

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

**CALLIE MERKERSON, *Applicant***

**vs.**

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,  
LEGALLY UNINSURED, administered by  
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ12405860; ADJ7255430; ADJ7241349  
Oakland District Office**

**OPINION AND ORDERS  
DENYING PETITION FOR RECONSIDERATION,  
GRANTING PETITION FOR RECONSIDERATION,  
AND DECISION AFTER RECONSIDERATION**

Applicant and defendant both seek reconsideration of the October 23, 2024 Joint Findings and Awards (F&A), in which the workers' compensation administrative law judge (WCJ) found in Case No. ADJ12405860, that applicant, while employed on January 9, 2008 by the California Department of Corrections and Rehabilitation (CDCR) as a corrections office sustained injury arising out of and in the course of employment to her right shoulder. The WCJ further found in ADJ7255430, that applicant, while similarly employed from July 7, 1998 to January 15, 2010, sustained industrial injury to her psyche, but did not sustain injury to her neck, low back, bilateral shoulders, bilateral hands, bilateral wrists, and/or in the form of bilateral carpal tunnel syndrome. The WCJ further found in ADJ7241349 that applicant, while similarly employed on January 15, 2010, sustained industrial injury to her bilateral shoulder, wrists, and in the form of bilateral carpal tunnel syndrome, and to the psyche.

Applicant's Petition contends the evidence does not support the findings of fact, and that defendant has not provided benefits commensurate with its statutory obligations.

Defendant's Petition avers clerical error in the case numbers and dollar amounts referenced at various locations in the F&A, and requests that we grant reconsideration to correct those errors. Defendant further alleges the evidentiary record does not support a finding of injury to the bilateral

wrists or in the form of carpal tunnel syndrome in ADJ7241349. Defendant also contends that any award of increased permanent disability indemnity pursuant to Labor Code<sup>1</sup> section 4658(d) should not attach until 60 days after the applicant became permanent and stationary for all body parts.

Applicant filed a January 31, 2025 Supplemental Petition averring defendant has underpaid temporary total disability indemnity, industrial disability leave (IDL) and permanent disability indemnity pursuant to section 4658. Applicant did not request approval to file that document. Notwithstanding applicant's failure to request leave to file the supplemental pleading, as required by Workers' Compensation Appeals Board (WCAB) Rule 10964, (Cal. Code Regs., tit. 8, § 10964.), we have nonetheless reviewed and considered applicant's pleading.<sup>2</sup>

We have received defendant's Answer to applicant's Petition. We have received applicant's Answer to defendant's Petition. We have considered the allegations of both Petitions for Reconsideration, and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Opinion on Decision and in the WCJ's report, both of which we adopt and incorporate, we will deny applicant's Petition, grant defendant's Petition, rescind the F&A, and restate the WCJ's amended decision as recommended in the report.

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.

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<sup>1</sup> All further references are to the Labor Code unless otherwise noted.

<sup>2</sup> Workers' Compensation Appeals Board (WCAB) Rule 10964(a)-(b) (Cal. Code Regs., tit. 8, § 10964(a)-(b)) provides in relevant part that "supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board," and that "[a] party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading." We remind applicant to observe our rules in this regard in future pleadings.

(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 March 7, 2025, and 60 days from the date of transmission is May 6, 2025. This decision is issued by or on May 6, 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 March 7, 2025, and the case was transmitted to the Appeals Board on March 7, 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 March 7, 2025.

In addition to the WCJ’s reasoned analysis as set forth in the Report, we observe the following. Defendant contends the WCJ erred in finding that applicant sustained injury AOE/COE to her bilateral wrists and awarding corresponding future medical care. (Defendant’s Petition, at p. 8:10.) Defendant acknowledges that former Agreed Medical Evaluator (AME) Robert Murphy, M.D., evaluated applicant and diagnosed bilateral carpal tunnel syndrome. (*Id.* at p. 8:3.) Indeed, Dr. Murphy’s report of November 15, 2010 characterized applicant’s bilateral carpal tunnel syndrome as “mild,” and observed that “symptoms in her hands of carpal tunnel have stabilized at

an acceptable level,” and that “industrial causation with a date of injury of 1/15/10 is established for both wrists/carpal tunnel syndromes.” (Ex. 101, Report of Robert Murphy, M.D., dated November 15, 2010, at p. 12.)

Following the initial injury, applicant’s bilateral wrists symptoms appear to have largely resolved, and Dr. Murphy ultimately determined that no impairment resulted from the injury. (Ex. 101, Report of Robert Murphy, M.D., dated January 16, 2014, at p. 2.) However, notwithstanding the quiescence of symptoms to the bilateral wrists, Dr. Murphy opined that “an award for further medical treatment is warranted with respect to both shoulders and both hand/wrists (carpal tunnel syndromes).” (Ex. 101, Report of Robert Murphy, M.D., dated July 5, 2013, at p. 7.)

Defendant contends that following Dr. Murphy’s unavailability, the parties selected Qualified Medical Evaluator (QME) William Campbell, D.O., who did not address the bilateral wrists. (Defendant’s Petition, at p. 8:21.) Defendant therefore concludes the WCJ erred in basing his findings of fact with respect to the bilateral wrists on the reporting of prior AME Dr. Murphy. However, we observe that to the extent the reporting of Dr. Campbell is silent as to the claimed body parts of the bilateral wrists, the reporting of Dr. Murphy is the sole medical-legal reporting in the evidentiary record that adequately addresses the identified industrial injury to these body parts. Moreover, the WCJ is empowered to choose among conflicting medical reports and rely on that which he deems most persuasive. (*Jones v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 476 [33 Cal.Comp.Cases 221].) We further observe that insofar as defendant contends that no body parts were placed in issue in ADJ7241349, WCAB Rule 10517 (Cal Code Regs., tit. 8, § 10517) allows the WCJ to conform the pleadings to proof. Here, the WCJ reasonably determined that based on the AME reporting of Dr. Murphy, applicant sustained industrial injury to her bilateral wrists in the form of carpal tunnel syndrome and that future medical care should be made available to cure or relieve from the effects of the injury.

It is well established that any decision, award or order of the Appeals Board must be supported by substantial evidence in light of a review of the *entire* record. (*Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310], *italics added.*)

Based on our independent review of the entire record occasioned by both Petitions, we discern no error in the WCJ’s reliance on the uncontested medical determinations of Dr. Murphy, and ultimate finding of injury to the bilateral wrists and award of corresponding future medical care.

In summary, we concur with the WCJ's analysis and recommendations as set forth in his Report, which include multiple corrections for clerical error across the three cases submitted for decision. For purposes of clarity, we will rescind the F&A in its entirety and restate the WCJ's decision with the amendments as recommended in the WCJ's Report, as follows.<sup>3</sup> We will amend the case number referenced in the first line of the Award in ADJ721439, to read ADJ7241349, instead of ADJ7255430; amend subsection "a" in each of the three Awards to reflect that the applicable permanent disability rate in each is "payable at \$230.00 per week for the first 60 days following P&S status, and thereafter payable at the rate of \$264.50 per week" as provided for in section 4658(d); amend Supplemental Order No. 2 to reflect that defendant is entitled to credit for all permanent disability advanced in any of the respective cases, i.e., ADJ7241349, ADJ12405860, and ADJ72554302; and amend Order No. 3, ordering the credit against PD to defendant for TTD overpayment, to reflect case number ADJ12405860. Finally, we will amend the dollar amount of credit in Order 3 based on the amounts set forth in the trial minutes, to reflect \$4,228.67. (Minutes, at p. 5:32.)

For the foregoing reasons,

**IT IS ORDERED** that applicant's petition for reconsideration of the decision of October 23, 2024 is **DENIED**.

**IT IS FURTHER ORDERED** that defendant's petition for reconsideration of the decision of October 23, 2024 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of October 23, 2024 is **RESCINDED**, with the following **SUBSTITUTED** therefor:

**FINDINGS OF FACT ADJ12405860 CT TO 1/9/08 DOI**

1. In ADJ12405860, Applicant, Callie Merkerson, while employed on January 9, 2008, by the California Department of Corrections and Rehabilitation, as a corrections officer, occupational group 490, at San Quentin Prison, sustained injury arising out of and in the course of employment to her right shoulder.

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<sup>3</sup> Because we restate the WCJ's Findings and Awards in their entirety herein, we need not amend the caption of the October 23, 2024 decision as recommended in the WCJ's Report.

2. At the time of this injury, the employer was legally uninsured and is currently administered by State Compensation Insurance Fund.
3. Based on the substantial medical opinions of the QME, William Campbell, D.O., this injury resulted in permanent disability of 12%, after adjustment for age and occupation.
4. There is need for further medical treatment for this injury to the right shoulder.
5. Applicant's former attorneys may be entitled to split a reasonable fee for services rendered, potentially up to 15% of the PD awarded.

