

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

**DANIEL STRAMBI, *Applicant***

**vs.**

**CITY OF FOSTER CITY,  
permissibly self- insured, adjusted by THE CITIES GROUP,  
*Defendants***

**Adjudication Number: ADJ12075922  
San Francisco District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings of Fact and Award (F&A) issued by the workers compensation administrative law judge (WCJ) on June 13, 2025, wherein the WCJ found, in relevant part, that applicant sustained injury arising out of and in the course of employment to his left knee, right knee, lower back, and left hip resulting in an award of 69% permanent disability based on the medical reporting agreed medical evaluator (AME) Dr. Peter Mandell, M.D. The WCJ also found that defendant unreasonably delayed or refused payment of partial permanent and temporary disability indemnity compensation and issued two penalties for defendant's unreasonable delay of payment of compensation pursuant to Labor Code<sup>1</sup> section 5814.

Defendant contends that the WCJ erred in finding 69% permanent disability based upon the AME, as Dr. Mandell's finding of injury to both knees and whole person impairment ratings were not based on substantial evidence. Defendant also asserts that the WCJ erred in awarding penalties under section 5814 based upon the finding that defendant unreasonably delayed payment of permanent disability and temporary disability indemnity.

Applicant filed an Answer.

The WCJ issued a Report and Recommendation recommending denial of the petition.

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

We have considered the allegations of the Petition for Reconsideration (Petition), the Answer, and the contents of the report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated below, as well as in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

## 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 July 21, 2025 and 60 days from the date of transmission is September 19, 2025. This decision is issued by or on September 19, 2025, so that we have timely acted on the petition as required by Labor Code 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 July 21, 2025, and the case was transmitted to the Appeals Board on July 21, 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 Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on July 21, 2025.

## II.

Based on our review of the record, we agree with the WCJ's determination that section 5814 penalties on both temporary and permanent disability benefits are appropriate.

The WCJ provides in the Opinion on Decision:

On December 14, 2022, WCJ Gogerman issued Findings of Fact, finding that the injury "caused applicant to be totally temporarily disabled starting March 11, 2019". He further found, "Once his earnings are ascertained, applicant will be entitled to Labor Code section 4850 benefits and indemnity in connection with the period of total temporary disability..." Defendant did not file for reconsideration from these findings. Although defendant filed for reconsideration from WCJ Gogerman's June 12, 2023 Supplemental Findings and Award, alleging that there was no substantial evidence to support the Finding of temporary disability, the petition was untimely as to finding of temporary disability. (See WCJ Gogerman's July 25, 2023 Report and Recommendation on Petition for Reconsideration). In its Opinion and Order Denying Petition for Reconsideration, the WCAB noted, "some of defendant's arguments appear to be meritless..."

At trial on May 9, 2023, the parties stipulated that, "[o]n the sole issue of the Applicant's earnings it is established that applicant was a maximum wage earner for TTD purposes, warranting the existing maximum rate pursuant to Labor Code section 4661.5; Additionally, it is agreed by the parties that applicant's entitlement to TTD benefits terminates on 10/31/20 as his CalPERS disability retirement commenced on 11/1/2020."

Labor Code section 4850 entitled applicant to a year of benefits. The year of benefits under section 4850 commenced on March 11, 2019, pursuant to Judge Gogerman's December 14, 2022 Finding. Applicant's entitlement to section 4850 benefits would end on March 10, 2020, regardless that there was a dispute about earnings for the purpose of that benefit only. Following the one year expiration of the section 4850 benefits, applicant would then be entitled to temporary disability indemnity payments. Pursuant to the December 14, 2022

