

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

**ALAN NEWELL, *Applicant***

**vs.**

**METROPOLITAN WATER DISTRICT, Permissibly Self-Insured, *Defendant***

**Adjudication Numbers: ADJ11054646, ADJ11055389, ADJ10719681  
San Bernardino District Office**

**OPINION AND ORDER GRANTING  
PETITION FOR RECONSIDERATION  
AND DECISION AFTER RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Awards of January 3, 2025 in cases ADJ11055389 and ADJ11054646.<sup>1</sup> In case ADJ11055389, it was found that while employed on November 1, 2016 as a maintenance worker, applicant sustained industrial injury to his back and left shoulder causing permanent disability of 13% and the need for further medical treatment. In case ADJ110554646, it was found that while employed during a cumulative period ending November 17, 2016, applicant sustained industrial injury to his shoulders, wrists, knees, back and neck causing permanent disability of 93% and the need for further medical treatment. The findings of permanent disability were based on the impairment ratings and apportionment determination of agreed medical evaluator orthopedist Chester A. Hasday, M.D., who apportioned pursuant to Labor Code section 4663 both to nonindustrial factors and between the two industrial injuries. Dr. Hasday opined that applicant's low back and lower extremity impairments should have been combined using the Combined Values Chart and the neck and upper extremity impairments should also be combined with the Combined Values Chart and these two groups of impairments should be added rather than combined. However, the WCJ rated the impairments by combining all impairments utilizing the Combined Values Chart.

---

<sup>1</sup> Applicant's caption also lists ADJ10719681. However, that case was ordered off calendar prior to trial and neither the Minutes of Hearing of the trial nor the WCJ's decision includes that case number.

Applicant contends that the WCJ erred in his permanent disability findings, arguing that the WCJ erred in not following Dr. Hasday's rebuttal of the use of the Combined Values Chart and in accepting Dr. Hasday's apportionment determination. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

As explained below, we will grant reconsideration and amend the WCJ's decision to defer the issue of permanent disability in both cases pending further development of the record and decision.

Preliminarily, we note that 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 February 5, 2025 and 60 days from the date of transmission is Sunday April 6, 2025. The next business day that is 60 days from the date of transmission is Monday April 7, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)<sup>2</sup> This decision is issued by or on Monday April 7, 2025, so we have timely acted on the petition as required by Labor Code section 5909(a).

---

<sup>2</sup> WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

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 February 5, 2025, and the case was transmitted to the Appeals Board on February 5, 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 February 5, 2025.

Turning to the merits, we will grant reconsideration and amend the decision to defer the issue of permanent disability and all associated issues. In his February 2, 2021 report, Dr. Hasday wrote:

With this degree of impairment of multiple aspects of the applicant's spine and upper and lower extremity joints I believe a discussion of Kite is indicated. I am aware of the Kite Decision discussing synergy in the case of bilateral total hip replacement and the conclusion that adding, as opposed to combining bilateral total hip impairments gives the best measure of actual function. I disagree with the example used in Kite but not the premise.

A more valuable discussion would be overlap, i.e., which impairments overlap in impacting similar ADL limitations? An example of this would be the ability to reach overhead to a high shelf, grab a heavy item, and bring it to table level. This would require simultaneous use of the shoulder to elevate the right hand, the wrist and hand to grip the item and to carry it, and the cervical spine to extend to allow overhead gaze. The impairments of these three regions overlap to a great degree.

Based on that concept I would find that combining the applicant's neck, bilateral shoulder, and bilateral wrist impairments into a single value would be

---

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.

appropriate, as most of the ADLs impacted using the neck and upper extremities requires all of these body parts to be used simultaneously.

On the other hand, the ADLs that are impacted by the back and lower extremities primarily involve sitting, repetitive heavy lifting, and all aspects of walking and climbing and can exist entirely independent of any neck or upper extremity ADL impairment; hence, I do not believe they should be combined with those impairments, as they overlap. They, however, should be combined with each other.

I would therefore combine the applicant's low back and bilateral knee impairments sequentially and arrive at a single number.

I finally would add the neck and upper extremity number to the back and lower extremity number to arrive at this applicant's overall level of impairment on an orthopaedic basis.

(February 2, 2021 report at pp. 37-38.)

At Dr. Hasday's deposition, the following exchange took place between applicant's counsel and dr. Hasday:

Q. GOT IT. SO I WANTED TO TEST THAT A LITTLE BIT. WHAT YOU SEEM TO HAVE DONE IS YOU LOOKED AT OVERLAP, AND I SAW THAT. WHAT IT SEEMS LIKE YOU DID WAS YOU TOOK THE UPPER BODY VERSUS THE LOWER BODY. DID I GET THAT RIGHT?

