

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

EDWAR VANEGAS GERENA, *Applicant*

vs.

**COMMERCIAL TREE CARE
(BARRETT BUSINESS SERVICES, INC.);
ACE AMERICAN INSURANCE COMPANY,
administered by CORVEL, *Defendants***

**Adjudication Number: ADJ14789657
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the July 16, 2025 Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ). By the F&A, as relevant here, the WCJ found that while employed by defendant on April 29, 2021, as a tree trimmer, occupational group number 482, applicant sustained injury arising out of and in the course of his employment to his left hand, neck, right shoulder, right arm, right upper extremity, and psyche resulting in permanent and total disability with no apportionment.

Defendant contends the WCJ erred because the assigned permanent disability rating is not supported by the evidence, as there is no evidence that applicant has lost all earning capacity or has no ability to be rehabilitated to work, and the report of the Qualified Medical Examiner (QME), Dr. Rakkar, does not constitute substantial medical evidence.

We received an Answer from Applicant.

The WCJ issued 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 Answer and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for

the reasons stated in the Report, which is adopted and incorporated herein, and for the reasons discussed below, we will deny reconsideration.

I.

Former Labor Code 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, Labor Code 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 Labor Code 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 August 25, 2025, and 60 days from the date of transmission is October 24, 2025. This decision is issued by or on October 24, 2025, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 25, 2025, and the case was transmitted to the Appeals Board on August 25, 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 Labor Code 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 25, 2025.

II.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Moreover, following our independent review of the record, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations (*Id.*)

Accordingly, defendant's Petition is denied.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 16, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 24, 2025

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

**EDWAR VANEGAS GERENA
GIMBEL LAW FIRM PC
GILSON DAUB**

DC/cs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

AND

NOTICE OF TRANSMISSION TO THE APPEALS BOARD

I.

INTRODUCTION

1. Applicant's Occupation : Tree trimmer
Date of Injury : 4/29/2021
Parts of Body Injured : Neck, left hand, right shoulder, right arm, right upper extremity, and psyche.
2. Identity of Petitioner : **Defendant** filed the Petition.
Timeliness : The petition was timely filed on 8/11/2025.
Verification : The Petition was verified.
3. Date of Issuance of Order : 7/16/2025
4. **Petitioner's contentions:** Petitioner contends that 1) the evidence does not justify the findings of fact; and 2) the findings of fact do not support the order, decision, or award. Specifically, defendant contends that the WCJ's finding of permanent total disability is not supported by the evidence, as there is no evidence that applicant has lost all earning capacity nor is there evidence that applicant cannot be rehabilitated to work in the open labor market, and that QME Dr. Rakkar's impairment finding for applicant's left upper extremity does not constitute substantial medical evidence.
Applicant has filed an Answer.

II.

FACTS

On 4/09/2021, applicant, EDWAR VANEGAS GERENA, employed as a tree trimmer, was seriously injured when a chain saw, still powered and with blade turning, fell on his left hand. Applicant testified that sometime after noon that day, they had to cut a long branch that was overhanging a busy street. The space they were working on was narrow, due to traffic going by. His co-worker was using a chainsaw and applicant was holding the branch to keep it from falling. At the moment the branch was cut, his coworker lost control of the chainsaw and it fell on applicant's left hand. The chainsaw, still powered with blade turning, fell approximately 10 feet

before it cut his hand. Applicant testified he was not expecting the saw to fall and never expected this would happen. Applicant further testified there was blood and a deep cut on his hand. He removed his glove, and tried to put something on it from the first aid kit to keep it from bleeding. His coworker called an ambulance, and he was transported to the hospital where he had emergency surgery to repair damage to the tendons and muscles of his left hand. (1/10/2024 MOH/SOE, p. 10: 13 – 45)

Applicant was subsequently referred to Concentra Medical Center. He was placed off work and referred to physical therapy. Unfortunately, the physical therapy gave him no relief. In July 2021, applicant was seen by Dr. Howard Sutkin, a reconstructive plastic surgeon. Dr. Sutkin recommended exploration surgery of the left hand to rearrange his tendons and drain the wound. Due to overcompensation while favoring his left hand, applicant began experiencing pain in his right shoulder, with pain radiating to his neck and hand. In September 2021, his primary treating physician, Dr. Vanessa Ortiz recommended that he undergo further surgery with Dr. Sutkin, and requested authorization for psychological treatment. On 10/04/2021, applicant underwent another left hand surgery with Dr. Sutkin.