Finding, applicant was entitled to temporary disability indemnity, “once his earnings are ascertained.” On May 9, 2023 there was a determination of earnings and the end date of temporary disability indemnity benefits. At that time, applicant became entitled to temporary disability indemnity benefits at the maximum rate, under section 4661.5 for the period from March 11, 2019 through October 31, 2020. The maximum rate for 2023 is \$1,619.15. The temporary disability indemnity was easily calculated and due then (May 9, 2023). Since it was not paid until October 19, 2023 (see Joint exhibit 6 benefit printout and Defendant exhibit E copies of checks) I find that there was an unreasonable delay of payment of temporary disability indemnity. Labor Code section 5814 states that the amount delayed shall be increased up to 25% of the amount unreasonably delayed, not to exceed \$10,000. I reviewed defendant’s February 16, 2024 answer to applicant’s penalty petition. Defendant asserts that it delayed payments pending its petition for reconsideration and because there was uncertainty about the amount of section 4850 benefits due. The petition for reconsideration was untimely. The amount of *temporary disability indemnity* was knowable and easily calculated as of May 9, 2023. I find the delay was unreasonable and will award a penalty in the amount of \$10,000.[ The amount delayed was in excess of \$40,000. See Joint exhibit 6 and defendant’s exhibit E.]

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(Opinion on decision, pp. 7-8.)

Moreover, we highlight the fact that while defendant is permitted to dispute the proper rate of temporary total disability indemnity, defendant should have, at a minimum, paid the rate they believed was proper, rather than no payment, to avoid a penalty pursuant to section 5814.

Further, as to the delay of permanent disability indemnity, the WCJ’s Opinion offers the following:

Labor Code section 4650 provides that permanent partial disability payments shall commence on the date temporary disability payments end or the permanent and stationary date, whichever is earlier. In this case, temporary disability was not paid until October 19, 2023. In *Maloney v. City of Berkeley*, 2012 Cal.Wrk.Comp. P.D. LEXIS 645, the court held that for purposes of section 4650, the *date of payment* for an earlier period of temporary disability controlled. In *Maloney*, an evaluator in 2011 described a period of temporary disability in 2000. The employer paid the temporary disability indemnity in 2011. The *Maloney* court held that this 2011 *payment* of temporary disability indemnity was the trigger under section 4650 and found no unreasonable delay. In the instant case, temporary disability indemnity was paid October 19, 2023. However, there is an earlier permanent and stationary date.

In his report of January 11, 2024 (Joint exhibit 1) Dr. Mandell stated that applicant's condition became permanent and stationary "four months after his last injection into his left knee, which was in 2022" (Id. at p. 7). Earlier in the same report, Dr. Mandell noted that applicant had left knee surgery on February 24, 2022. In about June 2022, he got a cortisone injection into his left knee (Id. at p. 2). Based on Dr. Mandell's AME report, I will find that applicant's condition became permanent and stationary on October 30, 2022, which is four months after his left knee cortisone injection. [To the extent that defendant asserts that there was any ambiguity regarding the permanent and stationary date, it had an obligation to conduct further investigation. Title 8, California Code of Regulations, section 10109. Defendant could have asked Dr. Mandell for a supplemental report or asked him at his deposition on August 1, 2024.] Under section 4650, permanent disability indemnity was due October 30, 2022.

***[Payment of permanent disability indemnity]***

According to applicant's verified penalty petition filed February 28, 2024 (see exhibit 2 attached thereto and Joint exhibit 6) defendant commenced permanent disability indemnity payments on January 11, 2024. I will find that defendant unreasonably delayed payment of permanent disability indemnity because under section 4650, it was due October 30, 2022. Payments should have been paid retroactive to that date. No reasons have been provided for this late payment. There was a 64 week delay in paying permanent disability indemnity (10/30/22-1/11/24) at \$290 per week. The total amount delayed was \$18,560. I will award a penalty in the amount of \$4,650 which is 25% of the amount delayed.

(Opinion on decision, pp. 8-10.)

Finally, we note that applicant's Answer alleges that the defendant's petition contains numerous inaccuracies and omits material evidence relative to the point or points at issue, thus meriting an additional award of costs and attorney fees pursuant to section 5813 against defendant.

