

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

ANGEL CORRALES, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants*

**Adjudication Number: ADJ14514363
San Bernardino District Office**

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

Applicant Angel Corrales seeks reconsideration of the July 28, 2025 Findings of Fact and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant failed to sustain his burden of proof of his entitlement to benefits from the Subsequent Benefits Trust Fund (SIBTF) per Labor Code, section 4751.¹

Applicant contends that the WCJ erred in applying apportionment to the subsequent injury for the purpose of meeting the 35% eligibility threshold and failed to properly aggregate applicant's pre-existing disabilities with his subsequent injury for purposes of meeting the 70% eligibility threshold. Applicant further contends that the WCJ improperly disregarded uncontested medical and vocational evidence supporting his SIBTF claim.

We received an answer from SIBTF. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration and amend the July 28, 2025 Findings of Fact and Order to find that applicant is entitled to SIBTF benefits.

¹ All statutory references are to the Labor Code unless otherwise indicated.

FACTS

The facts are as follows:

The underlying cases (ADJ14514363, ADJ14514353 and ADJ9970251) resolved via Order Approving Compromise and Release on 4/17/2023. These cases included a cumulative trauma claim of 11/17/2005 – 4/12/2021 (ADJ14514363) to the back, lower leg, neck, arm and upper extremities; a specific injury of 9/24/2020 (ADJ14514353) to the back; and a specific injury of 6//9/2014 (ADJ9970251) to the right knee, which case was the subject of a prior Stipulated Award of 6/18/2015 of 13% permanent disability.

At trial the parties stipulated that Angel Corrales, while employed as a landscape lead worker, sustained a cumulative trauma injury during the period 11/17/2005 through 4/12/2021 to his back, his neck, his bilateral lower extremities, his bilateral arms, upper extremities and bilateral knees. The parties stipulated to earnings and indemnity rates and stipulated that no attorney fees have been paid and no attorney fee agreements have been made in regard to any benefits under the Subsequent Injuries Benefits Trust Fund.

Raised in issue were the following:

1. Applicant's entitlement to benefits under the Subsequent Injuries Benefits Trust Fund per LC 4751.
2. Whether there are credits or offsets, if it is determined that SIBTF benefits are payable per LC 4751.
3. Whether applicant's medical reports constitute substantial medical evidence.
4. Whether the subsequent industrial injury resulted in a 35% disability.
5. Whether the combination of pre-existing labor disabling permanent disability and the subsequent injury impairment result in 70% permanent disability.
6. What is the final permanent disability of the applicant from all impairments?
7. What are the total benefits for which the SIBTF has liability?
8. What is a credit amount for which the SIBTF can deduct from the total benefits?
9. What is a life pension monthly benefit, if any, owed to the applicant by the SIBTF. (Report, p. 2.)

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, 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 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 14, 2025, and 60 days from the date of transmission is October 13, 2025. This decision is issued by or on October 13, 2025, so that we have timely acted on the petition as required by 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 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 October 13, 2025, and the case was transmitted to the Appeals Board on October 13, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 13, 2025.

II.

In order to be entitled to SIBTF benefits under section 4751, an employee must prove the following elements:

- (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. (§ 4751.)

In her Report, the WCJ opined as follows:

Based on the reporting of Dr. Nguyen, considering the WPI for each part of body considered to be injured via the subsequent cumulative trauma industrial injury (and NOT considering the other two prior industrial injuries – the 6/9/2014 right knee injury and the 9/24/2020 low back injury), I have come up with the following percentages of WPI, after apportionment: 5% Cervical Spine; 1% right shoulder; 1% left shoulder; 16% left knee; and 5% right knee. Even without considering the Combined Values Chart, these impairments, before adjusting for age and occupation, only total 28% PD attributable to the cumulative trauma injury, so the 35% threshold is NOT met.

Additionally, Dr. Nguyen, does not specifically indicate how the various apportionable impairments were otherwise labor-disabling prior to the subsequent industrial cumulative trauma injury, except to the extent that applicant did have a prior right knee industrial injury, for which he received a 13% Stipulated Award, and to which Dr. Nguyen apportioned 75% of a 20% WPI (or 15%). The addition of this labor-disabling pre-existing (whether considered as 13% or 15%) does not bring the total permanent disability attributed to prior labor-disabling disability to the 70% threshold for the combined effect of the pre-existing disability and subsequent injury. (Report, pp. 9-10.)