On 2/04/2022, applicant was examined by QME George Rakkar, M.D., who issued his report, dated 2/12/2022. At the time of the evaluation, applicant reported intermittent stabbing pain in his right shoulder, with pain radiating to his neck and down to his hand. He also reported intermittent stabbing pain in his left wrist and hand, with pain radiating to his fingers. He had episodes of numbness and tingling, swelling, cramping, and weakness. Applicant also claimed development of stress, anxiety, depression, and insomnia, for which he was receiving psychological counseling. Dr. Rakkar diagnosed applicant with laceration to the dorsum of the left hand, status post-surgical debridement and closure; left hand pain; left hand and upper extremity dysfunction; left upper extremity neuropathic pain; and right upper extremity compensatory pain. He opined that applicant's need for medical care and impairment stemmed from the 4/29/2021 injury and that he had not yet reached maximum medical improvement (MMI). Dr. Rakkar recommended physical therapy for applicant's left hand and a one-time multidisciplinary consultation to determine applicant's candidacy for a functional restoration program. He deferred to a psychiatrist or psychologist for evaluation of applicant's depressed mood and psychological treatment. (Exhibit 1)

On 2/17/2023, applicant was re-evaluated by Dr. Rakkar, who noted that since his initial evaluation, applicant had, completed a 6-week functional restoration program (FRP); a psychiatry consultation and several sessions of psychological therapy; several sessions of physical therapy for his left upper extremity; continuation of his medication; and had undergone a left stellate ganglion block. Dr. Rakkar noted applicant continued to have pain in the left and right shoulder; burning and tingling pain in the back of his left hand; throbbing, pulsing, and electrical sensations that start in the back of the left hand and travel up to his left upper extremity; and left hand weakness. Applicant expressed frustration of his overall condition and felt that he was not capable of performing normal activities around the house. He reported finding it very difficult to get dressed, open jars, fold laundry, and perform tasks of personal hygiene, and was upset that he continually had to ask for help. Dr. Rakkar's diagnoses now included Causalgia Complex Regional Pain Syndrome (CRPS) to the left upper extremity, as he noted applicant had developed neuropathic pain in the left upper extremity, which had progressed to CRPS. He opined applicant was now MMI, and rated applicant's CRPS under Class 4, using Table 13-16, page 338 of the AMA Guides 5th Edition, resulting in 45% WPI, with an additional 3% WPI for pain. Dr. Rakkar rated applicant's right shoulder under ROM at 4% WPI. (Exhibit 2)

On 2/27/2023, applicant was examined by psychiatric QME Miguel Alvarelllos, and was diagnosed with Major Depressive Disorder. Dr. Alvarelllos opined that the predominant cause of applicant's psychiatric impairment was the result of a compensable consequence of the tragic events that took place on the date of injury, and further opined applicant was permanent and stationary on a psychiatric basis and assigned a GAF of 50, resulting in 30% WPI, with no apportionment indicated. (Exhibit 4)

On 5/19/2023, Dr. Alvarelllos issued a supplemental psychiatric report in which he was asked to consider whether using the combination or the addition method would be the most accurate way to determine disability. Dr. Alvarelllos opined,

The combination of a synergistic effect in this case between the orthopedic injury, which is separate and distinct from (sic) the psychiatric injury along with the lack of any overlap in the psychiatric as well as the orthopedic injuries, provide reasonable medical evidence to support the use of the addition method in order to most accurately rate the applicant's impairments. If one were to utilize the

combination method, there would be a compression in determining Mr. Gerena-Vanegas' true level of disability.

