wholly legal in nature and requires that they be added where, as here, application of the 2005 permanent disability rating schedule requires the impairments to be converted to the whole person scale, adjusted, and then combined. (*Id.*)

Under the rationale of *Fitzpatrick*, *Almaraz-Guzman II*, *Kite*, and *Vigil*, the question of whether impairments should be combined or added for purposes of establishing the level of permanent disability is medical/legal in nature, allowing for impairments to be added rather than combined using the CVC when the medical record establishes that adding impairments is the more accurate method for determining the level of permanent disability. Consequently, applicant must produce substantial evidence showing that adding impairments will result in a more accurate rating than the rating obtained by the method of combining impairments using the CVC.

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).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93, 97].)

Since the WCJ found that the impairments should be added without a medical record opining that using that method would result in a more accurate rating, we conclude that the WCJ erroneously found that applicant's permanent disability resulting from the subsequent injury meets the 35 percent threshold under section 4751(b). (See also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 929 [71 Cal.Comp.Cases 1687] (stating that the Appeals Board may not substitute its judgment for that of a medical expert).)

Additionally, since the record does not address the question of whether combining or adding impairments will result in a more accurate determination of permanent disability resulting from subsequent injury, we conclude that the record should be further developed as to that issue and the issue of whether applicant meets the 35 percent threshold for entitlement to SIBTF benefits under section 4751(b).[3] (See *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389 [65 Cal.Rptr.2d 431, 62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [72 Cal.Rptr.2d 898, 63 Cal.Comp.Cases 261] (finding that the Appeals Board has the discretionary authority to develop the record when appropriate to fully adjudicate the issues); see also § 5313.)

Accordingly, we will rescind the F&O and return the matter to the trial level for further proceedings consistent with this decision.

[3] Although the parties stipulated that applicant's impairments for the cervical spine, lumbar spine, and left knee are to be multiplied by an adjustment factor of 1.4, and although the WCJ applied the 1.4 multiplier to the cervical spine, lumbar spine, and left knee individually before adding them, the record is without medical evidence regarding how the adjustment factor should be applied, i.e., whether to each impairment individually and then combined or added, or to the sum of the combined or added impairments. (Report, p. 3; see § 4660.1(b).) We therefore recommend that development of the record on the issue of whether combining or adding impairments will result in a more accurate determination of the level of permanent disability also address how the 1.4 adjustment factor should be applied.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings of Fact and Order issued on April 30, 2024 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact and Order issued on April 30, 2024 is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings consistent with this decision**.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 29, 2024

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

RAYMUNDO BARRERA
STRAUSSNER SHERMAN LONNÉ TREGER HELQUIST
TENNENHOUSE, MINASSIAN & ADHAM
OFFICE OF THE DIRECTOR-LEGAL UNIT

SRO/mc

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