In his March 21, 2022, Panel Qualified Medical Evaluator, Vi Nguyen, D.C., opined as follows with respect to applicant's subsequent cumulative trauma injury:

TOTAL WPI SUMMARY:

5% Cervical Spine based on DRE Cat II
1% Right Shoulder based on ROM Loss
1% Left Shoulder based on ROM Loss
8% Lumbar Spine based on DRE Cat II
20% Right Knee based on Arthritis
20% Left Knee based on Arthritis
(Exhibit 1B, Dr. Nguyen March 21, 2022 Report, p. 33.)

Per *Kite vs. Athens Administrators (2013)*, given the synergistic effect of bilateral knees, it would be appropriate to add the impairment ratings of both the right and left knee rather than combining them. This is relatively reasonable given that the applicant did not have two solid knees prior to his cumulative trauma of 11/15/2015-4/11/2021.
(*Ibid.*)

Dr. Nguyen then opined that the neck and bilateral shoulders disability were 100% due to the subsequent cumulative trauma injury; the lower back disability was 50% due to the September 4, 2020 injury and 50% due to a non-industrial motor vehicle accident in June 2019; the right knee disability was 25% due to the subsequent cumulative trauma and 75% due to an specific industrial injury dated June 9, 2014; and the left knee disability was 80% due to the subsequent cumulative trauma and 20% due to a prior industrial injury sustained while applicant was employed at Sears and due natural degenerative processes. (*Id.* at pp. 31-32.)

We note that Dr. Nguyen provided whole person impairment ratings, not permanent disability ratings. Using Dr. Nguyen's impairment ratings, we arrive at the following permanent disability ratings:

C Spine 15.01.01.00 – 5% - [1.4] 7% – 491H – 10% – 13%

L Shoulder 16.02.01.00 – 1% - [1.4]1% - 491G – 2% -3%

R shoulder 16.02.01.00 – 1% - [1.4]1% - 419G -2% - 3%

L knee 80% (17.05.03.00 – 20% - [1.4]28% - 491H -34% -41%) 33%

R knee 25% (17.05.03.00 – 20% - [1.4]28% - 491H -34% -41%) 10%

(*Note that the lumbar spine is not included because Dr. Nguyen opined that the lumbar spine impairment was not due to the current subsequent cumulative trauma injury.)

Per Dr. Nguyen, the knee disabilities are added and the rest are combined using the Combined Values Chart: 33 + 10 = 43 c 13 c 3 c = 53% permanent disability.

A. 35% Eligibility Threshold

We have previously determined that apportionment should not be included in calculating whether an employee meets the SIBTF 35% eligibility threshold. (*Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal. Comp. Cases 576 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board En Banc); *Anguiano v. Subsequent Injuries Benefits Trust Fund* (November 7, 2023, ADJ11107890) [2023 Cal. Wrk. Comp. P.D. LEXIS 310]; *Heigh v. Subsequent Injuries Benefits Trust Fund* (October 9, 2023, ADJ12253162) [2023 Cal. Wrk. Comp. P.D. LEXIS 269]; *Riedo v. Subsequent Injuries Benefits Trust Fund* (October 21, 2022, ADJ7772639) [2022 Cal. Wrk. Comp. P.D. LEXIS 303]; *Anguiano v. Subsequent Injuries Benefits Trust Fund* (August 15, 2023, ADJ11107890) [2023 Cal. Wrk. Comp. P.D. LEXIS 214].)

In *Anguiano*, 2023 Cal. Wrk. Comp. P.D. LEXIS 310, a previous panel decision² with a different panel, we explained that under the doctrine of state decisis, we are bound by the holding in *Bookout v. Workers' Comp. Appeals Bd.* (1976) 62 Cal. App. 3d 214, 228 [41 Cal. Comp. Cases 595], where the Court of Appeal held that the permanent disability attributable to applicant's

² Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers' compensation judges (see *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236]), but the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive (see *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc).)

subsequent injury for the purpose of meeting the 35% threshold requirement, excludes apportionment. We explained in our en banc³ decision in *Todd*:

In *Bookout*, applicant was employed as an oil refinery operator and sustained a compensable injury to his back, which was rated at 65% permanent disability. (*Bookout, supra*, 62 Cal. App. 3d at pp. 219–220.) The back disability included a limitation to semi-sedentary work. (*Id.* at p. 219.) Prior to his industrial injury, applicant had a nonindustrial heart condition. (*Ibid.*) The heart condition contained two work preclusions: preclusion of heavy work activity and preclusion from excessive emotional stress. (*Id.* at pp. 220–221.) The preclusion of heavy work activity was rated at 34.5% permanent disability. (*Id.* at p. 220.) The preclusion from excessive emotional stress was rated at 12% permanent disability. (*Id.* at 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% permanent disability from the 65% unapportioned permanent back disability and awarded applicant permanent disability of 30.5% for the industrial back injury. (*Id.* at pp. 219–221.) The referee then found that applicant was not eligible for SIBTF benefits based on the finding of 30.5% after apportionment, which was less than the requisite minimum of 35% for a subsequent disability under section 4751. (*Id.* at p. 221.) The Appeals Board affirmed both the 30.5% permanent disability award for the industrial back injury and the finding that applicant was not eligible for SIBTF benefits. (*Id.* at pp. 218–219.)