A THAT'S CORRECT.

Q AND SO YOU FOUND THAT THERE WAS NO OVERLAP IN IMPACT ON ACTIVITIES OF DAILY LIVING FROM THE UPPER BODY VERSUS IMPACT ON A.D.L.S FROM THE LOWER BODY, AND THEREFORE CONCLUDED THAT THOSE -- THAT THE RATINGS OF THE UPPER BODY SHOULD ALL BE COMBINED, THE RATINGS OF THE LOWER BODY SHOULD ALL BE COMBINED, AND THEN THOSE TWO SHOULD BE ADDED TOGETHER. DID I UNDERSTAND THAT CORRECTLY?

A YOU SUMMARIZED IT PERFECTLY.(July 7, 2022 Deposition at p. 25.)

(July 7, 2022 Deposition at p. 25.)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Bd. en banc), we held that rebuttal of the combined values chart along the lines of Dr. Hasday's report and deposition testimony was proper. In *Vigil*, we wrote:

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.

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.

(*Vigil*, 89 Cal.Comp.Cases at pp. 691-692.)

Here, the WCJ rejected Dr. Hasday's rebuttal analysis because he did not sufficiently explain the impacts that applicant's impairments had on his activities of daily living. We note that Dr. Hasday's report and deposition testimony pre-dated the issuance of the *Vigil* decision, and thus the parties and Dr. Hasday had not yet been alerted to specific contours of a proper rebuttal as set forth in our en banc decision. Therefore, we believe that further development of the record is appropriate so that a full *Vigil* analysis may be undertaken by the reporting physicians.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB 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].) In accordance with that mandate, we will grant reconsideration and amend the WCJ's decision to defer the issue of permanent disability in both cases. The parties should also further develop the record on the associated issue of apportionment, and these issues should be reanalyzed by the WCJ on an augmented record. We express no opinion on the ultimate resolution of these matters.

For the foregoing reasons,

**IT IS ORDERED** that Applicant's Petition for Reconsideration of the Findings and Awards of January 3, 2025 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Awards of January 3, 2025 is **AMENDED** as follows:

**FINDINGS OF FACT - ADJ11055389 (MF) - SPECIFIC**

- a. Applicant, Alan Newell, age 64 on the date of injury, while employed on November 1, 2016, as maintenance/heavy equipment, Occupational Group No. 480, at Los Angeles, California, by Metropolitan Water District, sustained injury arising out of and in the course of employment to his back and left shoulder.
- b. Applicant's earnings were \$1,692.65 per week, warranting indemnity rates of \$1,128.43 for temporary disability and \$290 for permanent disability.
- c. The issues of permanent disability and apportionment are deferred, with jurisdiction reserved.
- d. The issue of attorneys fees is deferred, with jurisdiction reserved.
- e. Applicant is entitled to further medical treatment to cure or relieve from the effects of this injury.

**FINDING OF FACT - ADJ11054646 - CT**

- a. Applicant, Alan Newell, age 64 on the date of injury, while employed during the period January 18, 1994, through November 17, 2016, as maintenance/heavy equipment, Occupational Group No. 480, at Los Angeles, California, by Metropolitan Water District, sustained injury arising out of and in the course of employment to his bilateral shoulders, bilateral wrists, bilateral knees, back, and neck.
- b. Applicant's earnings were \$1,692.65 per week, warranting indemnity rates of \$1,128.43 for temporary disability and \$290 for permanent disability.
- c. The issues of permanent disability and apportionment are deferred, with jurisdiction reserved.
- d. The issue of attorneys fees is deferred, with jurisdiction reserved.
- e. Applicant is entitled to further medical treatment to cure or relieve from the effects of this injury.

**AWARD - ADJ11055389 (MF) – SPECIFIC**

**AWARD IS MADE** in favor of **ALAN NEWELL** against **METROPOLITAN WATER DISTRICT** of:

- a. Future medical treatment to cure or relieve from the effects of the injury herein.

**AWARD - ADJ11054646 – CT**

**AWARD IS MADE** in favor of **ALAN NEWELL** against **METROPOLITAN WATER DISTRICT** of:

- a. Future medical treatment to cure or relieve from the effects of the injury herein.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**April 7, 2025**

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

**ALAN NEWELL  
LERNER, MOORE, SILVA, CUNNINGHAM & RUBEL  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

**DW/oo**

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