A petition for reconsideration must fairly state all of the material evidence relative to the point or points at issue, and a failure to fairly state all of the material evidence may be a basis for denying the petition. (Lab. Code, § 5902; Cal. Code Regs., tit. 8, § 10945(a).) The evidentiary statements in a petition for reconsideration must be supported by specific references to the record. (Cal. Code Regs., tit. 8, § 10945(b).) References to testimony must specify the date and time of the hearing and the page numbers in the Minutes where the testimony is found, if available. (Cal. Code Regs., tit. 8, § 10945(b)(1).) References to documentary evidence must specify the exhibit number, and relevant descriptive information including the author of the document, the document date, and page numbers. (Cal. Code Regs., tit. 8, § 10945(b)(2).) References to deposition

transcripts must specify the exhibit number, the name of the person deposed, the date of the deposition and the page number. (Cal. Code Regs., tit. 8, § 10945(b)(3).)

Labor Code section 5813 authorizes sanctions for “bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay.” (Lab. Code, § 5813(a).) Bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay include actions or tactics that result from a willful failure to comply with a statutory or regulatory obligation, that result from a willful intent to disrupt or delay the WCAB proceedings, or filing a verified document with the WCAB that contains substantially misleading statements of fact for which a reasonable excuse is not offered. (Cal. Code Regs., tit. 8, § 10421(b).)

We do not address the issue here of whether defendant’s conduct may give rise to an award of penalties pursuant to section 5813, as that issue is premature in the absence of the filing of a petition for sanctions at the district level, and determination of same in the first instance.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

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



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

**September 12, 2025**

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

**DANIEL STRAMBI  
DURARD, MCKENNA AND BORG  
LAUGHLIN FALBO LEVY & MORESI**

**LN/md**

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**

### **I INTRODUCTION**

Applicant, Daniel Strambi, alleged a cumulative injury to the low back, left hip and both knees, while employed by defendant, Foster City Fire Department. The case has an extensive procedural history.

After a trial based on Agreed Medical reports I found injury to all body parts, 69% partial permanent disability and two penalties for defendant's unreasonable delay of payment of compensation.

Defendant filed a timely verified petition for reconsideration from my Finding of Fact challenging my findings that applicant injured his right knee, partial permanent disability, and penalties. Applicant filed an answer.

#### **I. Procedural background.**

As I stated in my Opinion on Decision:

This case has an extensive procedural history. On September 14, 2020, there was a trial on the issue of AOE/COE. WCJ Gogerman issued a Findings of Fact on December 15, 2020, finding injury to the left knee, low back and left hip.

There was a second trial on September 13, 2022. The primary issues were earnings and applicant's entitlement to L.C. section 4850, and temporary disability benefits. On December 14, 2022 Judge Gogerman issued a Findings and of Fact and Order. WCJ Gogerman found applicant to be temporarily disabled from March 19, 2020 and continuing. WCJ Gogerman vacated the submission for development of the record on the issue of earnings.

On May 9, 2023 the parties resubmitted the matter on the record, after stipulating that applicant was a maximum wage earner for total temporary disability warranting the existing maximum rate pursuant to Labor Code section 4661.5.

On June 12, 2023, Judge Gogerman issued a supplemental Findings of Fact, Orders and Award. He found applicant to be entitled to the maximum rate for total temporary disability to end on October 31, 2020 [Applicant's disability retirement benefits commenced on November 1, 2020]. He awarded temporary disability indemnity in the amount of \$54,357.18, less



attorney fees. He ordered the parties to meet and confer regarding the weekly rate for Labor Code section 4850 benefits.

On July 10, 2023, defendant filed a petition for reconsideration alleging that WCJ Gogerman's June 12, 2023 Award of temporary disability was not supported by substantial evidence. On September 8, 2023, the WCAB adopted WCJ Gogerman's report and denied reconsideration.

The case proceeded to trial on April 30, 2025, without further testimony. The primary issues were compensability of the right knee, permanent disability and penalties. The parties offered Agreed Medical Reports from Peter Mandell, M.D. on the issue of permanent disability. On May 22, 2025, I vacated the submission and issued formal rating instructions based on Dr. Mandell's reports. After service of the formal rating, I resubmitted the case for decision on June 4, 2025.