#### **AWARD IN ADJ12405860**

In ADJ12405860, **AWARD IS MADE** in favor of Callie Merkerson against the California Department of Corrections & Rehabilitation, legally uninsured, administered by State Compensation Insurance Fund, as follows:

- a. Permanent disability of 12%, payable for 38.25 weeks, at \$230.00 per week for the first 60 days following P&S status, and thereafter payable at the rate of \$264.50 per week, and less a potential 15% attorney fee to be withheld by defendant, as noted below.
- b. Further medical treatment for the right shoulder, consistent with Findings of Fact Numbers 1 and 4.
- c. Since the attorney liens are deferred, defendant shall withhold 15% of the PD awarded for this injury, pending resolution of those liens.

#### **FINDINGS OF FACT IN ADJ7255430 CT TO 1/15/10**

6. In ADJ7255430, Applicant, Callie Merkerson, while employed during the period July 7, 1998 through January 15, 2010, by the California Department of Corrections and Rehabilitation, as a corrections officer, occupational group 490, at San Quentin Prison, sustained injury arising out of and in the course of employment to her psyche, and did not sustain injury AOE/COE to her neck, low back, bilateral shoulders, bilateral hands, bilateral wrists, and/or in the form of bilateral carpal tunnel syndrome.
7. At the time of this injury, the employer was legally uninsured, and is currently administered by State Compensation Insurance Fund.

8. Based on the substantial medical opinions of the successor psychiatric QME, Anish Shah, M.D., this injury resulted in permanent disability of 3%, after adjustment for age and occupation.
9. There is need for further medical treatment for this injury to the psyche.
10. Applicant's former attorneys may be entitled to split a reasonable fee for services rendered, potentially up to 15% of the PD awarded.

#### **AWARD IN ADJ7255430**

In ADJ7255430, **AWARD IS MADE** in favor of Callie Merkerson against the California Department of Corrections & Rehabilitation, legally uninsured, administered by State Compensation Insurance Fund, as follows:

- a. Permanent disability of 3%, payable for 9.00 weeks, at \$230.00 per week for the first 60 days following P&S status, and thereafter payable at the rate of \$264.50 per week, and less a potential 15% attorney fee to be withheld by defendant, as noted below.
- b. Further medical treatment for the psyche, consistent with Findings of Fact 6 and 9.

#### **FINDINGS OF FACT IN ADJ7241349 1/15/10 DOI**

11. In ADJ7241349, Applicant, Callie Merkerson, while employed on January 15, 2010, by the California Department of Corrections and Rehabilitation, as a corrections officer, occupational group 490, at San Quentin Prison, sustained injury arising out of and in the course of employment to her bilateral shoulders, bilateral wrists and in the form of bilateral carpal tunnel syndrome, and to the psyche.
12. At the time of this injury, the employer was legally uninsured, and is currently administered by State Compensation Insurance Fund.
13. Based on the substantial medical opinions of the QMEs, Anish Shah, M.D., and William Campbell, D.O., this injury resulted in permanent disability of 61%, after adjustment for age and occupation.
14. There is need for further medical treatment for this injury to the psyche and bilateral shoulders, bilateral wrists, and to the psyche.
15. Applicant's former attorneys may be entitled to split a reasonable fee for services rendered, potentially up to 15% of the PD awarded.

### **AWARD IN ADJ7241349**

In ADJ7241349, **AWARD IS MADE** in favor of Callie Merkerson against the California Department of Corrections & Rehabilitation, legally uninsured, administered by State Compensation Insurance Fund, as follows:

- a. Permanent disability of 61%, payable for 359.25 weeks, at \$230.00 per week for the first 60 days following P&S status, and thereafter payable at the rate of \$264.50 per week, and less a potential 15% attorney fee to be withheld by defendant, as noted below.
- b. Further medical treatment for the psyche, bilateral shoulders, and wrists, consistent with Findings of Fact 11 and 14.
- c. Since the attorney liens are deferred, defendant shall withhold 15% of the PD awarded for this injury, pending resolution of those liens.

### **ORDERS**

1. As discussed in the Opinion on Decision, defendant shall withhold 15% of the PD awarded in each case, as a potential attorney fee, to be split by the three Applicant attorneys who have filed liens. The exact amounts of the awarded attorney fee and how it is to be shared among the three attorney lien claimants is deferred for now and may require future hearings to resolve absent an informal settlement of those liens.
2. Defendant shall have credit for all PDAs to date in case nos. ADJ12405860, ADJ7255430 and ADJ7241349.

3. Defendant shall have credit of \$4,228.67 for TTD overpayment in ADJ12405860, in the sum of \$4,228.67, which may be credited against PD due in that case.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**PAUL F. KELLY, COMMISSIONER**  
**CONCURRING NOT SIGNING**

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

**May 6, 2025**

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

**CALLIE MERKERSON  
JAMES LATIMER  
STATE COMPENSATION INSURANCE FUND  
DEPARTMENT OF CORRECTIONS**

**SAR/oo**

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

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

### **INTRODUCTION**

By a timely and verified Petition for Reconsideration (Petition) dated November 12, 2024, which was not entered into EAMS by the clerk until November 25, 2024, the pro per Applicant seeks reconsideration of the Joint Findings & Awards with Opinion on Decision (Joint F&A) dated and served on October 23, 2024. On November 14, 2024, defendant filed its own Petition for Reconsideration, requesting the correction of a number of clerical/typographic errors and/or omissions. That Joint F&A found in relevant part as follows: 1. In ADJ12405860, Applicant while employed on January 9, 2008, by the California Department of Corrections and Rehabilitation (CDCR) as a corrections officer, occupational group 490, sustained injury AOE/COE to her right shoulder, with associated PD of 12%, equivalent to \$9,821.41, based on the reporting of QME, William Campbell, D.O., that there was a need for further medical treatment for the right shoulder, and that Applicant's former attorneys may be entitled to up to 15% of that PD award as a related attorney fee pursuant to the liens on file, and 15% was ordered withheld pending resolution of those liens; 2. In ADJ7255430, the Applicant while similarly employed by CDCR as a corrections officer, during the period July 7, 1998 through January 15, 2010, sustained injury AOE/COE to her psyche, but did not sustain cumulative injury to her neck, low back, bilateral shoulders, bilateral hands, bilateral wrists, and/or in the form of bilateral carpal tunnel syndrome, with PD for the psychiatric injury of 3% PD based on the reporting of QME Anish Shah, M.D., that there was a need for further medical treatment for the psyche, and that Applicant's former attorneys may be entitled to up to 15% of that PD award as a related attorney fee, and 15% was ordered withheld pending resolution of those liens; and 3. In ADJ7241349, the Applicant while similarly employed by CDCR as a corrections officer, on January 15, 2010, sustained injury AOE/COE to her bilateral shoulders, bilateral wrists, in the form of bilateral carpal tunnel syndrome, and to the psyche, which resulted in PD of 61 % PD, pursuant to the reporting of QME's Dr. Campbell and Dr. Shah, there was a need for further medical treatment with respect to the psyche, bilateral shoulders, and bilateral wrists, and that Applicant's former attorneys may be entitled to up to 15% of that PD award. Order No. 3, at page 4, awarded a credit to defendant against PD in what was intended to be the ADJ12405860 case, in the sum of \$4,225.00, for a period of TTD overpayment, as discussed in the Opinion on Decision at pp. 16-17. The various prior attorney liens in each of the 3 claims,

were deferred as an issue and will be addressed once an Amended Joint F&A issued by the WCAB pursuant to my recommendation is final.

I apologize to the parties and the Board for the long delay in submitting this Report & Recommendation. I note the amendment of Labor Code section 5909, effective as of July 2, 2024, which indicates, "(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."

Defendant's Petition followed an earlier Petition for Correction of Clerical Error dated and e-filed on October 29, 2024, that I did not act on in sufficient time before I lost jurisdiction to the Board pursuant to Title 8, Cal. Code. Regs. § 10961. That Petition, similar to the earlier Petition for Correction of Clerical Error, requests the granting of reconsideration to correct a number of clerical and/or typographic errors. The first of these is the typographic error listing the third case in the caption of the Joint F&A as ADJ7231349, instead of the intended and correct, ADJ7241349. (Defendant Petition at p. 5.) I concede that error, which was a clerical/typographic mistake and inadvertent. The second is the typographic error in the first sentence of the Award in ADJ7241349 at page 3 of the Joint F&A, which reads ADJ7255430, when it should read ADJ7241349. (*Id.*) I likewise concede that as an unintended clerical/typographic error. The third is a clerical error in the form of the omission of case number ADJ (*Id.* at pp. 5-6.)