(Exhibit 5)

On 5/30/2023, Dr. Rakkar was deposed. He explained that his 45% rating under Class 4 was based on applicant's description of his home life and the difficulties he was having with normal activities, which were "quite profound." He opined that applicant's diagnosis of CRPS, which can be very debilitating, was appropriately rated at the higher end of the spectrum of Class 4 and more accurately represented applicant's disability. (Exhibit 3, p. 7: 10-23) Dr. Rakkar explained that he did not place applicant under Class 3 due to applicant's inability to complete meaningful tasks using his left upper extremity in a very meaningful way. (Exhibit 3, p. 10: 19-25; p. 11: 1-4). When asked if he had considered whether applicant's orthopedic impairments should be added or combined, Dr. Rakkar testified he would not change his opinion that combined values for the orthopedic impairments was best. (Exhibit 3, p. 21: 7-19)

On 7/25/2023, Dr. Alvarellos, M.D. was deposed. He testified that when the impairments are added, they would reflect a more accurate measure of the applicant's true disability. (Exhibit 6, p. 10: 14-16)

Parties proceeded to trial on 1/10/2024, 2/28/2024, 4/22/2024, and 6/12/2024, wherein extensive review of TikTok videos offered by defendant as Exhibits X and Y and testimony took place to determine whether said videos should be provided to the QME's. The matter was submitted for decision on 6/12/2024. On 7/25/2024, an Order Rescinding Submission and Order Setting Matter for Conference issued. On 9/06/2024, after discussion with the parties at the 8/29/2024 Status Conference, applicant's objection to the admissibility of defendant's Exhibits X and Y was overruled, and an Order admitting defendant's Exhibits X (TikTok videos dated 6/10/2022 through 9/02/2023) and Y (List of TikTok videos with interpretations dated 6/10/2022 through 9/02/2023) into evidence and Order to develop the Record issued. The parties were ordered to provide said videos and translations, and copies of the Minutes of Hearing and Summary of Evidence for each of the aforementioned trial dates to QME's Dr. Rakkar and Dr. Alvarellos for comment.

With parties having obtained supplemental reporting consistent with the undersigned's Order, a Notice of Intention to Augment the Record and Notice of Intention to Re-submit Matter for decision issued On 4/22/2025. On 4/30/2025, defendant objected to the admissibility of Court

Exhibit ZZ on the grounds that applicant's counsel had violated Labor Code section 4062.3. On 5/12/2025, defendant's objection was overruled, and an Order to Augment the Record and Order Re-Submitting Matter for Decision issued. The matter was re-submitted for decision on 5/12/2025.

On 7/16/2025, the Findings and Award and Opinion on Decision issued, wherein the undersigned found applicant permanently totally disabled. Defendant, aggrieved by the undersigned's decision, filed a timely Petition for Reconsideration.

III.

DISCUSSION

PERMANENT TOTAL DISABILITY IS SUPPORTED BY THE EVIDENCE

As discussed above, QME Dr. Rakaar rated applicant's CRPS for his left upper extremity, using Table 13-16, p. 338 under Class 4, resulting in 45% WPI, with an additional 3% WPI for pain, with no apportionment factors to consider. Dr. Rakkar rated applicant's right shoulder using ROM at 4% WPI. Dr. Rakkar's report rates as follows:

Left UE – CRPS: 100% - (16.01.02.04 - 48 - [1.4] 67 - 482J - 77 - 77%) 77%

Right Shoulder ROM: 100% - (16.02.01.00 - 4 - [1.4] 6 - 482I - 9 - 9%) 9%

CVC: 77 C 9 = 79%

Defendant argues that Dr. Rakkar's impairment rating under Class 4 does not constitute substantial medical evidence as it is based on speculation. To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and set forth reasoning to support the expert conclusions reached¹. As summarized above, Dr. Rakkar was deposed by able counsel. He was specifically asked to explain his Class 4 rating. Dr. Rakkar explained that the 45% rating under Class 4 was based on applicant's description of his home life and the difficulties he was having with normal activities, which were "quite profound." Dr. Rakkar opined that applicant's diagnosis of CRPS, which can be very debilitating, was appropriately rated at the higher spectrum of Class 4 and more accurately represented applicant's disability. Defendant takes issue with Dr. Rakkar's rating because applicant did not state he could not use his upper extremity at all. (Defendant Trial Brief p. 19: 19-20) Defendant asserts Dr. Rakkar's rating, which indicates the individual cannot use the involved extremity for self-care or daily activities, is based on surmise, speculation, conjecture, or