The Court of Appeal concluded that the Appeals Board had properly determined applicant's permanent disability rating of 30.5% 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 [27 Cal. Rptr. 702, 377 P.2d 902] (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 [129 Cal. Rptr. 161, 548 P.2d 361, 41 Cal. Comp. Cases 205] (the fact that injuries are to two different parts of the body does not in itself

³ “En banc decisions of the Appeals Board are assigned by the chairperson on a majority vote of the commissioners and are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of *stare decisis*.” (Cal. Code Regs., tit. 8, § 10325; *City of Long Beach v. Workers' Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee, supra*, 96 Cal.App.4th at p. 1425, fn. 6.)

preclude apportionment). (*Bookout, supra*, 62 Cal. App. 3d at pp. 222–227.)

The court, however, found that applicant was erroneously denied SIBTF benefits under section 4751. (*Bookout, supra*, 62 Cal. App. 3d at p. 228.) It explained that the referee incorrectly instructed the rating specialist to apportion 34.5% for the preexisting nonindustrial heart disability (based on a standard rating of 30%) from the total subsequent injury disability of 65% (based on a standard rating of 60%), 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. (*Ibid.*; § 4751, subd. (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% threshold requirement under the statute was the standard rating of 60%. (*Bookout, supra*, 62 Cal. App. 3d at p. 228; § 4751, subd. (b).)

(*Todd, supra*, 85 Cal. Comp. Cases at pp. 582–583, 2020.)

Here, without taking into account apportionment, adjustments for occupation and age, and adding the knee disabilities per the opinion of Dr. Nguyen, we conclude that applicant's subsequent permanent cumulative trauma disability for purposes of the 35% eligibility threshold is as follows:

C Spine 15.01.01.00 – 5% - [1.4] 7%

L Shoulder 16.02.01.00 – 1% - [1.4] 1%

R shoulder 16.02.01.00 – 1% - [1.4] 1%

L knee 17.05.03.00 – 20% - [1.4] 28%

R knee 17.05.03.00 – 20% - [1.4] 28%

$28 + 28 = 56$ c 7 c 1 c 1 = 60% permanent disability, which meets the 35% eligibility threshold.

Furthermore, we note that applicant had a prior right knee disability of 13% dated June 9, 2014. (ADJ9970251 Stipulations with Request for Award dated June 11, 2015; Award dated June 18, 2015.) Applicant would, thus, qualify for the 5% eligibility threshold, given that his opposite and corresponding member (left knee), considered alone and without regard to, or adjustment for occupation or age, is 28%.

B. 70% Eligibility Threshold

The next question we address is whether the combined preexisting and subsequent permanent partial disability is equal to 70% or more. Section 4751 does not qualify the 70% eligibility threshold, unlike the 35% eligibility threshold, by taking out adjustments for the occupation and age of the employee. Nor have we found any case law that interprets the 70% eligibility threshold to preclude apportionment. Per *Todd, supra*, 85 Cal.Comp.Cases 576, prior and subsequent permanent disabilities shall be added to the extent they do not overlap in order to determine the combined permanent disability.

As discussed above, the subsequent injury results in 53% permanent disability. (See *infra*, p. 6.)

With respect to preexisting permanent disabilities, the record shows that applicant stipulated to 13% permanent disability to the right knee as a result of a June 9, 2014 injury. (ADJ9970251, Amended Stipulations with Request for Award dated June 11, 2015; ADJ9970251, Award dated June 18, 2015.)

Dr. Nguyen further opined that applicant sustained 8% lumbar spine whole person impairment, which he apportioned entirely as a preexisting disability (50% due to a September 4, 2020 injury and 50% due to motor vehicle accident in June 2019). (Exhibit 1B, Dr. Nguyen March 21, 2022 Report, pp. 29-30, 31-32.) Dr. Nguyen's 8% lumbar spine whole person impairment results in 18% permanent disability as follows:

L Spine 15.03.01.11 – 8% - [1.4]11% - 491H – 14% - 18%

Furthermore, Dr. Nguyen apportioned 20% of applicant's left knee impairment to a prior employment at Sears in 2003 and to natural degenerative processes. (Exhibit 1B, Dr. Nguyen March 21, 2022 Report, p. 32.) Applicant's preexisting 20% left knee impairment results in 8% permanent disability as follows:

L knee 20% (17.05.03.00 – 20% - [1.4]28% - 491H -34% -41%) 8%

Thus, adding preexisting and subsequent disabilities per *Todd, supra*: $53 + 13 + 18 + 8 = 92\%$ permanent disability, which meets the 70% eligibility threshold.

We agree with the WCJ that the medical reports of Christopher T. Simonet, Ph.D. (opining on psychological impairment), Babak Kamkar, O.D. (opinion on vision), Charlie Hsieh, DDS (opining on dental issue), and Richard Heimann, M.D. (opining on internal medicine—insomnia, hypertension and bladder) are not substantial medical evidence. (Exhibit 3A, Dr. Simonet

September 7, 2023 Report [“. . . the medical records provide limited support for the identified diagnoses”]; Exhibit 4, Dr. Kamkar August 29, 2023 Report; Exhibit 6, September 29, 2023 Report; Exhibit 7, October 12, 2023 Report.)

Accordingly, we grant reconsideration and amend the July 28, 2025 Findings of Fact and Order to find that applicant is entitled to SIBTF benefits.

C. Attorneys’ Fees

Section 4903(a) provides that a lien against a worker’s compensation may attach for a reasonable attorney’s fee. WCAB Rule 10844 provides that:

In establishing a reasonable attorney's fee, the workers' compensation judge or arbitrator shall consider the:

- (a) Responsibility assumed by the attorney;
- (b) Care exercised in representing the applicant;
- (c) Time involved; and
- (d) Results obtained. (Cal. Code Regs., tit. 8, § 10844.)

Here, applicant’s attorneys, Brian Freeman and Perez Law, PC, failed to adequately present the case for applicant’s entitlement to SIBTF benefits. Applicant’s attorney failed to exercise due care in developing the record for applicant’s preexisting disabilities, and did not adequately argue on behalf of applicant for benefits from the SIBTF. We, therefore, defer the issue of attorney’s fees and return this matter to the trial level to determine this issue in accordance with our conclusions above.

For the foregoing reasons,

IT IS ORDERED that applicant Angel Corrales’s Petition for Reconsideration of the July 28, 2025 Findings of Fact and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 28, 2025 Findings of Fact and Order is **AFFIRMED EXCEPT** that it is **AMENDED** as follows, and **RETURNED** to the trial level on the issue of attorney's fees.

FINDINGS OF FACT

1. Applicant Angel Corrales sustained 53% permanent disability as a result of his subsequent cumulative trauma injury from November 17, 2005 to April 11, 2021.
2. Applicant met the 35% eligibility threshold as specified in Labor Code, section 4751 because applicant's subsequent cumulative trauma injury from November 17, 2005 to April 11, 2021, when considered alone and without regard to or adjustment for the occupation or the age of the employee, and without apportionment per *Bookout v. v. Workers' Comp. Appeals Bd.* (1976) 62 Cal. App. 3d 214, 228 [41 Cal. Comp. Cases 595], is 60% permanent disability.
3. Applicant met the 70% eligibility threshold as specified in Labor Code, section 4751 because the combined effect of the subsequent injury and the previous disabilities equal to 92% permanent disability.
4. The combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone.
5. Applicant is entitled to Subsequent Injuries Benefits Trust Fund benefits of 92% permanent disability, less Labor Code, section 4753, credits, which includes, but is not limited to, payments made as a result of the Compromise and Release in the underlying matter and the June 9, 2014 award to applicant's right knee, as well as any other offsets subject to proof and with jurisdiction reserved, and less attorney's fees.
6. The issue of attorney's fees is deferred. Applicant's attorneys, Brian Freeman and Perez Law, PC, failed to adequately present the case for applicant's entitlement to Subsequent Injuries Benefits Trust Fund benefits. Applicant's attorney failed to exercise due care in developing the record for applicant's preexisting disabilities, and did not adequately argue on behalf of applicant for benefits under the Subsequent Injuries Benefits Trust Fund.

ORDER

Applicant Angel Corrales is entitled to Subsequent Injuries Benefits Trust Fund pursuant to Finding 5 above.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 13, 2025

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

**ANGEL CORRALES
PEREZ LAW, PC
OFFICE OF THE DIRECTOR**

LSM/pm

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