Applicant's 2-page Petition dated November 12, 2024, consists of a typed form, supplemented by some handwritten notes. The typed form contends generally that the Board acted without or in excess of its powers, that the order, decision, or award was procured by fraud, that the evidence does not justify the findings of fact, that Petitioner has discovered new material evidence, which could not have been previously obtained with reasonable diligence, and that the findings of fact do not support the order, decision or award. (Petition at p. 1.) More specifically, it asserts and argues in the hand written section that defendants made fraudulent statements, doctors reports were changed, that there was a failure to use LC 4658 in calculating amount of benefits, that defendant is seemingly claiming PD As she did not receive, that defendant failed to offer future medical care, and made no fraudulent payments of PD and TTD, that she is owed back pay, and that they refused to pay 4850 benefits and refused to pay the 15% bump up as she was not taken back at work. (*Id.*)

Defendant filed an Answer to Applicant's Petition dated November 25, 2024, which asserts that the Petition is "skeletal, conclusory, and devoid of any references to the record" and that it does not explain or provide a ground or basis for reconsideration, with the result that the defendant is unable to answer. (*Id.* at p. 1.) It also asserts that the Petition is untimely. I note per Filenet, Applicant's Petition was filed at the Oakland WCAB on November 12, 2024, and that it was not uploaded/entered in EAMS/Filenet until November 21, 2024. There does not appear to be a proof of service with the original 2-page Petition for Reconsideration, but it appears that I&A officer Jennifer Gemmel, created one and served it and the Petition on November 21, 2024, on all parties on the address record "As a courtesy per WCJ." Assuming it was filed on November 12, 2024, that would make it timely, even if the Applicant did not properly serve it on all parties, which the I&A office did thereafter, as a courtesy to call at my direction. Since the Joint F&A was served on October 23, 2024, 25 days thereafter would be November 17, 2024, so a November 12, 2024 filing would render it timely.

On January 31, 2025, Applicant filed what appears to be a 6-page Supplemental Petition for Reconsideration, although it has no title or date, which is mostly single-spaced typewritten, with a portion on the first page being handwritten. This appears to be largely incomplete statements and/or assertions, with only portions or partial arguments. These include claims the F & A did not correctly apply Labor Code section 4658, although it appears that she is confusing TTD with PD in terms of rates. (*Id.* at pp. 1-2.) It also asserts she is owed back pay by CDCR, and that additional TTD was due, although the factual basis and/or rationale for this claim is not clear or explained. (*Id.* at pp. 2-5.) She also appears to dispute the SCIF indemnity printouts in evidence for TTD payments and PD payments (Defendant Exhibits B&C), asserting they are fraudulent. (*Id.* at p. 3.) On page 5, she seems to argue that the 25 WPI standard for her right shoulder was somehow improperly rated because she does not see that number in his report.

In response to this de facto Supplemental Petition, defendant filed an Answer dated March 4, 2025, which states that is "untimely and vague" and that despite its multiple claims of fraud, no evidence of fraud was presented at trial, and that if this is based on newly procured evidence, there is no evidence or explanation as to why it could not have been produced previously. (*Id.* at pp. 1-2.)

## **BACKGROUND**

The Applicant worked as a corrections officer for CDCR at San Quentin prison. Her last day worked for the department was January 15, 2010. She is retired and is currently 72 years old. Her first claim, ADJ12405860, involved an accepted specific injury to her right shoulder dating from January 9, 2008. (MOH/SOE Stipulation No. 1, at p. 2.) The second claim, ADJ7255430, involved a nominally denied cumulative injury claim (CT) from July 7, 1988 through January 15, 2010, involving alleged injuries to her neck, low back, bilateral shoulders, bilateral hands, bilateral wrists, and in the form of carpal tunnel. (MOH/SOE Stipulation No. 1 in ADJ7255430 at p. 3.) The third claim, ADJ7241349, involved an accepted specific injury on January 15, 2010, involving the bilateral shoulders and a compensable consequence psychiatric claim. The issues for determination in the first case were PD, apportionment, credit for PDAs and the need for further for further medical treatment. (MOH/SOE at p. 3.) The attorney lien of James Latimer in that claim was deferred the issues for determination in the second CT case are: injury AOE/COE for all body parts except for the psyche, PD, apportionment, and the need for further medical treatment for any part found to be compensable beyond the psyche. (MOH/SOE at p. 4.) The issues for determination in the third claim were PD, apportionment, Applicant's claim of entitlement to Labor Code section 4850 benefits, and defendant's claim of TTD overpayment/credit against PD in the sum of \$7,745.53, for two distinct periods. Attorney liens from Hodson & Mullin, the Marcus Regalado firm, and James Latimer, were deferred. (MOH/SOE at p. 5.)

Applicant's original attorney, Spiro Pistiolas of the Mullin & Hodson firm, filed application for the January 15, 2010 date of injury on April 29, 2010, at the Sacramento WCAB. That firm was substituted out by successor attorney Kim Regalado of the Marcus Regalado firm, on June 9, 2010. Mr. Regalado then filed an application for a CT claim through January 15, 2010 dated April 23, 2010, at the Sacramento WCAB on April 26, 2010. Venue in those two cases was transferred to Oakland in 2015 after Ms. Merkersen filed a notice dismissing Mr. Regalado on January 9, 2015. Over a year later, James Latimer filed Notices of Representation in the two claims on September 27, 2016. He later e-filed an application on July 29, 2019 in Oakland for the January 9, 2008, specific date of injury, which to that point had been an accepted medical only claim, in which no TTD had been paid.

In the 2010 cases, the parties including Mr. Regalado at the time, agreed on orthopedist Robert Murphy M.D., to act as the agreed medical evaluator (AME.) He issued six reports starting

on November 15, 2010, and ending on January 16, 2014, at which point he retired and became unavailable. (Joint 101.) In his report dated November 15, 2010, Dr. Murphy found that Applicant's wrists/carpal tunnel condition were P&S as of the September 22, 2010 re-exam date, but that her bilateral shoulders were not, and required further treatment. (Joint 101, Report of 11/15/10, at p. 11.) That report notes that Ms. Merkersen was hired by the Department in July 1988. (*Id.* at p. 2.) He found injury to the wrists/bilateral carpal tunnel syndrome on an industrial basis with respect to the January 15, 2010 specific injury as a result of the fall, but with no associated impairment/PD. (*Id.* at p. 12.) He did not find the claimed injuries to either the cervical or the lumbar spine to be industrial either as a specific injury or on a cumulative basis. (*Id.*)

The specific injury on January 15, 2010 was the result of a trip over a cement wheel stop in a darkened parking lot at the start of her shift, which resulted in a fall forward in which she landed on both hands. (*Id.*) She was found to be TTD, and IDL was paid from January 19, 2010 through January 26, 2010, and thereafter from February 18, 2010 continuously through February 9, 2011, for a total of 365 days. (Defendant's A, MOH/SOE Stipulation No. 4 at p. 4.) TTD was paid in that claim from February 10, 2011 continuously through September 7, 2011. (Defendant's B, pp. 2.) Thereafter, TTD resumed on February 17, 2012 and was paid continuously through September 19, 2012. (*Id.* at pp. 2-3.) There was a period early on when PDAs were paid from January 27, 2010 through February 17, 2010. (Defendant's B, at p. 1.) After IDL and subsequent TTD ended, PDAs resumed as of September 22, 2011, and were paid through February 26, 2012. PDAs were paid for a third period continuously from September 20, 2012 through June 27, 2014, for total PDAs of \$35,638.50. (Defendant's B at pp. 1-2.)

Defendant alleges a TTD overpayment and seeks a related credit against PD for the period August 9, 2011 through September 7, 2011, in the amount of \$4,228.67, based on the delayed service of the AME, Dr. Murphy's P&S report dated August 31, 2011, which was based on an August 8, 2011 exam, which was not signed until September 6, 2011, and was not served until September 8, 2011 per the attached proof of service. (Joint 101, Report of 8/31/11.) Given that date of service, it appears defendant immediately upon receipt of that report, presumably in the form of a fax of that report from Dr. Murphy's office, and stopped TTD as of September 7, 2011. SCIF resumed TTD as of February 17, 2012, the date of Dr. Gomez's left shoulder surgery, which the AME Dr. Murphy discussed in his report dated August 6, 2012. (Defendant's B, at p. 2, Joint 101, Report of 8/6/12, pp. 2, 6.)

Defendant seeks a [similar] credit based on alleged TTD overpayment in the amount of \$3,516.86, for the period August 18, 2012 through September 19, 2012, when TTD ended. Although this was not discussed in either defendant's Pre-Trial Brief dated July 1, 2024, or in its Response dated July 20, 2024 to Applicant's Trial Brief, it appears this second period of claimed TTD overpayment is related to delayed service of a nominal P & S report of the AME, Dr. Murphy, dated August 6, 2012. A review of that report, which was based on a July 12, 2012 re-exam, indicates that although he found Applicant was no longer TTD as of the date of the exam, he failed to make a formal P&S finding, and provided work restrictions of no heavy lifting, forceful pushing and pulling, and no work at or above shoulder level with either upper extremity, without providing final impairment ratings. (Joint 101, Report of 8/6/12 at p. 8.) He recommended a re-exam in two or three months for a final report for rating purposes. (*Id.* at p. 8.) He also discussed Applicant attorney's question of whether his prior P&S finding as of August 8, 2011, was premature and/or incorrect, and opined that it was not and that absent surgery on the left shoulder, the Applicant was in fact P&S as of that date, and he did not change any of his prior opinions as to P&S date. (*Id.* at p. 9.)