¹ (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

guess. Defendant asserts that it was the doctor's own conjecture that led him to decide that applicant could not use his upper extremities in a meaningful way. (Defendant Trial Brief, p. 20)

However, when asked why he placed the applicant in a Category 4, Dr. Rakkar testified,

Because when I asked him, you know, 'what can you do with your extremity?' it was apparent that he really wasn't able to use it at all. I kind of felt that when I was speaking to him about his abilities, it was almost as if he was trying to tell me that he could do things. But when I really boiled it down, he wasn't really capable of performing these activities, you know, using his left upper extremity in a very meaningful way." (Exhibit 3, p. 8: 5-15)

...when I'm talking about usage of an upper extremity, I'm referring to the ability to complete meaningful tasks and having that extremity contribute in a meaningful way.

So, you know, if you're not able to – if someone's not able to, you know, put two hands around a broom to sweep, or they're not able to carry their laundry with both hands, I wouldn't really say that the upper extremity is able to participate in self-care or daily activities. (Exhibit 3, p. 11: 1-10)

Dr. Rakkar explained that difficulty getting dressed, for example, means getting dressed with one arm. Similarly, with regard to opening doors and jars, folding laundry, and activities of personal hygiene, applicant has difficulty performing those task with using only the right arm, because he is unable to use the left. (Exhibit 3, p. 17: 15-17; p. 18: 1-14) Dr. Rakkar's explained that his decision to place applicant in Class 4 was not an inference about what applicant told him. It was the explanation that applicant provided to him about what he does, and also the results of his physical evaluation, including when he was able to touch him and try to manipulate his hand. (Exhibit 3, p. 8: 16-22)

Dr. Rakkar examined the applicant, reviewed the extensive medical record, and explained his reasoning in his reports and at deposition as to why Class 4 is the most accurate rating for applicant's left upper extremity. The undersigned found Dr. Rakkar's opinion and testimony to be substantial medical evidence.

Applicability of Labor Code section 4660.1(c)(2).

Pursuant to Labor Code §4660.1(c)(2)², an increased impairment rating for psychiatric disorder is allowed if the compensable psychiatric injury resulted from either a significant violent act, or a catastrophic injury. The undersigned found applicant's severe injury resulted from a strong, extreme or intense physical force and constitutes a violent act, as defined in *Larsen v. Securitas Security Services*³. As such, applicant is entitled to an increased impairment rating pursuant to section 4660.1(c)(2). Defendant does not challenge this finding.

As previously discussed, QME Dr. Alvarellos diagnosed applicant with Major Depressive Disorder. He opined that the predominant cause of applicant's psychiatric impairment was the result of a compensable consequence of the tragic events that took place on the date of injury. He assigned a GAF of 50, equivalent to 30% WPI. He opined there is no reasonable medical evidence to support non-industrial apportionment. Dr. Alvarellos' report rates as follows:

Psyche: 100% - (14.01.00.00 - 30 - [1.4] 42 - 482I - 51 - 51%) 51%

(Exhibit 4)

Applicability of *Kite/Vigil* addition

Permanent disability in workers' compensation cases is determined using the Permanent Disability Ratings Schedule (PDRS), which is prima facie evidence of applicant's level of permanent disability. (Lab. Code, §§ 4660(c), 4660.1(d).) However, the PDRS is rebuttable⁴. The *Kite*⁵ decision established that permanent disability stemming from multiple impairments can be combined by simple addition rather than using the Combined Values Chart (CVC) in certain circumstances. In *Vigil*⁶, the WCAB, en banc, clarified that the CVC can be rebutted and impairments may be added when an applicant establishes the impact of each impairment on activities of daily living (ADLs). Accordingly, where an applicant seeks to rebut the CVC, applicant must establish the impact of each impairment on the activities of daily living (ADLs), and that either:

a) the ADLs do not overlap, or

² Lab. Code, §4660.1(c)(2).

³ *Larsen v. Securitas Sec. Servs.*, (2016) 81 Cal. Comp. Cases 770, 774-775 [2015 Cal. Wrk. Comp. P.D. LEXIS 237].

⁴ *Vigil (Sammy) v. County of Kern*, 89 Cal. Comp. Cases 686, 690, 2024 Cal. Wrk. Comp. LEXIS 23, *6-7, citing *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal. App. 4th 808, 822 [115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837].)

⁵ *Athens Administrators v. WCAB (Kite)* (2013) 78 Cal. Comp. Cases 213.

⁶ *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc).

b) the ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs⁷.

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.⁸

In his 12/04/2024 report, Dr. Alvarellos discussed in detail the ADLs impacted by the psychological impairment as follows:

Activities of daily living, as indicated in Table 1-2, include such activities as self-care, personal hygiene, communication, ambulation, travel, sexual function, and sleep.

The applicant Mr. Vanegas Gerena, has limited use of the entire left upper extremity. He has been diagnosed with Chronic Regional Pain Syndrome. In the case of the applicant, there has been a deleterious impact in relation to his pre and post-date of injury recreational activities and ADLs. In relation to activities of daily living, the applicant endorsed a history of problems in the provision of self-care, which I reported in my initial assessment when he has to use his left hand. This would include challenges with typical ADL's that are done slowly and with some discomfort. This would encompass the applicant having to hold things with his left hand that would involve cooking, cleaning, and self-care activities such as getting dressed, showering, preparing to brush his teeth, putting on a belt, buttoning a shirt and tying shoes. These self-care/personal hygiene activities are done with some discomfort due to his left-hand pain. These difficulties have been documented in various medical records as well as the report of the applicant.

I noted in my initial evaluation that the applicant has had decreased communication with others given his self-isolation and low self-worth has led to him being less motivated to interact with others. The physical disfigurement with his hand often

⁷ *Vigil supra*, 89 Cal. Comp. Cases at p. 693.

⁸ *Vigil supra* 89 Cal. Comp. Cases at p. 692.

leads to embarrassment and a tendency for the applicant to maintain his left (affected hand) hidden and in his pocket. As a result of his injury, the applicant reported that he has limited physical activity due to his depression and motivation to engage in physical activities, which then limits the non-specialized hand activities due to the physical limitations and pain when using force with his affected hand. For example, the applicant reported that he struggles to ride dirt bikes in the same manner that he was able to do prior to his hand injury. This is in addition to the general use of his left hand which would be necessary when operating manual transmission vehicles, which he reported struggling to navigate during the evaluation. The applicant also reported a decreased desire for sexual intercourse and problems maintaining an erection, which like all of the other ADL's noted previously, also impact his quality of life and further negatively impact his mood and anxiety. In addition, the applicant has difficulty with falling and staying asleep. He becomes frustrated easily because of his problems with sleep and feeling well rested, which exacerbates his mood and anxiety symptoms. As such, all of these the ADLs noted above are negatively impacted by the psychiatric impairment that was a result of the injury to the applicant's left hand.

As to whether the ADLs that are impacted by the psychological and orthopedic impairment overlap, Dr. Alvarellos opined:

There is no overlap in physical ADL's and psychiatric ADL's. The orthopedic and psychiatric point of view, the impairments are separate and distinct. As a result of the lack of overlap, the impairments should be added because adding them would provide a more accurate way of determining applicant's true level of impairment.

Dr. Alvarellos further noted,

In the case of Mr. Vanegas Gerena, there is fairly significant psychiatric impairment and disability as a result of the multiple physical limitations due to injuries to his left upper extremity and the development of CPRS (sic), which resulted from the surgical intervention to repair the applicant's left hand injury per George Rakkar, M.D. (pain medicine). In fact, Dr. Rakkar's opinion indicated that there was a substantial amount of impairment involving a WPI of 48% for the LUE CRPS; WPI of 4% for the right shoulder; and total WPI of 50%. The applicant's physical

injuries are chronic in nature and given they have been determined to have reached P&S by QME Dr. Rakkar, it indicates that the physical ailments are not expected to improve nor worsen in the near future. It is the presence of these physical ailments and their sequelae (pain, physical limitations to ADL's and other activities) that in turn negatively affect the applicant's mood, anxiety, concentration, insomnia, and cause further mental fatigue. In this case, there is no reasonable medical evidence to support that the psychiatric injury overlaps with the physical injuries. ... In addition, there is a synergistic effect between the physical injuries and the psychiatric injury: that is, the applicant's physical injuries not only caused the psychiatric injury, but the worsening physical functioning and worsening pain clearly exacerbates the psychiatric injury. When the applicant has flare ups in their physical injury, then his mood and anxiety worsens and causes further psychiatric clinical deterioration, which at times has led to the development of suicidal ideation as noted in my initial psychiatric QME. ...

To conclude, the lack of overlap between the psychiatric and physical injuries and synergistic relationship between them indicate that adding the psychiatric rating to the physical rating would be the most accurate measure of the applicant's overall residual disability from the industrial work injury.

(Court Exhibit YY)

Dr. Rakkar, in his 2/27/2025 report, agreed with Dr. Alvarellos that the psychological impairments and the physical impairments should be added, rather than combined, as they do not overlap. He further opined that the left upper extremity CRPS and the right shoulder impairments do overlap. In discussing the ADLs impacted by each impairment, he explained:

As the impairments for the 2 body parts overlap, they can be discussed together. He experiences difficulty using his upper extremities to get dressed, opening doors and jars, folding laundry, performing tasks of personal hygiene. He states he is unable to use his left upper extremity almost at all for self-care and daily activities. He is unable to use his right upper extremity to easily put objects away on high shelves, reach up to brush his hair, or brush his teeth.

As to whether the ADLs are affected by the psychological impairment found by Dr. Alvarellos, he noted:

They would not all be directly affected by the psychological impairment. Crying spells, feelings of self worth, feelings of worthlessness and hopelessness do not affect his ability to pick objects off of the floor or brush his teeth. The fact that he is unable to push open a door or open a jar is unlikely to directly result in him feeling suicidal. I do not think that the physical ADL's significantly overlap with the psychological impairments. I do agree that the psychological symptoms are responsible for his lack of social interaction, decreased motivation, and decreased ability to concentrate. Physical impairments would not necessarily cause the symptoms.

Dr. Rakkar opined that only the physical impairments overlap, and that the psychological impairments amplify the effect on the physical impairments. On page 4, he noted,

I feel that the physical impairments should be combined, as there is significant overlap of the ability to perform activities of daily living due to the physical impairments. I feel that the psychological impairment should be added to the combined physical impairment rather than combined again. I feel that the psychological impairment increases and amplifies the physical impairments, even though they are separate and distinct impairments.

(Court Exhibit ZZ)

The undersigned found that Dr. Alvarellos and Dr. Rakkar established the impact of the impairment on applicant's ADLs and opined that there is no overlap between the effects on ADL's for the body parts rated. The undersigned found that, consistent with *Vigil*⁹, Dr. Alvarellos and Dr. Rakkar appropriately added, rather than combined, applicant's orthopedic and psychiatric impairments, which is the most accurate measure of applicant's overall disability. Their opinions, that adding the psychiatric rating to the physical rating would be the most accurate measure of the applicant's overall residual disability, are found to be substantial medical evidence.

Defendant further asserts that the undersigned's methodology for finding permanent total disability is illogical and creates absurd results, because in this instance, the total impairment is 130% ($77\text{ C }9 = 79\% + 51\% = 130\%$). Defendant asserts that under the undersigned's analysis, any permanent disabilities to orthopedic body parts and psychiatric impairment with more than 50% ratings can be 100% as long as a QME opines the impact on activities of daily living do not

⁹ Vigil (supra).

overlap. While here the total impairment may result in a percentage above 100%, applicant is limited to a 100% rating. Further, defendant's assertion that *any* such impairment will result in 100% permanent impairment as long as the QME opines the impact on ADLs do not overlap disregards *Vigil's* stringent requirements that must be met for an applicant to rebut the CVC.

Defendant further argues that the undersigned's opinion never discusses earning capacity, ability to work in the open labor market, or ability to be rehabilitated, and that without such evidence, applicant cannot be found to be permanently and totally disabled. However, *Vigil* imposes no such requirement. As the Board has recently explained, in determining whether the application of the CVC table has been rebutted in a case, medical expertise (as opposed to vocational expertise) is required. 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.¹⁰ Defendant further incorrectly argues that "Vigil is not mandatory." As an en banc decision, *Vigil* is mandatory authority on all WCJs and WCAB panels¹¹. Finally, defendant argues that neither QME in this case has suggested that applicant may never work again. However, a finding of permanent and total disability does not preclude subsequent employment. This is because a finding of permanent and total disability is a metric of applicant's disability and does not bar future employment that conforms to applicant's residual functional capacity.¹²

This case involves a serious injury with devastating physical and psychological results for the applicant. Although defendant argues the TikTok videos are inconsistent with applicant's

¹⁰ *Baigmoradi v. NEP Group, Inc.*, 2025 Cal. Wrk. Comp. P.D. LEXIS 189, *7, 2025 LX 294207 (citing *Vigil*, supra, 89 Cal. Comp. Cases at p. 692, italics added.)

¹¹ *Avakian v. City of Baldwin Park*, 2024 Cal. Wrk. Comp. P.D. LEXIS 452, *14, 90 Cal. Comp. Cases 418, 426, 2024 LX 31278 [citing (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 [23 Cal. Rptr. 3d 782, 70 Cal. Comp. Cases 109]; *Gee v. Workers' Comp. Appeals Bd.*, 96 Cal. App. 4th 1418, 1425, 118 Cal. Rptr. 2d 105, 67 Cal. Comp. Cases 236; see also Govt. Code, § 11425.60(b).)]

¹² *Avakian v. City of Baldwin Park*, 2024 Cal. Wrk. Comp. P.D. LEXIS 452, *23, 90 Cal. Comp. Cases 418, 430-431, 2024 LX 31278 [citing (See, e.g., *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal. 3d 234 [193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587]; *Dickow v. Workmen's Comp. Appeals Bd.* (1973) 34 Cal. App. 3d 762 [109 Cal. Rptr. 317, 38 Cal. Comp. Cases 664]; *Maxwell v. Los Angeles Rams* (September 9, 2013, ADJ6855102) [2013 Cal. Wrk. Comp. P.D. [**431] LEXIS 498]; cf. *Landmark Education Corp. v. Workers' Comp. Appeals Bd. (Anbender)* (2006) 71 Cal. Comp. Cases 288 [2006 Cal. Wrk. Comp. P.D. LEXIS 40] (writ den.).)]

description of symptoms and the medical record, Dr. Rakkar and Dr. Alvarellos, having viewed said videos, disagreed, indicating they do not reflect applicant's everyday reality.

As discussed above, the undersigned found the opinions of Dr. Rakkar and Dr. Alvarellos, to be substantial medical evidence. After careful and thorough review of all evidence and having considered applicant's credible testimony, the undersigned found applicant successfully rebutted the CVC. As such, applicant is awarded total permanent disability at the rate of \$753.75 per week, commencing with the last payment of temporary disability (04/05/2023) and continuing, for the remainder of his lifetime, subject to reduction for a reasonable attorney's fee of 15%, and with credit to defendant for payments advanced, according to proof.

IV.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

NOTICE OF TRANSMISSION:

Pursuant to Labor Code, Section 5909, the parties and the appeals board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

DATE: 08/25/2025

NORMA L. ACOSTA

WORKERS' COMPENSATION JUDGE