2. Evidence at trial and decision.

I relied on the following evidence:

**a. AMA Guides impairment rating**

The medical evidence was four AME reports from Peter Mandell, M.D. (joint exhibits 1-4) and Dr. Mandell's deposition transcript (joint exhibit 5). I did a detailed summary of the exhibits in the Opinion on Decision. The parties chose Peter Mandell, M.D., an orthopedic surgeon, as their agreed medical evaluator. Dr. Mandell stated that applicant injured his low back and both knees. [WCJ Gogerman previously found injury to the lumbar spine, left knee and right hip in his December 14, 2022 Findings of Fact and Order.] Defendant challenged Dr. Mandell's permanent disability opinion by supplemental report and at deposition. Dr. Mandell opined that applicant's permanent disability was 15% WPI for each knee based on Table 17-10 page 537 of the AMA Guides for varus deformity. Defendant maintained that the AMA Guides mandated the evaluating physician to take several measurements of the varus deformity and Dr. Mandell only took one measurement of the varus deformity. Dr. Mandell explained by way of report and at his deposition that there was a mistake in the AMA Guides, varus deformity is a *deformity*; not a *motion*. Dr. Mandell stated the drafters of the AMA Guides included the varus deformity disability, in the range of motion section of the guides, *in error*. He reported that there is no motion involved in the diagnoses of a varus disability. He stated that he correctly measured the angle of the varus deformity. Although the guides state that an evaluator should take several measurements of *range of motion* disabilities, that statement does not apply to a varus deformity. I relied on Dr. Mandell's reports and deposition transcript in determining applicant's permanent disability level. I awarded applicant 69% partial permanent disability indemnity in accordance with the formal DEU rating.

**b. Injury to the right knee**

Defendant contested Dr. Mandell's finding of injury to the right knee. Dr. Mandell stated:

Mr. Strambi indicates that he worked for several decades as a firefighter. I was asked to address problems that he developed with regard to his low back and lower limbs. He notes that these began in about 2018 with his LEFT knee following some pickleball playing. He consulted some doctors. There was talk about doing surgery. There was difficulty getting authorization for treatment, however. Eventually he did use private insurance to get surgery on his LEFT knee in February of 2022, where an arthroscopic debridement was performed. Unfortunately, he indicates that that wasn't particularly helpful. More recently he has been having problems with his RIGHT lower limb and knee as well. He has also had problems with his lumbar spine as a compensable consequence due to limping around (applicant's exhibit 1, page 7).

Approximately 100% of the causation of his bilateral knee impairments is a direct result of cumulative trauma on the job and compensable consequence from favoring the LEFT knee over to the RIGHT knee (Id. at page 8).

At his deposition, Dr. Mandell stated:

Q: How is the varus deformation caused by such left knee injury?

A: Wear and tear, putting more stress on the medial side than on the lateral side. So nature initially wanted the stresses that go across the knee to be distributed fairly evenly between both sides of the knee, and in Mr. Strambi's case, for reasons that probably happened with all the cumulative trauma he sustained, that balance was knocked out of whack and more of the stress was put on the medial side, and that's how things started to deteriorate along the medial side and creating varus (Joint exhibit 5 at pages 14-15).

Q: Okay. So – so how is the varus deformation in the right knee caused by the injury to the left knee?

A: Well, it isn't necessarily caused by the injury to the left knee. It's caused by the cumulative trauma, which is to both knees. Firefighters, as you know, is a very physical job, squatting, kneeling, climbing, carrying around ladders, walking on uneven terrain, things of that sort (Id. at page 17).

Q: Dr. Mandell, do you have an opinion – do you have an expert opinion about whether it's more likely than not that the applicant's cumulative trauma is the cause of the varus deformation?

A: That's my medically probable opinion (Id. at page 19) Q: [W]hat's the basis for that opinion?

A: My training, experience, judgment and skill.

Q: And your understanding of the applicant's job description and job duties; is that correct?

A: Yes (Id. at page 20).

I followed Dr. Mandell's opinion that applicant suffered injury to his right knee as a result to cumulative trauma, finding injury to the right knee.

**c. Kite/Vigil**

Dr. Mandell reported that the knee disabilities should be added rather than combined. In his report dated February 24, 2024, Dr. Mandell stated:

I apologize for the incompleteness of my report. I should have indicated to the parties that with regard to Mr. Strambi's bilateral knee impairments, *Kite* should apply. In other words, the LEFT and RIGHT knee impairments should be added rather than combined. That's because of the synergistic interaction between the two parts. The resulting number from that should then be combined with his lumbar impairment in order to attain accuracy (Joint exhibit 2, page 1).

In his report dated January 18, 2025, Dr. Mandell added:

It's my medically probably opinion, based upon my training, experience, judgment and skill, that in Mr. Strambi's particular case, his LEFT and RIGHT lower limbs do somewhat overlap but in a way that increases or amplifies the impact of the overlapping activities of daily living. In other words, he could walk further, lift more, squat and kneel more often, etc., if he had at least one good knee to rely on. He does not have that option, and utilizing the Combined Values Chart would introduce errors in the amount of impairment he has (Joint exhibit 4).

I relied on Dr. Mandell's opinions and asked the DEU rater to add the knee disabilities.

**d. Finding of 69% permanent disability.**

I found that applicant had a 69% partial permanent disability per the formal DEU rating. I relied on Dr. Mandell's opinions, set forth in detail above, to reach that finding. I decided that: applicant suffered an injury to his right knee; Dr. Mandell's 15% whole person impairment rating for each knee was consistent with the AMA Guides and constituted substantial evidence; and that Dr. Mandell's opinion that the disabilities should be added was consistent with the *Vigil* case.

**e. Labor Code section 5814 Penalty on temporary disability.**

I found that defendant had unreasonably delayed payment of temporary disability because: there was a prior award, on December 15, 2022, of temporary disability commencing on March 11, 2019. The award of temporary disability had become final. There was no uncertainty about the indemnity rate after May

9, 2023, when defendant stipulated (1) that applicant was a maximum wage earner for temporary disability purposes, and (2) that applicant's temporary disability entitlement ended on October 31, 2020. As of May 9, 2023, defendant should have known if had a duty to pay applicant temporary disability indemnity from March 11, 2019 to October 31, 2020 at the maximum rate. I found defendant's delay in payment of this temporary indemnity until October 19 2023 unreasonable.

**f. Labor Code section 5814 penalty on permanent disability.**

I found that applicant's condition became permanent and stationary on October 30, 2022, based on Dr. Mandell's January 11, 2024 report (Joint exhibit 1). Defendant does not contest that finding. Defendant paid permanent disability indemnity on February 16, 2024, *for the period commencing January 11, 2024*. I found that defendant should have paid permanent disability indemnity retroactive to the permanent and stationary date, an additional \$18,560 (64 weeks at \$290 per week). I found that defendant's failure to pay permanent disability retroactive to the permanent and stationary date was an unreasonable delay.

**2. Contentions on reconsideration.**

Defendant seeks reconsideration, contending:

1. My finding of 69 percent partial permanent disability was not based on substantial evidence because:
  - a. The finding of injury to the right knee was not based on substantial evidence;
  - b. Dr. Mandell's finding of injury to both knees was not based on substantial evidence;
  - c. Dr. Mandell's whole person impairment ratings were not substantial evidence because he did not take 3 measurements;
  - d. Dr. Mandell's opinion that the knee disabilities should be added is not substantial evidence;
2. Defendant did not unreasonably delay payment of temporary disability indemnity;
3. Defendant did not unreasonably delay payment of permanent disability.

**DISCUSSION**

This is defendant's third petition for reconsideration in this case. The prior WCJ in this case stated, "some of defendant's arguments appear to be meritless." I concur, with respect to this third petition. In my June 13, 2025 Opinion on Decision, I addressed most of these same contentions. I stand by my Opinion on Decision.

**FURTHER ANALYSIS ON RECONSIDERATION**

Defendant challenges the opinions of the *agreed medical evaluator*. "[T]he agreed medical examiner is chosen by the parties for his expertise and neutrality,

his opinion should ordinarily be followed unless there is good reason to find that opinion unpersuasive.” *Siqueros v. Workers’ Compensation Appeals Bd.* (1995) 60 Cal.Comp.Cases 150 (following *Power v.*

*Workers’ Compensation Appeals Bd.* (1986) 51 Cal.Comp.Cases 114. I found Dr. Mandell’s opinions to be reasonable and persuasive in this case.

1. **Dr. Mandell’s whole person impairment rating of the knees based on one measurement constituted substantial evidence.**

This is defendant’s primary contention on reconsideration. There is a major flaw in defendant’s argument. Defendant contends on reconsideration, the AMA Guides state that, “if it is clear to the evaluator that a *restricted range of motion* has an organic basis, *three measurements* should be obtained...” Dr. Mandell’s diagnosed that applicant has a varus deformity<sup>3</sup> in each knee. Dr. Mandell, an orthopedic surgeon chosen as an AME in this case, explained that varus is a deformity. *It is not a range of motion. The AMA Guides instruction to the evaluator to take three measurements when examining a range of motion is not applicable on its face.* Dr. Mandell measured the deformity once per his training, judgment, skill and expertise. The Guides required nothing else.

The AMA Guides note that some specialists performing evaluations have special expertise in anatomical assessment (Section 2.3, page 18). “The physician must use the entire range of clinical skill and judgment when assessing whether or not the measurements and tests results are plausible and consistent with the impairment being evaluated.” (AMA Guides section 2.5c, page 19). Dr. Mandell eloquently explained how and why he assessed the knee whole person impairment. Dr. Mandell’s evaluation was consistent with the AMA Guides. Dr. Mandell’s whole person impairment rating for the knees is substantial evidence. Defendant’s challenge to Dr. Mandell’s opinion that applicant injured both knees as a result of cumulative trauma is meritless. Defendant did not fairly and accurately represent the record. Defendant omitted Dr. Mandell’s discussion, at his deposition, of how and why

<sup>3</sup> Applicant is bowlegged.

applicant’s work activities caused the varus deformity, an impairment within the four corners of the AMA Guides.

Mr. Strambi indicates that he worked for several decades as a firefighter. I was asked to address problems that he developed with regard to his low back and lower limbs. He notes that these began in about 2018 with his LEFT knee following some pickleball playing. He consulted some doctors. There was talk about doing surgery. There was difficulty getting authorization for treatment, however. Eventually he did use private insurance to get surgery on his LEFT knee in February of 2022, where an arthroscopic debridement was performed. Unfortunately, he indicates that that wasn’t particularly helpful. More recently he has been having problems with his RIGHT lower limb and knee as well. He has also had problems with his lumbar spine as a compensable consequence due to limping around (applicant’s exhibit 1, page 7).

Approximately 100% of the causation of his bilateral knee impairments is a direct result of cumulative trauma on the job and compensable consequence from favoring the LEFT knee over to the RIGHT knee (Id. at page 8).

At his deposition, Dr. Mandell stated:

Q: .... How is the varus deformation caused by such left knee injury?

A: Wear and tear, putting more stress on the medial side than on the lateral side. So nature initially wanted the stresses that go across the knee to be distributed fairly evenly between both sides of the knee, and in Mr. Strambi's case, for reasons that probably happened with all the cumulative trauma he sustained, that balance was knocked out of whack and more of the stress was put on the medial side, and that's how things started to deteriorate along the medial side and creating varus (Joint exhibit 5 at pages 14-15).

Q: Okay. So – so how is the varus deformation in the right knee caused by the injury to the left knee?

A: Well, it isn't necessarily caused by the injury to the left knee. It's caused by the cumulative trauma, which is to both knees. Firefighters, as you know, is a very physical job, squatting, kneeling, climbing, carrying around ladders, walking on uneven terrain, things of that sort (Id. at page 17).

Q: Dr. Mandell, do you have an opinion – do you have an expert opinion about whether it's more likely than not that the applicant's cumulative trauma is the cause of the varus deformation?

A: That's my medically probable opinion (Id. at page 19) Q: [W]hat's the basis for that opinion?

A: My training, experience, judgment and skill.

Q: And your understanding of the applicant's job description and job duties; is that correct?

A: Yes (Id. at page 20).

Dr. Mandell's opinion is based on reasonable medical certainty. It is substantial evidence. [Defendant points to Dr. Mandell's statement that it is possible that varus deformation is a congenital defect; and that there is no deviation from the normal (i.e. there is no deformity). These possibilities are speculative. Anything is possible. Possibilities are not substantial evidence.]

**2. Dr. Mandell's opinion that the knee disabilities should be added is substantial evidence.**

Defendant states in its petition, "Dr. Mandell issued a single-page opinion raising that the bilateral knee impairments should be added rather be (sic) combined per *Kite*, because of the synergistic interactions between the two parts...He did not explain his reasoning further as required by Vigil..." (petition for reconsideration page 9). This is a mischaracterization of the record. In his report dated February 24, 2024, Dr. Mandell stated:

I apologize for the incompleteness of my report. I should have indicated to the parties that with regard to Mr. Strambi's bilateral knee impairments, *Kite* should apply. In other words, the LEFT and RIGHT knee impairments should be added

rather than combined. That's because of the synergistic interaction between the two parts. The resulting number from that should then be combined with his lumbar impairment in order to attain accuracy (Joint exhibit 2, page 1).

In his report dated January 18, 2025, Dr. Mandell added:

It's my medically probable opinion, based upon my training, experience, judgment and skill, that in Mr. Strambi's particular case, his LEFT and RIGHT lower limbs do somewhat overlap but in a way that increases or amplifies the impact of the overlapping activities of daily living. In other words, he could walk further, lift more, squat and kneel more often, etc., if he had at least one good knee to rely on. He does not have that option, and utilizing the Combined Values Chart would introduce errors in the amount of impairment he has (Joint exhibit 4).

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 the WCAB, *en banc*, held:

The Combined Values Chart (CVC) in the Permanent Disability Ratings Schedule (PDRS) may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either:

- (a) there is no overlap between the effects on ADLs as between the body parts rated; or
- (b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs.

Dr. Mandell, consistent with the correct legal standard, stated that there was overlap in activities of daily living (walking, lifting, squatting and kneeling). He described these overlapping disabilities and explained how and why the overlap amplifies the impact on the overlapping disabilities. He stated that if applicant had two good knees, "he could walk further, lift more, squat and kneel more often, etc." Defendant's contention is meritless. Dr. Mandell's opinion is substantial evidence. The knee disabilities were appropriately added in my formal rating instructions.

There was substantial evidence to support my finding of 69% partial permanent disability. I appropriately relied upon Dr Mandell's whole person impairment ratings and *Vigil* analysis.

3. **I correctly found that defendant unreasonably delayed paying temporary disability indemnity.**

I addressed this in my Opinion on Decision. Defendant has not raised any new issues or evidence. My finding was correct.

4. **I correctly found that defendant unreasonably delayed paying permanent disability indemnity.**

In its petition, defendant stated, "under the circumstances of this case, the reasonable course was to begin advances as of the date of AME reporting and advances (sic) to a reasonable amount (which in this case was 61% based on Dr. Mandell's reporting without the Kite add-on)." Defendant's argument ignores its legal duty under Labor Code section 4650 to commence permanent disability

payments on the permanent and stationary date, which had been provided by the agreed medical evaluator. Defendant should have paid permanent disability indemnity retroactive to October 30, 2022. There is no legal basis to commence payments on the date of an AME report. Defendant's failure to follow the law deprived applicant of 64 weeks of permanent disability indemnity payments. The benefit printout at trial (Joint exhibit 6) showed permanent disability advances of \$18,974.34. They should have paid an additional \$18,560 (64 weeks X \$290 per week); far less than the amount defendant concedes would be a reasonable amount (61% is 359.25 weeks at \$290 per week = \$104,182.50). My finding of an unreasonable delay was correct.

#### **RECOMMENDATION**

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on July 8, 2025, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

DATED: July 21, 2025

Barry Gorelick  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE