WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GILBERT GUZMAN, *Applicant*

vs.

COMPASS AT CITY OF INDUSTRY CANTEEN VENDING SERVICE; ZURICH; AIM TRANSPORTATION; STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Numbers: ADJ4336912 (ANA 0345079), ADJ418935 (ANA 0384541)
Santa Ana District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Zurich[1] seeks reconsideration of the Amended Joint Findings of Fact and Award/Order (FA&O), issued by the workers' compensation administrative law judge (WCJ) on January 31, 2025. In case number ADJ4336912, the WCJ found in pertinent part that on July 17, 2000, applicant sustained injury to his back, psyche and urological system, arising out of and in

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[1] In their Petition, defendant states that the Petition is brought on behalf of Compass at City of Industry and refers to the workers' compensation insurance carrier as "Zurich."

WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390) states that:

> Any party that appears at a hearing or files a pleading, document or lien shall:
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> (a) Set forth the party's full legal name on the record of proceedings, pleading, document or lien;
>
> (b) File a notice of representation if a party is represented and the attorney or non-attorney representative has not previously filed a notice of representation or an Application for Adjudication of Claim; and
>
> (c) Identify the insurer and/or employer as the party or parties and not identify a third party administrator as a party. The third party administrator shall be included on the official address record and case caption if identified as such.

In our en banc decision in *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289, we held that a failure to properly identify the represented parties could subject the offending person to sanctions.

In the instant case, the only reference to defendant's workers' compensation insurance company is "Zurich." Thus, defendant has failed to comply with its mandatory duty under *Coldiron* and WCAB Rule 10390 to clearly identify the employer's workers' compensation insurance carrier, and this conduct is subject to sanctions. Moreover, from the applicant's perspective, if the correct defendant is not identified, any award to applicant may potentially be unenforceable. (See Lab. Code, §§ 5806, 5807.) Upon return of this matter, the parties should make all efforts to correct the official address record and all relevant pleadings and documents forthwith.

the course of employment (AOE/COE), while working as a truck driver for defendant Compass at City of Industry; that applicant is permanently, totally disabled; and that defendant failed to meet their burden to establish apportionment. In the same case, the WCJ issued an award in favor of applicant, consisting, in pertinent part, of permanent, total disability indemnity payments and future medical care. In case number ADJ418935, the WCJ found in pertinent part that applicant did not sustain injury AOE/COE, when working for defendant AIM Transportation during the time period October 21, 2002 through January 21, 2003; and that the issues of permanent disability, apportionment, need for further medical treatment, liability for self-procured medical treatment and attorneys' fees are moot; and ordered that applicant take nothing in that matter.

Defendant contends that the WCJ should have relied on defendant's medical evaluator Dr. Aval's reporting; that applicant's claim for new and further disability is in part due to a cumulative injury that occurred while applicant was employed for defendant AIM Transportation; that the findings in case number ADJ4336912 should be amended to reflect apportionment to that claimed injury; that applicant is not permanently and totally disabled; and, that applicant is capable of returning to work.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the Answer, and the contents of the Report with respect thereto. Based on our review of the record and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

The WCJ set forth the factual background of these consolidated matters as follows:

> **FACTUAL BACKGROUND (ADJ4336912 MF [master file])**
>
> Gilbert Guzman, while employed on July 17, 2000, as a truck driver, occupational group no. 350, at Los Angeles, by Compass at City of Industry, sustained injury arising out of and in the course of employment to back, psyche, and injury to his urological. At the time of injury, the employers Worker's Compensation carrier was Zurich. At the time of injury, the employee's earnings were $637.42 per week warranty indemnity rates of $424.95 for temporary disability and maximum for permanent disability.
>
> At the time of trial, the parties stipulated to the following:

1. The carrier / employer has paid compensation as follows: Temporary Total Disability (TD), at the weekly rate of $424.95 for the period of August 29, 2000 to January 29, 2001, and February 24, 2004 through May 25, 2011. Permanent disability (PD) at the weekly rate of $140 for the period of January 30, 2001 through August 13, 2002. PD at the weekly rate of $230 for the period of August 26, 2011 through March 19, 2015. Total permanent disability advances equal $61,272.11. VRMA at the rate of $246 per week for the period of February 12, 2001 through August 31, 2001.
2. The employee has been adequately compensated for all periods of TD claim through May 25, 2011.
3. The employer has furnished some medical treatment.
4. The primary treating physician is Dr. Michael Einbund.
5. Defendants' reporting of Dr. Soheil Aval, Dr. Fraser, and Dr. Agastein rate to 81% PD. Defendants' rating of 81% is before apportionment. After apportionment, the rating is 32% permanent disability for Zurich and 49% permanent disability for State Compensation Insurance Fund. The applicant's reporting of Dr. Michael Einbund, Dr. Ted Greenzang, and Dr. Garotertzakian rate to 99% permanent disability.

The issues for trial were as follows:

1. PD with regard to the Petition to Reopen.
2. Whether the Applicant has rebutted the permanent disability rating schedule resulting in 100% permanent disability pursuant to the vocational expert's reporting.
3. Apportionment.
4. Need for further medical treatment.
5. Liability for self-procured medical treatment.
6. Attorney fees.
7. Liens were deferred.

FACTUAL BACKGROUND (ADJ418935 COMPANION FILE)

Gilbert Guzman, while employed during the period of October 21, 2002 through January 21, 2003, as a shipping receiving clerk, occupational group no. 360 at Orange, California, by Aim Transportation claims to have sustained injury arising out of and in the course of employment to back, psyche, and injury to urological. At the time of injury, the employer's workers compensation carrier was State Compensation Insurance Fund. At the time of injury, the employee's earnings were $300 per week warranty indemnity rates of $200 for temporary disability and maximum for permanent disability.

At the time of trial the parties stipulated to the following facts:

1. The employer has furnished no medical treatment.
2. The primary training physician is Dr. Michael Einbund.
3. No attorney fees have been paid and no attorney fee arrangements have been made.

The issues for trial were as follows:

1. Injury Arising Out of in the Course of Employment
2. Permanent Disability.
3. Apportionment.
4. Need for further medical treatment.
5. Liability for self-procured medical treatment.
6. Attorney fees.
7. Liens are deferred.
8. Whether the issue of industrial causation from AIM Transportation employment has already been adjudicated pursuant to Judge Van Gorder's decision dated March 24, 2005.

After several days of trial and time allowed for Post Trial Briefs, this matter was submitted as of October 24, 2024. After correcting errors made in the Joint Findings of Fact and Award/Order, an Amended Joint Findings of Fact and Award/Order was issued on January 31, 2025.

(Report, at pp. 1-3.)

DISCUSSION
I.

Former Labor Code section 5909[2] 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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> (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."

[2] All section references are to the Labor Code, unless otherwise indicated.

Here, according to Events, the case was transmitted to the Appeals Board on February 19, 2025 and 60 days from the date of transmission is Sunday, April 20, 2025. The next business day that is 60 days from the date of transmission is Monday, April 21, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[3] This decision is issued by or on Monday, April 21, 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 February 19, 2025, and the case was transmitted to the Appeals Board on February 19, 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 February 19, 2025.

II.

To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408, 413, 416–417, 419 [33 Cal.Comp.Cases 660].) A physician's report must also be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Gatten, supra*, 145 Cal.App.4th at p. 928; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc), 70

[3] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

Cal.Comp.Cases 1506 (writ den.).) We observe, moreover, that it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

Defendant holds the burden of proof on apportionment of permanent disability. (Lab. Code, § 5705; see also *Escobedo*, *supra*, 70 Cal.Comp.Cases at p. 613; *Pullman Kellogg v. Workers' Comp. Appeals Bd.* (*Normand*) (1980) 26 Cal.3d 450 [45 Cal.Comp.Cases 170].) To meet this burden, defendant "must demonstrate that, based upon reasonable medical probability, there is a legal basis for apportionment." (*Gay v. Workers' Comp. Appeals Bd.* (1979) 96 Cal.App.3d 555, 564 [44 Cal.Comp.Cases 817]; see also *Escobedo*, *supra*, at p. 620.) "Apportionment of permanent disability shall be based on causation." (Lab. Code, § 4663(a).) "Apportionment is a factual matter for the appeals board to determine based upon all the evidence." (*Gay*, *supra*, 96 Cal.App.3d at p. 564.) Thus, the WCJ has the authority to determine the appropriate percentage of apportionment, if any.

For a decision by the Appeals Board to be supported by substantial evidence, the underlying medical opinions relied upon by the WCJ must be substantial evidence, which includes a correct application of the law by the physician. The WCJ may not isolate portions of a physician's opinion to support a specific result, but must consider the physician's reports and testimony as a whole. (*Id.*; see also *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].)

Here, defendant contends that the WCJ should have relied on the reporting by defendant's evaluator Dr. Aval, rather than on the reporting of applicant's doctors, to determine if applicant was injured AOE/COE while working for AIM Transportation.[4] (Petition, at pp. 3-7.)

This assertion repeats defendant's contentions at trial and has no merit. The WCJ weighed the conflicting medical reporting, as required, and found applicant's doctors to be more credible, and found specifically that the reporting by applicant's treating physician, Dr. Einbund, constituted

[4] Defendant Zurich correctly notes in its petition that it is "not an official party to the companion case [ADJ418935]," but requests that we allow it to proceed with its petition as to both matters, because the finding of no injury in the companion case "is also in essence a ruling against Zurich regarding apportionment to causation." (Petition, at p. 3.) In its description of who may file a petition for reconsideration, section 5900 broadly refers to "[a]ny person aggrieved directly or indirectly" rather than limiting the right to an aggrieved party. (Lab. Code, § 5900(a).) We thus agree with Zurich that it is "an aggrieved person" *vis a vis* applicant's companion case. We therefore address Zurich's arguments on the merits as to both cases.

substantial medical evidence. (*Place, supra,* 3 Cal.3d at pp. 378-379.) The WCJ explained in the Opinion on Decision (Opinion) that:

> "…[I]n review of the reports from Dr. Michael Einbund, Applicant's Treating Physician and Dr. Soheil Aval, Defendants' Orthopedic Qualified Medical Evaluator, it is found that Dr. Einbund's reporting is more persuasive. Dr. Aval's reporting contained some inconsistencies. Further, Dr. Einbund has been treating the Applicant shortly after his injury of July 17, 2000. He has thus been treating with Dr. Einbund, for quite some time and has seen him dozens of times (MOH/SOE 08/26/2024, page 3, lines 10-12). Given the comprehensive and well-reasoned reporting of Dr. Einbund, the fact that the Applicant's testimony substantiated Dr. Einbund's findings, and Dr. Luis Mas reporting, also supported Dr. Einbund's findings, it is found that Dr. Einbund's opinions, rise to the level [of] substantial medical evidence. Ultimately Dr. Einbund, opines that "…in my medical opinion, the patient is unable to compete in an open labor market at this time as he is on morphine prescribed by his pain management specialist." (Exhibit 2, 3/16/2022, page 27).
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> Additionally, after review of all the medical reporting submitted into evidence, it is found that Applicant's reporting of Dr. Ted Greenzang, and Dr. Garo Tertzakian are also more persuasive than that of Defendants' reporting."

(Opinion, at p. 10.)

Defendant contends that the Opinion did not include a description of the inconsistencies the WCJ identified in Dr. Aval's reporting. (Petition, at p. 7.) However, in the Report, the WCJ addressed this concern, describing in detail the inconsistencies in Dr. Aval's reports. (Report, at pp. 3-5.) After providing these details, the WCJ contrasted Dr. Aval's reporting with that of Dr. Einbund, explaining that "Dr. Aval's reporting cannot be deemed to be substantial medical evidence given the inconsistencies with his own reporting, the Job Analysis and the Applicant's unrebutted, credible testimony." (Report, at p. 5.) The WCJ's Report thus cures any technical or alleged defect in satisfying the requirements of section 5313. (Lab. Code, § 5313; *City of San Diego v. Workers' Comp. Appeals Bd.* (*Rutherford*) (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd.* (1980) 45 Cal.Comp.Cases 1026 (writ den.).)

Defendant also contends that Dr. Mas is a Ph.D., not a medical doctor, and that his opinions should not have been relied upon in determining causation. (Petition, at p. 6.) The WCJ addressed this contention in her Report, wherein she agreed that Dr. Mas is a Vocational Expert, not a medical examiner. (Report, at p. 5.) In the Report, the WCJ indicated that she was correcting the typographical error in the Opinion to remove the reference to Dr. Mas on page 12, and to clarify

that her finding that there was no injury AOE/COE in case ADJ418935 was based only on "the findings of Dr. Einbund and the Applicant's credible testimony that the Applicant did not sustain an industrial injury during his employment with AIM Transportation." (Report, at p. 5.) We observe that it is the findings and orders that are ultimately enforceable as a judgment, not the Opinion. (See Lab. Code, §§ 5806, 5807.) Here, there is no indication in the findings in either case that the WCJ relied on Dr. Mas as anything other than a vocational expert. (See *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (*Nunes I*) (Appeals Board en banc); *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894 (*Nunes II*) (Appeals Board en banc).) The WCJ's clarification in the Report is thus all that is needed to address defendant's contention.

Defendant contends, too, that applicant's claim for new and further disability is in part due to applicant's alleged cumulative trauma injury that occurred while applicant was employed for defendant AIM Transportation. (Petition, at pp. 3, 10.) Defendant argues that the findings in case number ADJ4336912 should be amended "to reflect apportionment to the applicant's cumulative trauma claim against AIM Transportation." (Petition, at p. 10.)

We find no legal basis for this request. Defendant holds the burden of proof on apportionment of permanent disability, and here, defendant failed to meet its burden of proof to establish apportionment. (Lab. Code, § 5705; *Escobedo, supra,* 70 Cal.Comp.Cases at p. 613.) As discussed above, the WCJ concluded that the reporting of applicant's witnesses constituted substantial medical evidence, while the reporting of defendant's medical witnesses did not. (Opinion, at p. 10.) Based on this finding, the WCJ explained that "the more persuasive reports have found that the applicant's disability is 100% apportioned to this industrial injury [in case number ADJ4336912]. Therefore, Defendant's [*sic*] have failed to meet their burden of proof to establish apportionment." (Opinion, at p. 10.)

Thus, we agree with the WCJ that the opinion of Dr. Einbund is substantial medical evidence upon which the WCJ properly relied in reaching her conclusions in this matter. We see no error in the WCJ's findings, including the finding, in case ADJ418935, that applicant did not sustain any injury AOE/COE while employed by AIM Transportation, and the finding, in case ADJ4336912, that defendant failed to meet their burden of proof to establish apportionment.

III.

Defendant next contends that that applicant is not permanently and totally disabled and is capable of returning to work. (Petition, at pp. 7-10.) These arguments, too, lack merit. The evidence supports the WCJ's finding of permanent total disability pursuant to section 4662, subdivision (b).

"A permanent disability is the irreversible residual of a work-related injury that causes impairment in earning capacity, impairment in the normal use of a member or a handicap in the open labor market." (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1270 [76 Cal.Comp.Cases 624].) "A disability is considered permanent when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment." (Cal. Code Regs., tit. 8, § 10152.) Section 4662, subdivision (b), states that to determine permanent disability for conditions other than those enumerated in subdivision (a), "permanent total disability shall be determined in accordance with the fact." (Lab. Code § 4662(b).)

In the case of *Dept. of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.* (*Fitzpatrick*) (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Third District Court of Appeal held that a finding of permanent total disability cannot be found solely "in accordance with the fact" under section 4662(b) without following the more specific and detailed framework of section 4660 (which applies to injuries occurring before January 1, 2013, including the injury in this case). This approach is necessary in order to give effect to the legislature's intent to provide a system that is objective and uniform in application, with consistency, uniformity, and objectivity in its results. At the same time, the Court in *Fitzpatrick* acknowledged that it is possible to rebut a rating that is calculated using the AMA Guides and the current rating schedule in accordance with section 4660. (*Id*.)

In *Ogilvie, supra,* 197 Cal.App.4th at pp. 1269-1276, the Court described three methods for rebutting a scheduled rating: (1) by showing a factual error in the application of a formula or the preparation of the rating schedule; (2) when the injury impairs rehabilitation, causing diminished future earning capacity greater than reflected in the scheduled rating (as in *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [48 Cal.Comp.Cases 587]); or (3) where the nature or severity of the claimant's injury is not captured within the sampling of disabled workers that was used to compute the adjustment factor. (*Id*.)

It is well-settled that for all dates of injury, the presentation of substantial vocational evidence offers a legal path to rebuttal of the scheduled permanent disability rating. (*Nunes I*, *supra*, 88 Cal.Comp.Cases 741, citing *LeBoeuf*, *supra,* 34 Cal.3d 234 and *Ogilvie*, *supra*, 197 Cal.App.4th 1262.) We explained, in *Nunes I*, that vocational evidence may be relied upon for multiple purposes:

> "…vocational evidence continues to be relevant to the issue of permanent disability, and may be offered to rebut a scheduled rating by establishing that an injured worker is not feasible for vocational retraining. Vocational evidence may also be considered by evaluating physicians as relevant to their determination of permanent disability, and may assist the parties and the WCJ in assessing those factors of permanent disability. Finally, the WCJ retains the duty and the authority to review and weigh the medical and vocational evidence, and to enter corresponding orders, findings, decisions, and awards that are supported by substantial evidence in light of the entire record, including orders for development of the record where necessary."

(*Nunes I, supra*, 88 Cal.Comp.Cases 741, 752-753, citing *Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; and *Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 404 [65 Cal.Comp.Cases 264].)

Here, a prior permanent disability award of 27% had been issued in applicant's case on June 10, 2002, pursuant to the Stipulations with Request for Award. (Opinion, at p. 6.) Regarding the current proceedings on the Petition to Reopen, the parties stipulated before trial that, based on the reporting of defendant's doctors, the medical-legal evaluations rate to a combined rating of 81% permanent disability before apportionment, and, after apportionment, the rating is 32% permanent disability for defendant and 49% permanent disability for SCIF, while based on the reporting of applicant's doctors, applicant rates to 99% permanent disability. (Opinion, at pp. 2, 6-7.) Applicant argued at trial that he was 100% permanently totally disabled. (Opinion, at pp. 6-7.) Applicant argued, too, that he successfully rebutted the permanent disability rating schedule through vocational reporting. (Applicant's 1/17/24 Trial Brief, at pp. 5-6.)

Here, the WCJ took into account the legal standards described above in making her determination regarding permanent disability. (Opinion, at pp. 6-10.) The WCJ carefully considered applicant's testimony and demeanor, indicating that he credibly testified to his constant pain, ongoing need for daily opiate medication, urinary incontinence, difficulty with concentration, inability to work full time due to his disability, and inability to pass a drug test due to taking the prescribed morphine. (Opinion, at pp. 7-9.) The WCJ fully considered the reports by both vocational experts, finding applicant's expert, Dr. Mas, more persuasive. (Opinion, at p. 9;

Applicant's Exb. 20.) As described above, the WCJ also found that the medical reporting from applicant's physician, Dr. Einbund, was substantial medical evidence, and relied on Dr. Einbund's reporting, as well as that of applicant's medical evaluators, Drs. Greenzang and Tertzakian, to reach her conclusions regarding permanent disability. (Opinion, at p. 10.) The WCJ concluded, "based on the reporting of Mr. Mas, as well as the medical determinations of applicant's treating physicians and the reporting of Applicant's QMEs, this Worker's Compensation Judge now findings in accordance with labor Code §4662(b), applicant is permanently totally disabled." (*Id*.)

We find no basis to question the WCJ's reliance on the vocational reporting of Dr. Mas, who concluded that applicant cannot be retrained for a position on the open labor market, is unable to return to the labor market, and would not be able to pass an employment drug test. (Opinion, at p. 9.) Dr. Einbund agreed with this assessment, noting that "…in my medical opinion, the patient is unable to compete in an open labor market at this time as he is on morphine prescribed by his pain management specialist." (Applicant's Exb. 2, at p. 27.) Applicant has thus presented substantial vocational evidence, which rebuts the scheduled permanent disability rating of 99%. (*Nunes I*, *supra*, 88 Cal.Comp.Cases 741.) Accordingly, for the reasons stated in the Report and the Opinion on Decision, we are persuaded that the WCJ's analysis follows the more specific and detailed framework of section 4660 as required by *Fitzpatrick* and that the WCJ's finding that applicant is permanently totally disabled must be affirmed.

In addition, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza, supra,* 3 Cal.3d at pp. 318-319.) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

Lastly, regarding defendant's contention that applicant is capable of returning to work, the WCJ pointed out in the Report that defendant supported this assertion by incorrectly quoting Dr. Einbund's March 16, 2022 report. (Report, at pp. 5-6.) The WCJ, after reviewing all of the available evidence, issued findings and orders indicating that applicant is not able to return to work, and explained those findings in her Opinion. Based on our independent review of the record, we agree, and we will not disturb the WCJ's determination.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Amended Joint Findings of Fact and Award/Order, issued by the WCJ on January 31, 2025 is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 21, 2025

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

GILBERT GUZMAN
LEVITON, DIAZ & GINOCCHIO
WAI, CONNOR & HAMIDZADEH, LLP
STATE COMPENSATION INSURANCE FUND

MB/*ara*

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