The Applicant underwent right shoulder surgery to repair a rotator cuff tear with Dr. Gomez at Kaiser on March 18, 2010. (Joint 101, Report of 11/15/10 at pp. 3, 7.) She later had a second right shoulder revision surgery with Dr. Gomez on January 7, 2011. (Joint 101, Report of 8/31/11 at pp. 3, 6.) The AME, Dr. Murphy found Applicant's shoulders and wrists to be P&S as of his August 8, 2011 re-exam, in his report of August 31, 2011. (Joint 101, Report of 8/31/11 at p.8.) In that report, Dr. Murphy provided an 11 WPI standard rating for the right shoulder, plus a 3 WPI pain add on. (*Id.* at p. 9.) He deferred an opinion on left shoulder PD/impairment, pending receipt of a requested MRI. (*Id.*) In his report dated July 5, 2013, which was based on a re-exam on June 6, 2013, Dr. Murphy noted the Applicant had formally retired from CDCR in "either March 2012 or early July 2012," and never returned to work in any modified capacity after he provided work restrictions in his report dated August 6, 2012. (Joint 101, Report of 7/5/13 at page 3.) In his report of July 5, 2012, Dr. Murphy opined that 80% of the PD related to the right shoulder was attributed to the specific January 15, 2010 injury, with the remaining 20% attributed to the January 9, 2008 DOI. He reiterated his opinion that the left shoulder had also been injured in the January 9, 2008 DOI, and apportioned causation identically to that of the right shoulder, i.e., 80% to the January 15, 2010 DOI and 20% to the January 9, 2008 DOI.

In a 2-page supplemental report dated September 30, 2013, (Joint 101, Report of 9/30/13), Dr. Murphy confirmed his left shoulder rating from his prior report. In his final report dated January 16, 2014, he reviewed and commented on report of the psychiatric QME, Stephen Raffle, M.D., dated October 31, 2013, which concluded that Ms. Merkerson was malingering and was not credible with respect to her psychiatric claim. In response to that QME report, he changed his rating for the right shoulder, dropping his prior 3 WPI pain add on for each shoulder, with a final opinion of 11 WPI for the left, and 5 WPI for the left shoulder, with his opinion of 0% WPI for the wrists/hands remaining unchanged. (Joint IOI, Report of 1/16/14 at pp. 2-3.)

Dr. Murphy retired and/or became unavailable thereafter, and was replaced by orthopedic QME, William Campbell, D.O., who issued two reports. The first is dated September 5, 2018, and was based on an exam that same day as well as a review of all prior records, including the AME reports of Dr. Murphy and the QME reports of Dr. Raffle. He also issued a supplemental report dated January 28, 2019. (Joint 103.) In his first report, Dr. Campbell found the Applicant to be P&S, and providing a rating for the right shoulder based on the Mumford procedure, range of motion, and strength deficits, which he combined using Almaraz/Guzman. (Joint 103, Report of 9/5/18 at pp. 17-19.) In a highly annotated consultative rating from DEU rater Dorothy Sun, dated March 12, 2024, which issued at my request in an effort to try to resolve the parties' rating dispute at earlier MSC, she rated this Almaraz/Guzman rating for the right shoulder to 25 WPI, after correcting a range of motion calculation error by the doctor. Defendant did not dispute the validity of that Almaraz/Guzman rating. This is and was a significantly higher rating for the right shoulder than the older reports from Dr. Murphy. With respect to the left shoulder, the DEU rated Dr. Campbell's report to 8 WPL (*Id.*) Dr. Campbell found a need for further medical treatment for both shoulders. (*Id.* at p. 19.)

With respect to causation, he opined consistent with Dr. Murphy's earlier finding that the right shoulder was injured on both January 9, 2008 and January 15, 2010, and that 25% of the current PD was attributable to the earlier injury, with the balance or 75% attributable to the 2010 specific injury. (*Id.* at p. 20.) His reasoning was that after the initial injury the Applicant returned to full duty work, which was not possible after the second injury. (*Id.*) He did not find any cumulative orthopedic injury and/or attribute any PD to the alleged CT claim. (*Id.*) In a supplemental report dated January 19, 2019, Dr. Campbell responded to a SCIF adjuster request

to clarify whether there was any cumulative orthopedic injury, and he reaffirmed his opinion that there was not on the cul Tent record. (Joint 103, Report of 1/9/19.)

The original psychiatric QME, Dr. Raffle, issued four reports covering the period July 24, 2012 through July 14, 2017. (Joint Exhibit 102.) In his first report dated July 24, 2012, he diagnosed Major Depressive Disorder, Moderate, Recurrent, and Generalized Anxiety Disorder, Moderate, with Panic Attacks and a GAF of 60. (Joint 102, Report of 7/24/12 at p. 17.) He also found predominate causation as a compensable consequence of the specific orthopedic January 15, 2010 date of injury, but did not feel the Applicant was P&S, and provided interim work restrictions of a four-hour workweek, and that there was a need for psychiatric treatment. (*Id.* at pp. 15-16.) He issued a second report dated October 31, 2013 based on a re-exam on October 17, 2013. (Joint 102, Report of 10/17/13.) In a dramatic change of opinion, seemingly based on new psychology testing data, he now found Ms. Merkersen to be a malinger with respect to her psychiatric symptoms, with the result that her GAF was now "indeterminable." (*Id.* at pp. 21-22.) He reaffirmed that opinion and explained it further in a supplemental report dated June 2, 2014, which responded to a request from Applicant's attorney and reviewed and commented on psyche PTP reports from Dr. Donald Stanford. (Joint 103, Report of 6/2/14 at pp. 1-5.) Dr. Raffle issued a final report dated July 14, 2017, following Applicant's failure to appear at a scheduled re-exam and which reviewed and summarized additional medical reports, but did not provide any new opinions and/or even confirm his opinions were unchanged. He merely stated that he had agreed to re-examine the Applicant to complete her case, even though he had generally stopped doing QME evaluations in the interim. (Joint 103, Report of 7/14/17.)

Due to Dr. Raffle's unavailability, the parties utilized a new psychiatric QME, Anish Shah, M.D., who issued two reports, an initial dated August 21, 2018, based on an exam the same date, and a supplemental report dated January 18, 2019. (Joint 104.) In that first report, he diagnosed Major Depressive Disorder, Recurrent and Mild, and provided a GAF of 63, which is equivalent under the PDRS to 11 WPI. (*Id.* at p. 82.) In contrast to Dr. Raffle's later opinion, he found predominant industrial causation of a psychiatric injury, and concluded the Applicant was P&S, with a need for psychiatric treatment, although he noted that she was not interested in such treatment at present, and apportioned 10% of the PD to preexisting anxiety. (*Id.* at p. 84.) He did not provide or discuss permanent work restrictions on a psychiatric basis, perhaps because they were moot with the Applicant's retirement, and did not discuss possible causation related to the

Applicant's earlier specific injury from 2008 and/or to the alleged cumulative trauma injury through last day worked (*Id.*) However, in his second supplemental report dated January 18, 2019, he addressed causation issue as between dates of injury. (Joint 104, Report of 1/18/19.) Specifically, he attributed 90% of the PD to the January 15, 2010 claim and 10% to the CT claim, reasoning, "the cumulative trauma clearly is responsible for chronic pain she is experiencing." Oddly, these percentages do not explicitly account for the 10% non-industrial causation he found in his prior report. It is therefore unclear if the 90/10 split was after the 10% non-industrial apportionment, and since this was his last report, that ambiguity was never clarified.

The Applicant testified at trial and was cross-examined. (MOH/SOE at pp. 4-9.) (MOH/SOE at p. 5.) (*Id.*) On direct, she claimed that she had not been treated fairly in course of these claims by the defendant and asserted that the DEU ratings which defendant agrees with and relies on, are incorrect and claimed that she was not properly paid the PD she alleged was due under Labor Code section 4650. (*Id.* at pp. 9-10.) She also testified she was underpaid and/or was not paid the proper amounts of TTD from February 10, 2011 through September 9, 2011, and that because she had multiple shoulder surgeries, TTD should not have stopped. (*Id.* at pp. 9-10.) She believes she is legally entitled to Labor Code section 4850 benefits, but cannot cite to any specific legal authority in support of that claim. (*Id.* at p. 10.)

On cross-examination, she disputes that she received the \$986.69 in TTD per week for the period February 10, 2011 through September 7, 2011, as reflected in SCIF's benefit printout dated May 21, 2024, which was admitted into evidence as Defendant's Exhibit B. (*Id.*) When asked for proof of that claim and/or how she knows she was underpaid TTD for that period, she responds that she knows "from her standard of living." (*Id.*) She further states she has been looking for documentation related to this, but that some of her documents were stolen from her house and that there was a related police report. (*Id.*) She believes she is due more money in PD, because it was not paid per Labor Code section 4650. (*Id.* at p. 11.) However, she is unable to explain exactly how that is the case, but believes she should receive 3/4s of her pay in PD, up her maximum average weekly wage. (*Id.*) She concedes that she has never been trained to rate medical reports in the California workers' compensation system, and has not rated any reports other than her own. (*Id.*) Her proposed PD ratings are based on her own interpretation of the Permanent Disability Rating Scheduled (PDRS.) (*Id.*) When asked about whether she knows how to combine

impairments at the upper extremity level before combining impairments at the WPI level, she testified that she does. (*Id.*)

## DISCUSSION

There is no dispute that any F & A must be supported by substantial evidence in light of the entire record. (Labor Code section 5952( d); *Escobedo v. Marshalls* (2005) (Appeals Board en bane) 70 Cal.Comp.Cases 604, 620; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310, 314]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500, 503]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) I Cal.3d 627, 635 [35 Cal.Comp.Cases 16, 22].) 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 must set forth the reasoning used to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687, 1691]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Board en bane).) "[A] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (Citations.)" (*Gatten, supra*, at p. 928.) As noted above, I concede the typographic and/or clerical errors cited in defendant's Petition, and I recommend reconsideration be granted to the limited purpose of correcting those, which include case number references and supplementing the awards sections to indicate that the PD due in each for the first 60 days after P&S status is at the rate of \$230.00 a week, and only thereafter is it payable at the bumped up rate of \$264.50.

The claims of error raised in Applicant's Petition and de facto Supplemental Petition are harder to address, since there is minimal to no citation to the record and/or explanation of the basis and/or reasoning of its conclusory claims of fraud, failure to pay additional claimed TTD due, alleged back pay due, and seemingly claims that additional PD is due. However, I will attempt to address what seems to be her arguments or concerns as follows. First, Applicant's claims for additional TTD due seem to be new allegations, since per the MOH/SOE dated July 8, 2024, at pages 3-5, no claims for additional TTD were at issue and/or submitted for decision. In fact in each case the TTD and PD rates were stipulated to by both parties (*Id.* at pp. 2-5), although the MOH/SOE reflect that the Applicant would not concede and/or stipulate to the indemnity payments made by SCIF as reflected in the benefit printouts in evidence as Defendant's C & D.

(See MOH/SOE at p. 4, lines 35-38.) In fact, the only issue submitted with respect to TTD was defendant's claims of TTD overpayment and related claims for credit against PD due, in ADJ7241349, per the MOH/SOE at p. 5, issue No. 5 at lines 32-36.

In any event, it is not dear from either the Petition and/or the Supplemental Petition what periods Applicant is claiming additional TTD is due. Without specifics, I am unable to address what otherwise appears be appropriate payment of TTD and/or PDAs.

The Applicant does not seem to dispute and/or appeal the TTD overpayment claim which was submitted as an issue (MOH/SOE at p. 5, lines 32-36), which I found and meant to award as credit against PD due in ADJ7241349,<sup>4</sup> i.e., the 1/9/08 DOI, for the period August 9, 2011, through September 7, 2011, in the sum of 4,225.80. As noted in the Opinion on Decision at pp. 16-17, I found and awarded only one period of the claimed TTD overpayment, related to delayed service of the initial AME P&S report of Dr. Murphy dated August 31, 2011 (Joint 101), and where defendant was diligent in ending TTD promptly upon receipt of that report. I denied defendant's request for a claimed second period of payment from August 18, 2012 through September 19, 201, due to the ambiguity and equivocalness of the AME Dr. Murphy's opinion as to P&S status in his later report dated August 6, 2012. (Joint 101.) So far as I can tell from defendant's Petition, they are not appealing that latter determination/finding.

Applicant seems to indirectly contest the QME rating of her right shoulder by Dr. Campbell in his reports of September 5, 2018 and January 9, 2019, with respect to her right shoulder, which the DEU in is Consultative Rating dated March 12, 2024, found to be 25 WPI after combining his ratings for analogy to a distal clavicle resection (10 UE), with corrected range of motion ratings (20 UE) and a strength loss rating (17 UE). As explained in the Opinion on Decision at pp. 17-19, I found the opinions of Dr. Campbell as to rating impairments to be substantial evidence, and which rated much higher than the previous orthopedic ratings of the AME Dr. Murphy, who he succeeded, and particularly with respect to the right shoulder, i.e., a 25 WPI standard pursuant to Almaraz/Guzman vs. Dr. Murphy's 11 WPI, to be more current and accurate, and that is why I used his reports to rate the Applicant's orthopedic PD, as outlined in the Opinion at pages 20-21. The Applicant is getting the full benefit of Dr. Murphy's higher rating in my award in ADJ7241349, and she appears to be confused about the 3 separate ratings of Dr. Campbell for the

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<sup>4</sup> Which as discussed previously was a typo and in the Joint F&A erroneously referenced and awarded it in ADJ12405860, and which I ask and recommend the Board correct after granting reconsideration.

right shoulder she discusses at page 5 of her Supplemental Petition, which are combined as outlined in the DEU consultative rating dated March 12, 2024, which I took judicial notice of in the opinion on decision.

The Applicant also renews her claim that she was due Labor Code 4850 benefits. That claim was addressed and rejected in the Opinion on Decision at pp. 14-16. There is no statutory authority that entitles corrections officers to 4850 benefits. Applicant has the burden of proof of this issue and a mere claim/assertion that she is entitled to benefits, without citation to legal authority, is insufficient, and she has failed to meet that burden. As noted within that discussion, although claims for additional periods of TTD, as opposed to 4850 benefits, was technically not an issue for determination at trial, the Applicant's trial testimony seemed to include assertions she was due more money for TTD. However, it was unclear if this was based on a rate dispute and/or she was claiming unspecified additional periods of TTD. To the extent that she seemingly disputes the amount of TTD and/or PD As paid by SCIF as reflected in Defendant's Exhibits B & C, she provides no credible evidence to rebut them and I found that as a business record, the amounts listed therein were accurate and should be credited. Applicant's testimony that she knows she received insufficient TTD based on her "standard of living" is not credible evidence that she was or is due more money in TTD.

### **RECOMMENDATION**

In conclusion, with the exception of the clerical/typographic errors cited in defendant's Petition, which I concede and agreed should be corrected by the WCAB as outlined below, I otherwise stand by the substance of the findings and Awards and Orders in the Joint F &A. I therefore recommend that WCAB grant reconsideration for the limited purpose of amending the Joint F &A to correct those errors as follows: 1. Amend the case number in the caption of the Joint F&A, for the January 15, 2010 DOI to ADJ7241349, instead of the listed ADJ7231349; 2. Amend the case number referenced in the first line of the Award in ADJ721439, to read ADJ7241349, instead of ADJ7255430; 3. Amend/supplement subsection a. in in each of the three Awards, at pages 2 & 3 of the Joint F&A, to reflect the applicable PD rate in each is "payable at \$230.00 per week for the first 60 days following P&S stahls, and thereafter payable at the bumped up PD rate of \$264.50 per week" as provided for in Labor Code section 4658(d); 4 Supplement Order No. 2 at page 4 of the Joint F&A, to reflect that defendant shall have credit for all PDA's paid in any of the respective cases, i.e., ADJ7241349, ADJ12405860, and ADJ72554302 and not just in the 2

cases referenced in that order, i.e., ADJ12405860, and ADJ7255430; and 5. Amend Order No. 3, at page 4 of the Joint F&A ordering the credit against PD to defendant for TTD overpayment, to reflect case number 12405860, and not the incorrectly listed ADJ7241349. With respect to all the other claims of error and/or fraud in Applicant's Petition and Supplemental Petition, I recommend that 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 March 7, 2025.

Dated: March 7, 2025

**Thomas J. Russell, Jr.**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## **OPINION ON DECISION**

### **INTRODUCTION**

This matter involves three old claims of the currently unrepresented Applicant: ADJ12405860, a January 9, 2008 date of injury; ADJ7255430, an alleged cumulative injury through January 15, 2010; and ADJ7241349 a January 15, 2010 date of injury. The matter proceeded to trial for the first time on July 8, 2024. Defense counsel was Bruce Parker of State Compensation Insurance Fund (SCIF), who has since retired. The Applicant was previously represented by three different attorneys, including the Hodson & Mullin firm, the Marcus Regalado firm, and James Lattimer, in succession over the years, who have all filed liens in ADJ7241349, and with Mr. Lattimer only filing liens in ADJ7255430 and ADJ12405860. The Applicant was the only witness to testify at trial. (Minutes of Hearing and Summary of Evidence (MOH/SOE) dated July 8, 2024, at pp. 9-12.)

The Applicant worked as a corrections officer for the California Department of Corrections & Rehabilitation (Department) at San Quentin prison. Her last day worked for the Department was January 15, 2010. She is now retired and is currently 70 years old. The first claim, ADJ12405860, is an accepted specific injury to her right shoulder dating from January 9, 2008. (MOH/SOE Stipulation No. 1, at p. 2.) The second claim, ADJ7255430, involves a nominally denied cumulative injury claim (CT) from July 7, 1988 through January 15, 2010, involving alleged injuries to her neck, low back, bilateral shoulders, bilateral hands, bilateral wrists, and in the form of carpal tunnel. (MOH/SOE Stipulation No. 1 in ADJ7255430 at p. 3.) The third claim, ADJ7241349, involves an accepted specific injury on January 15, 2010, involving the bilateral shoulders and a compensable consequence psychiatric claim. The issues for determination in the first case are: permanent disability and apportionment, defendant's claim for credit of PDAs paid in that case, and the need for further medical treatment. (MOH/SOE at p. 3.) The attorney lien of James Latimer in that case and by implication a potential attorney fee is deferred. The issues for determination in the second CT case are: injury AOE/COE for all body parts except for the psyche, PD and apportionment, and the need for further medical treatment for any part found to be compensable beyond the psyche. (MOH/SOE at p. 4.) The issues for determination in the third claim involving the accepted bilateral shoulders and psyche are: PD and apportionment, Applicant's claim of entitlement to Labor Code section 4850 benefits, defendant's claim of TTD

overpayment and related credit in the total amount of \$7,745.53, for two distinct periods. The attorney liens from Hodson & Mullin, the Marcus Regalado firm, and James Lattimer, and the related fee claims are deferred. (MOH/SOE at p. 5.)

### **FACTUAL BACKGROUND**

An application for the January 15, 2010 claim dated April 29, 2010, was e-filed at the Sacramento WCAB by Applicant's original attorney Spiro Pistiolas of the Mullin & Hodson firm. That firm was substituted out of that case by successor attorney, Kim Regalado, of the Marcus Regalado firm, in a pleading dated June 9, 2010. Mr. Regalado filed an application for the CT through January 15, 2010 dated April 23, 2010, in Sacramento on April 26, 2010. Venue in those two cases was transferred to Oakland in 2015 after Ms. Merkerson filed a notice dismissing Mr. Regalado on January 9, 2015, and over a year later, Mr. Latimer filed Notices of Representation in the two claims on September 27, 2016. He later e-filed an application on July 29, 2019 in Oakland for the January 9, 2008 date of injury, which seemingly to that point had been an accepted medical only claim, in which no TTD had been paid.

In the 2010 cases, the parties including Mr. Regalado at the time, agreed upon orthopedist Robert Murphy M.D., as the agreed medical evaluator (AME.) He issued six reports starting on November 15, 2010 and ending on January 16, 2014, at which point he retired and became unavailable. (Joint 101.) In his report of November 15, 2010, Dr. Murphy found that Applicant's wrists/carpal tunnel condition were P&S as of the September 22, 2010 re-exam date, but that her bilateral shoulders were not, and required further treatment. (Joint 101, Report of 11/15/10, at p. 11.) That report notes that Ms. Merkerson was hired by the Department in July 1988. (*Id.* at p. 2.) He found injury to the wrists/bilateral carpal tunnel syndrome on an industrial basis with respect to the January 15, 2010 specific injury as a result of the fall, but with no associated impairment/PD. (*Id.* at p. 12.) He did not find the claimed injuries to either the cervical or lumbar spine to be industrial for either the specific injury or on cumulative basis. (*Id.*)

The specific injury on January 15, 2010 was sustained when she tripped over a cement wheel stop in a darkened parking lot at the start of her shift and fell forward, landing on both hands. (*Id.*) She was found to be TTD and IDL was paid from January 19, 2010 through January 26, 2010, and thereafter from February 18, 2010 continuously through February 9, 2011 for a total of 365 days. (Defendant's A, MOH/SOE Stipulation No. 4 at p. 4.) TTD was paid in that claim from

February 10, 2011 continuously through September 7, 2011. (Defendant's B, pp. 2.) Thereafter, TTD resumed on February 17, 2012 and was paid continuously through September 19, 2012. (*Id.* at pp. 2-3.) There was a brief period early on when PDAs were paid from January 27, 2010 through February 17, 2010. (Defendant's B at p. 1.) After IDL and subsequent TTD ended, PDAs resumed as of September 22, 2011, and were paid through February 26, 2012. PDAs were paid for a third period in the January 15, 2010 claim continuously from September 20, 2012 through June 27, 2014, for total claimed PDAs in that case of \$35,638.50. (Defendant's B at pp. 1-2.) Defendant claims and seeks a TTD overpayment and related credit against PD for the period August 9, 2011 through September 7, 2011, in the amount of \$4,228.67, based on the delayed service of the AME, Dr. Murphy's P&S report dated August 31, 2011, which was based on an exam of the Applicant on August 8, 2011, and was not signed until September 6, 2011, and not served per the attached proof of service dated September 8, 2011. (Joint 101, Report of 8/31/11.) Given that date of service, it appears defendant immediately upon receipt of that report, presumably in the form of a fax of that report from Dr. Murphy's office, since the service of the report by U.S. Mail was not until September 8, 2011, and stopped TTD as of September 7, 2011. SCIF resumed paying TTD as of February 17, 2012, the date of Dr. Gomez's left shoulder surgery, which the AME Dr. Murphy discussed in his report of August 6, 2012. (Defendant's B at p. 2, Joint 101, Report of 8/6/12, pp. 2, 6.)

Defendant also seeks a similarly credit based on alleged TTD overpayment in the amount of \$3,516.86, for the period August 18, 2012 through September 19, 2012, when TTD ended. Although this was not discussed in either defendant's Pre-Trial Brief dated July 1, 2024, or in its Response dated July 20, 2024, to Applicant's Trial Brief, it appears this second period of claimed TTD overpayment is be related to delayed service of a nominal P&S report of the AME, Dr. Murphy dated August 6, 2012. A review of that report, which was based on a re-exam on July 12, 2012, indicates that although he seemingly found Applicant to be no longer TTD as of the date of the exam, July 12, 2012, he declined to make her formally P&S and provided work restrictions of no heavy lifting, forceful pushing and pulling, and no work at or above shoulder level with either upper extremity, without providing final impairment ratings. (Joint 101, Report of 8/6/12 at p. 8.) He recommended a re-exam in two or three months for a final report for rating purposes. (*Id.* at p. 8.) He also discussed Applicant attorney's question of whether his prior P&S finding as of August 8, 2011, was premature and/or incorrect, and opined that it was not and that absent surgery on the

left shoulder, the Applicant was in fact P&S as of that date, and he did not change any of his prior opinions as to P&S date. (*Id.* at p. 9.)

The Applicant underwent an initial right shoulder surgery to repair a rotator cuff tear with Dr. Gomez at Kaiser on March 18, 2010. (Joint 101, Report of 11/15/10 at pp. 3, 7.) She underwent a second right shoulder revision surgery with Dr. Gomez on January 7, 2011. (Joint 101, Report of 8/31/11 at pp. 3, 6.) Dr. Murphy found Applicant's shoulders and wrists to be P&S as of his August 8, 2011 re-exam date in his report of August 31, 2011. (Joint 101, Report of 8/31/11 at p.8.) The AME Dr. Murphy in his report of August 31, 2011, provided a standard 11 WPI rating plus a 3 WPI pain add on for the right shoulder. (*Id.* at p. 9.) He deferred an opinion on left shoulder PD/impairment, pending receipt of a requested MRI. (*Id.*) In his report dated July 5, 2013, which was based on a re-exam on June 6, 2013, Dr. Murphy noted that the Applicant had formally retired from the Department in "either March 2012 or early July 2012," and never returned to work in any modified capacity after he provided work restrictions in his earlier report of August 6, 2012. (Joint 101, Report of 7/5/13 at page 3.) In his report of July 5, 2012, Dr. Murphy opined that 80% of the PD related to the right shoulder was attributable to the specific January 15, 2010, with the remaining 20% to the January 9, 2008 DOI. He also reiterated his opinion that the left shoulder had also been injured in the January 9, 2008 DOI, and apportioned causation identically to that of the right shoulder, i.e., 80% to the January 15, 2010 DOI and 20% to the January 9, 2008 DOI.

In a 2 page supplemental report dated September 30, 2013, (Joint 101, Report of 9/30/13), Dr. Murphy confirmed his left shoulder rating from his prior report. In his final report dated January 16, 2014, Dr. Murphy reviewed and commented on the psychiatric QME Dr. Raffle dated October 31, 2013, which concluded that Ms. Merkerson was malingering and was not credible with respect to her psychiatric claim. In response to that report he changed his rating for the right shoulder, dropping his prior 3 WPI pain add on for each shoulder, with a final opinion of 11 WPI for the left, and 5 WPI for the left shoulder, with his opinion of 0% WPI for the wrists/hands remaining unchanged. (Joint 101, Report of 1/16/14 at pp. 2-3.)

Dr. Murphy retired and/or became unavailable thereafter and was replaced with an orthopedic QME, William Campbell, D.O., who issued two reports. The first is dated September 5, 2018 and was based on an exam that same day as well as review of all prior records including the AME reports of Dr. Murphy and the QME reports of Dr. Raffle, and a supplemental report dated January 28, 2019. (Joint 103.) I note in passing that these days Dr. Campbell is frequently

used as an AME at this Board. In his first report, Dr. Campbell found the Applicant to be P&S and providing a rating for the right shoulder based on the Mumford procedure, range of motion and strength deficits, which he combined using Almaraz/Guzman. (Joint 103, Report of 9/5/18 at pp. 17-19.) The DEU in a highly annotated consultative rating from Dorothy Sun dated March 12, 2024, which was obtained at my request in an effort to try and resolve the parties rating dispute at an MSC, and which I take judicial notice of, rated this Almaraz/Guzman rating for the right shoulder to 25 WPI after correcting a range of motion calculation error by the doctor. Defendant does not contest the Almaraz/Guzman rating as substantial evidence. This is a significantly higher rating than the older reports and ratings from Dr. Murphy for the right shoulder. With respect to the left shoulder, the DEU rates Dr. Campbell's rating using the Mumford procedure and ROM to 8 WPI. (*Id.*) Dr. Campbell also found a need for further medical treatment for both shoulders. (*Id.* at p. 19.) With respect to causation in an apportionment context, he opined that the right shoulder was injured on both January 9, 2008 and January 15, 2010, and that 25% of the current PD was attributable to the earlier injury, with the balance or 75% attributable to the 2010 specific injury. (*Id.* at p. 20.) His reasoning was that after the initial injury the Applicant continued to and/or returned to full duty work, which was not possible after the second injury. (*Id.*) He did not find any cumulative orthopedic injury and/or attribute any PD to the alleged CT claim. (*Id.*) In a supplemental report dated January 19, 2019, Dr. Campbell responded to a SCIF adjuster request to clarify whether there was any cumulative injury involvement, and he reaffirmed his opinion that there was not on the current record. (Joint 103, Report of 1/9/19.)

The original psychiatric QME Stephen Raffle, M.D., issued four reports covering the period July 24, 2012 through July 14, 2017. (Joint Exhibit 102.) In his first report dated July 24, 2012, he diagnosed Major Depressive Disorder, Moderate, Recurrent, and Generalized Anxiety Disorder, Moderate, with Panic Attacks and a GAF of 60. (Joint 102, Report of 7/24/12 at p. 17.) He also found predominate causation as a compensable consequence of the January 15, 2010 date of injury, but did not feel she was not yet P&S, with work restrictions of a four-hour workweek, and with a need for further medical treatment. (*Id.* at pp. 15-16.) He issued a second report dated October 31, 2013 based on a re-exam on October 17, 2013. (Joint 102, Report of 10/17/13.) In a dramatic change of opinion, seemingly based on new psychology testing data reflecting probably over reporting of symptoms, he now found Ms. Merkerson to be a malinger with respect to her psychiatric symptoms, and with the result that her GAF was "indeterminable." (*Id.* at pp. 21-22.)

He reaffirmed that opinion and explained it further in a supplemental report dated June 2, 2014, that responded to a request from Applicant's attorney and reviewed and commented on psyche PTP reports from Dr. Donald Stanford. (Joint 103, Report of 6/2/14 at pp. 1-5.) Dr. Raffle issued a final report dated July 14, 2017, following Applicant's failure to appear at a scheduled re-exam and which reviewed and summarized additional medical reports, but seemingly did not give any new opinions and/or even confirm his opinions were unchanged, and noted that he had agreed to re-examine the Applicant to complete her case even though he had generally stopped doing QME evaluations in the interim. (Joint 103, Report of 7/14/17.)

As a result of Dr. Raffle's unavailability, the parties obtained a new psychiatric QME, Anish Shah, M.D., who issued two reports, and initial dated August 21, 2018 based on an exam the same date, and a supplemental report dated January 18, 2019. (Joint 104.) In that first report, he diagnosed Major Depressive Disorder, Recurrent and Mild, and provided a GAF of 63, which is equivalent under the PDRS to 11 WPI. (*Id.* at p. 82.) Contrary to Dr. Raffles later opinion, he did find predominant causation, found that she was P&S, with a need for psychiatric treatment, although he noted that she was not interested in such treatment, and apportioned 10% of the PD to preexisting anxiety. (*Id.* at p. 84.) He did not discuss work restrictions on a psychiatric basis, perhaps because they were moot with her retirement and did not discuss possible causation related to the Applicant's earlier specific injury from 2008 and/or to the alleged cumulative trauma injury through last day worked (*Id.*) However, he was asked to and did address the causation issue as between dates of injury in his second and final report, a supplemental dated January 18, 2019. (Joint 104, Report of 1/18/19.) In that report, he attributed 90% of the PD to the January 15, 2010 claim and 10% to the CT claim, reasoning, "the cumulative trauma clearly is responsible for chronic pain she is experiencing." Oddly, these percentages do not explicitly account for the 10% non-industrial causation he found in his prior report and even references earlier in this report. It is therefore not clear if the 90/10 split was after the 10% non-industrial apportionment, and this is his last report, so that issue was never clarified.

The Applicant testified at trial and was cross-examined. (MOH/SOE at pp. 4-9.) (MOH/SOE at p. 5.) (*Id.*) On direct, she claimed that she had not been treated fairly in these claims and asserted that the DEU ratings which defendant agrees with and relies on are incorrect and that she was not properly paid the PD she claims is due under Labor Code section 4650. (*Id.* at pp. 9-10.) She also claims she was underpaid and/or was not paid the proper amounts of TTD from

February 10, 2011 through September 9, 2011, and that because she had multiple shoulder surgeries TTD should not have stopped. (*Id.* at pp. 9-10.) She believes she is legally entitled to Labor Code section 4850 benefits, but cannot cite to any specific legal authority in support of that claim. (*Id.* at p. 10.)

On cross-examination, she disputes that she received the \$986.69 in TTD per week for the period February 10, 2011 through September 7, 2011, as reflected in SCIF's benefit printout dated May 21, 2024, which has been admitted into evidence as Defendant's Exhibit B. (*Id.*) When asked for proof of that claim and/or how she knows she was underpaid TTD for that period, she responds that she knows "from her standard of living." (*Id.*) She further states she has been looking for documentation related to this but that some of her documents were stolen from her house and a related police report was generated. (*Id.*) She believes that she is due more money in PD because it was not paid in accordance with Labor Code section 4650. (*Id.* at p. 11.) However, she is unable to explain exactly how that is the case, but believes she should receive 3/4s of her pay in PD, up her maximum average weekly wage. (*Id.*) She concedes that she has never been trained in rating medical reports in the California workers' compensation system and has not rated any reports other than her own. (*Id.*) Her proposed ratings are based on her interpretation and application of the Permanent Disability Rating Scheduled (PDRS.) (*Id.*) When asked about whether she knows how to combine impairments at the upper extremity level before combining impairments at the WPI level, and she says she does. (*Id.*)

#### **APPLICANT'S CLAIM FOR 4850 BENEFITS OR ADDITIONAL TTD**

One of the issues for determination in the primary injury claim, the January 15, 2010 specific injury, is Applicant's claim of entitlement to Labor Code section 4850 benefits. (MOH/SOE Issue No. 2., at p. 5.) Those benefits amount to up to one year of de facto salary continuation for certain public safety officers and fireman, along with a few other jobs, who are identified in Labor Code section 4850(b) and include 12 different types of employees. State correction offices are not among the listed job categories and accordingly do not qualify for 4850 benefits. Pursuant to Labor Code sections 5705 and 3202.5, the Applicant has the burden of proof to establish her entitlement to such benefits by the preponderance of the evidence. At trial and in her Trial Brief nominally dated July 8, 2024, but not emailed to the court and defense counsel until July 19, 2024, Applicant provides no legal authority and/or analysis as to how or why she would

be entitled to such a benefit. I therefore find and conclude the defendant had no liability for Labor Code section 4850 benefits to the Applicant in this case.

As noted above, Applicant also testified at trial that she believes she was underpaid TTD in 2011 and/or 2012, oddly however, this was not explicitly listed as an issue for determination in the MOH/SOE although arguably, this type of claim goes to defendant's claim of TTD overpayment/credit against PD that she disputes. The details of her claim of TTD underpayment are vague, but seemingly related to her trial testimony that she denies receiving TTD as reflected as having been paid by SCIF in Defendant's Exhibit B. The only evidence she could cite in support of this claim, is that she knows that was true "by her standard of living." (MOH/SOE at p. 10, line 33.) This is not sufficient or credible evidence to rebut the evidence of SCIF's payments as reflected in a benefit printout that is a reflection of a regularly kept business record that is essential to the function of providing benefits as a third party administrator for state agencies. Applicant has not met her burden of proof to establish that she was underpaid TTD, despite her claims and testimony to the contrary. More specifically, her trial testimony implies there were extended periods where she was not paid IDL and/or TTD and when she was off for her two shoulder surgeries. A review of the benefit printouts in evidence, including periods of IDL payments (Defendant's A) and payments of TTD in the January 15, 2010 claim (Defendant's B) reflect with the brief exception when PDAs were paid from January 27, 2010 through February 17, 2010, that she was paid IDL from January 19, 2010 through January 27, 2010, and then continuously from February 18, 2010 through February 9, 2011, when 365 days of IDL had been paid out. (Defendant's A.) Applicant cites to no medical evidence in the record that she was TTD for the approximately 2week period in late January 2010 and/or early February 2010, when she received PDAs from SCIF. It is hard to know based on the current record and the long passage of time since 2010 why PDAs were paid during this period, but it could be there was an attempt at modified work before being taking off as TTD.

Finally, although Applicant did not complain of alleged IDL underpayment at trial, my recollection is that she made such complaints at prior hearings. Defense counsel's response was to provide a copy of the IDL printout (Defendant's Exhibit A), and advise that SCIF is not involved in payment IDL, which I understand is paid directly by the Department. In any event, there is no evidence in this record to support any claim that IDL was underpaid and/or improperly paid, and the WCAB's jurisdiction over IDL is very limited, i.e., to only determine if Applicant is TTD

during a period when IDL might be due under the Government Code, which provides that benefit, i.e., the Board cannot award IDL or any related penalties for a failure to provide it. See *Blankenship v. Workers' Comp. Appeals Bd.* (1986) 51 Cal.Comp.Cases 38, 39 (writ den.) If Applicant believes she is due additional IDL, her remedy must be pursued through the Department and not at the WCAB, which has no jurisdiction over the issue.

#### **DEFENDANT'S CLAIM OF TTD OVERPAYMENT/CREDIT AGAINST PD**

As referenced above, a related issue is defendant's claim of TTD overpayment in the January 15, 2010 injury, ADJ12405860. With respect to the first period, it is clear there was a TTD overpayment based on the AME Dr. Murphy's P&S report of August 31, 2011 which found that Applicant was P&S as of the date of the exam on August 8, 2011 (Joint 101), and that the defendant was conscientious in ending TTD once the report was served a few weeks later. I therefore find that it is appropriate to find a TTD overpayment for the period August 9, 2011 until TTD ended on September 7, 2011. That period consists of 30 days exactly. At the time, TTD was paid at the biweekly rate of \$1,973.38 (Defendant's B), which equates to \$140.96 per day.  $30 \times 140.96$  is equal to \$4,228.80. I therefore find a TTD overpayment for that period in that amount, which should be credited against PD in that claim.

The second claimed period of TTD overpayment is not as clear. Defendant in the original PTCS asserted a TTD overpayment from August 18, 2012 through September 19, 2012. There is no clear argument in either of defense counsel's Briefs and/or that was made a trial as to where or how this overpayment came about. The most recent AME report to that period is Dr. Murphy's report of August 6, 2012, which was based on an exam on July 12, 2012. (Joint 101, Report of 8/6/12.) As discussed earlier, that report was equivocal as to whether the Applicant was P&S or not, even though he made clear the Applicant was TTD through July 12, 2012. He provided work restrictions, seemingly with the idea, that if they could be accommodated the Applicant might return to work. (*Id.* at p. 8.) He states the Applicant is "not yet technically P&S," did not provide a rating, and recommended a re-exam a few months later that year in October or November. (*Id.*) Presumably, the Department did not offer modified work consistent with his restrictions either because they could not and/or had deemed the Applicant to have retired. It was not until his following report almost a year later, dated July 5, 2013, that Dr. Murphy provided an impairment rating for the left shoulder. On these facts, where it is not clear exactly what the P&S date was, I decline to find a TTD overpayment for this second period.

## **AME AND QME OPINIONS AS SUBSTANTIAL MEDICAL EVIDENCE**

Any finding or award by a workers' compensation judge must be supported by substantial evidence in light of the entire record. (Labor Code section 5952(d); *Escobedo v. Marshalls* (2005) (Appeals Board en banc) 70 Cal.Comp.Cases 604, 620; *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310, 314]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500, 503]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16, 22].) 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 must set forth the reasoning used to support the expert conclusions reached. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687, 1691]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Board en banc).) "[A] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (Citations.))" (*Gatten, supra*, at p. 928.)

With respect to orthopedic impairment ratings, as discussed above, the AME Dr. Murphy, provided a final opinion, rating in his last report of January 16, 2014 (Joint 101), of 11 WPI for the right shoulder and 5 WPI for the left shoulder, with 0% for the wrists/carpal tunnel, with all attributable to the January 15, 2010 DOI. However, that report and the related ratings were superseded by the subsequent QME report of Dr. Campbell dated September 5, 2018, whose Almaraz/Guzman rating for the right shoulder rates significantly higher. Having considered all the evidence, I find Dr. Campbell's report to be more current and likely more reflective of the Applicant's current PD, and I further find that he adequately explained his Almaraz/Guzman rationale such that it constitutes substantial medical evidence under *Escobedo*. I also find that his opinions with respect to causation as between the two injuries is sufficiently explained and benefits from a global review of all the medical evidence over many years, and is more persuasive and credible than that of Dr. Murphy. Accordingly, I will follow his causation opinion that 75% of the right shoulder is attributable to the January 15, 2010 DOI, whereas 25% is attributable to the old January 9, 2008 DOI, and that 100% of the left shoulder causation is attributable to the January 15, 2010 DOI with none to the 2008 injury. This finding also avoids a dilution of the left shoulder PD pursuant to *Benson*, and works to Applicant's advantage.

With respect to the psyche claim, find that Dr. Shah's reporting is more persuasive than that of Dr. Raffle and constitutes substantial medical evidence with respect to predominant causation and current GAF. However, I find that his opinion of 10% apportionment to preexisting anxiety on page 84 of his August 21, 2018 report (Joint 104, Report of 8/21/18) is conclusory and not sufficiently explained to constitute substantial medical evidence. He also in his supplemental report leaves it unclear when discussing causation as between the 3 dates of injury as to whether this was after the 10% apportionment or not. In any event, I do not find Dr. Shah's non-industrial apportionment opinion to be substantial medical evidence and will not apply any non-industrial apportionment in rating his reports. However, I further find that Dr. Shah's nominal Kite opinion in his report of August 21, 2018 at p. 84, where the extent of his opinion and reasoning is "My rating here should be considered purely psychiatric and an additive method should be calculated in disability rating calculations" is conclusory and does not constitute substantial medical evidence under either *Escobedo* or the more recent en banc WCAB decision in *Vigil v. County of Kern*, 89 Cal.Comp.Cases 686 (2024). Accordingly, I will combine the psychiatric ratings with the orthopedic ratings per the rules of the PDRS. Finally, I find Dr. Shah's opinion as to causation as between injuries in his supplemental report dated January 28, 2019, where he attributes 90% to the January 15, 2010 DOI and 10% to the CT DOI, to be substantial evidence and I will apply that opinion in rating the PD in these cases.

### **PERMANENT DISABILITY RATINGS**

Having found the opinions of both the orthopedic QME Dr. Campbell and the psychiatric QME Dr. Shah to be substantial medical evidence, with the significant exception of Dr. Shah's conclusory and non-substantial *Kite* opinion, I rate and find Applicant's permanent disability as follows.

1. ADJ112405860, January 9, 2008 DOI. [ ] Applicant was 54 at the time of this DOI. Using that age and the stipulated 490 occupational group, the applicable rating string from the orthopedic QME Dr. Campbell's reports of September 5, 2018 and January 9, 2019, which provide an Almaraz/Guzman standard rating of 25 WPI for the right shoulder, and the applicable 25% causation attributable to this DOI with the 75% balance attributable to the cumulative injury, is as follows:

R Shoulder Other 16.02.02.00 25 [7] 34 490J 43 49 (.25) 12%

12% PD at the bumped up 2010 PD rate is \$9,821.41.

2. ADJ7241349, January 15, 2010 DOI. Applicant's age at this DOI is 56. Applying Dr. Campbell's opinions results in the rating strings for the bilateral shoulders as follows:

R Shoulder Other 16.02.02.00 25 [7] 34 490I 43 49 (.75) 37

L Shoulder Other 16.02.02.00 8 [7] 11 490 16 19

The psychiatric QME opinions of Dr. Shah, without Kite rate as follows for the CT.

Psych 14.01.00.00 11 [8] 15 490J 23 27 (.9) 24

$37 \text{ C } 24 = 52 \text{ C } 19 = 61\% \text{ PD}$

61% PD at the bumped up PD rate of \$264.50 is \$94,725.91.

3. ADJ7255430 CT to January 15, 2010. The only medical legal reporter to find injury AOE/COE on a cumulative basis through January 15, 2020 was Dr. Shah, who attributed 10% of the psychiatric compensable consequence injury to the CT.

Applicant was also 56 years old for this DOI and Dr. Shah's opinions for this DOI rate as follows:

Psych 14.01.00.00 11 [8] 15 490J 23 (.1) 3

3% PD at the bumped up PD rate of \$264.50 is \$2,084.79.

**ATTORNEY LIENS AND RELATED FEES DEFERRED**

As noted above, the attorney liens in these three cases are deferred. For now, I order SCIF to withhold 15% from the PD award in each case for a potential attorney fee until those liens are resolved. Once this Joint F&A is final, I will set a lien conference before me to get all parties together to see if those liens can be informally resolved.

DATE: October 23, 2024

**Thomas J. Russell Jr.**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE