WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GLORIA ROBLES, *Applicant*

vs.

SBM SITE SERVICES, LLC; SAFETY NATIONAL CASUALTY CORPORATION; administered by CANNON COCHRAN MANAGEMENT SERVICES, INC., *Defendants*

Adjudication Number: ADJ14926383
San Jose District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on October 6, 2025 wherein the workers' compensation administrative law judge (WCJ) held, in relevant part, that while employed by defendant as a janitor on July 24, 2020, applicant sustained injury arising out of and in the course of employment (AOE/COE) to the lumbar spine and right shoulder resulting in a 78% permanent disability, plus a life pension thereafter, per the opinions of Qualified Medical Evaluator (QME), Nathan Morello, D.C.

Defendant contends that the opinions of Dr. Morello are not based upon substantial medical evidence, and that applicant has failed to satisfy the requirements outlined in *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688-689 (Appeals Bd. en banc) for rebuttal of the combined values chart (CVC) method of rating. (Petition for Reconsideration (Petition), pp.17, 20, 22.) Defendant further contends that the WCJ incorrectly rated the lumbar spine and pain impairments in finding applicant's overall 78% permanent disability. (*Id*. at p. 23.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted for the "limited purpose of allowing a correction in the rating" to reflect a 73% rather than 78% permanent disability with corresponding corrections to attorney's fees. (Report, p. 10.)

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant the Petition for the limited purpose of amending the permanent disability to reflect a 73% rather than 78% permanent disability with corresponding changes to attorney's fees, but otherwise affirm the WCJ's F&A.

FACTS

Applicant filed an Application for Adjudication of Claim (Application) claiming that while employed by defendant as a janitor on July 24, 2020, she sustained injury AOE/COE to the arm(s), hand(s), hips, and knee(s). The claim was initially denied by defendant via a written letter dated October 5, 2021. (Exhibit W.)

Applicant sought medical treatment with Michael Newman, D.C. who first examined applicant on October 20, 2021, and issued a report dated October 25, 2021, wherein he diagnosed applicant with contusion/laceration injury to both knees (since resolved), lumbar and left ankle strain, and mild right thumb De Quervain's tenosynovitis as a result of the work injury. (Exhibit L, p. 4.)

Thereafter, the parties proceeded with discovery and selected Nathan Morello, D.C. as the chiropractic QME. Dr. Morello evaluated applicant on two occasions and issued reports dated December 30, 2021, December 30, 2022, March 30, 2023, December 16, 2023, January 8, 2024, August 6, 2024, and November 6, 2024. Dr. Morello was also deposed by the parties on August 15, 2022, and June 6, 2024.

In his December 30, 2021 report, Dr. Morello opined that applicant sustained injury AOE/COE to the low back and right shoulder. (Exhibit 7, p. 7.)

On June 5, 2023, the parties entered into a joint stipulation, approved by the WCJ, which stated that defendant agreed to accept applicant's claim with respect to the "lumbar spine and right shoulder only." (Exhibit X.)

On January 8, 2024, Dr. Morello issued a medical report wherein he found that applicant reached permanent and stationary status with a resulting 13% whole person impairment (WPI) to the lumbar spine under DRE category III and 9% WPI to the right shoulder due to decreased range of motion. (Exhibit 3, pp. 21-22.) With respect to apportionment, he opined that "[i]n reviewing the history, records provided[,] and evaluation of the patient[,]" he saw "no indication for [non-

industrial] apportionment…in regard to [applicant's] right shoulder." (*Id*. at p. 21.) He noted that although he originally saw an indication for non-industrial apportionment to the lumbar spine, "[a]fter questioning [applicant] and reviewing the medical records again," he did not believe there was non-industrial apportionment. (*Ibid*.) He further indicated that applicant "suffers from conditions involving multiple body systems/regions and associated disabilities" which "have a synergistic effect upon each other" resulting in an "overall disability…larger than [that] represented using the [American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (]AMA Guides[)] 'Combined Values Chart.'" (*Id*. at p. 23.) As such, he recommended that the right shoulder and lumbar spine impairments be added rather than combined as this would "most accurately reflect the injured worker's overall disability." (*Ibid*.)

On August 30, 2024, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issues of permanent disability and future medical treatment. At the December 2, 2024 hearing, the parties filed their joint stipulations and issues, and the matter was set for trial.

At the July 15, 2025 trial, the following issues were set for determination: permanent disability; apportionment; attorney's fees; whether the opinions of Dr. Morello are substantial medical evidence; whether sub-rosa evidence submitted by defendant should be admitted; and sanctions against defendant for failure to comply with May 14, 2025 Orders. The parties submitted into evidence the above noted QME reports as well as transcripts from the depositions of Dr. Morello. Defendant submitted as evidence, reports from Dr. Newman; denial and acceptance letters; right shoulder and lumbar MRIs dated April 8, 2022; and upper and lower extremity EMGs dated April 11, 2022, and April 18, 2022, respectively.

On October 3, 2024, the WCJ issued a F&A wherein it was held, in relevant part, that while employed by defendant as a janitor on July 24, 2020, applicant sustained injury AOE/COE to the lumbar spine and right shoulder resulting in a 78% permanent disability, plus a life pension thereafter, based upon the opinions of Dr. Morello.

DISCUSSION

I.

Preliminarily, 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 under the Events tab 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 October 30, 2025, and 60 days from the date of transmission is December 29, 2025. This decision was issued by or on December 29, 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 constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on October 30, 2025, and the case was transmitted to the Appeals Board on October 30, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that

service of the Report provided accurate notice of transmission under Labor Code section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on October 30, 2025.

II.

Turning now to the merits of the Petition, defendant contends that the opinions of Dr. Morello are not based upon substantial medical evidence. (Petition, pp. 17, 20.) As explained in *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc), a decision "must be based on admitted evidence in the record" (*Id.* at p. 478) and supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "[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.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Defendant also contends that Dr. Morello's opinions on apportionment are not based upon substantial evidence. With respect to apportionment, it is well established that defendant carries the burden of proof. (Lab. Code, § 5705; *Pullman Kellogg v. Workers' Comp. Appeals Bd.* (*Normand*) (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v.Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 613 (Appeals Bd. en banc).) 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.) Further, "[a]pportionment is a factual

matter for the appeals board to determine based upon all the evidence." (*Gay*, *supra*, at p. 564.) The WCJ has the authority to determine the appropriate amount of apportionment, if any.

In *Escobedo*, the Appeals Board outlined the following requirements for substantial evidence on the issue of apportionment:

> "[I]n the context of apportionment determinations, the medical opinion must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion, so that the Board can determine whether the physician is properly apportioning under correct legal principles. (citations.)
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> Thus, to be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must 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."

(*Escobedo*, *supra*, at p. 621.)

Here, Dr. Morello opined that "within reasonable medical probability" applicant sustained an injury AOE/COE to the lumbar spine and right shoulder resulting in a 13% WPI to the lumbar spine under DRE lumbar category III and a 9% WPI to the right shoulder under the range of motion (ROM) method. (Exhibit 3, pp. 20, 22.) He outlined various studies, including an April 18, 2022 EMG, and an April 8, 2022 lumbar MRI, which confirmed bilateral radicular pain at the L5-S1 regions and a history of a herniated disc. (*Id*. at p. 22.) He noted also that applicant qualified "for the higher DRE rating due to the impact" of the injury on applicant's ability "to perform activities of daily living [ADLs]." (*Ibid*.) Further clarification regarding the specific ADLs affected were provided during a June 6, 2024 deposition. (Exhibit 9, pp. 21:2-22:24.) With respect to the right shoulder, Dr. Morello documented tendinitis, bursitis, and severe degenerative changes to the AC joint, as confirmed by an April 8, 2022 MRI, as well as "demonstrated[,] consistent decreases of ROM of the shoulder" based upon his examinations of applicant. (Exhibit 3, p. 22.)

With respect to apportionment, he noted that "[i]n reviewing the history, records and evaluation of the [applicant], [he] saw no indication of apportionment" for the lumbar spine or right shoulder. (*Id*. at p. 21.) He conceded to a prior history of low back pain and left sacroiliac dysfunction, but "after questioning [applicant] on [January 4, 2024] and reviewing the medical records again," he did not believe that apportionment to the lumbar spine was indicated. (*Ibid*.)

During his June 6, 2024 deposition, he reiterated that based upon the physical examinations, a medical records review, his "20 years of [experience] being a QME[,]" and the fact that there were no prior lumbar injuries, he continued to find no non-industrial apportionment for the lumbar spine. (Exhibit 9, pp. 29:23-30:8.)

Based upon the foregoing and our review of the evidentiary record, we believe that Dr. Morello took an adequate examination and history, including review of extensive medical reports, and provided well-reasoned opinions on the issues of injury AOE/COE, permanent disability, and apportionment. As such, we agree with the WCJ that the opinions of Dr. Morello constitute substantial medical evidence.

III.

Defendant further contends that applicant failed to rebut the CVC and erroneously applied the addition method for rating impairments. (Petition, p. 22.) Pursuant to section 4660.1, the Permanent Disability Rating Schedule (PDRS) is prima facie evidence of an injured employee's permanent disability. (Lab. Code, § 4660; cf. *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1274-1277 [76 Cal.Comp.Cases 624].) The PDRS provides that the ratings for multiple body parts arising out of the same injury are "generally" combined using the CVC, which is appended to the PDRS. (2005 PDRS, at p. 1-10.) Yet, because it is part of the PDRS, the CVC is rebuttable and a reporting physician is not precluded from utilizing a method other than the CVC to determine an employee's whole person impairment so long as the physician's opinion remains within the four comers of the AMA Guides. (Lab. Code, § 4660; *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808, 818-829 [75 Cal.Comp.Cases 837].) Accordingly, the use of the multiple disabilities table is discretionary depending upon whether it produces a rating that fully compensates an applicant for the effects of his or her injury. (*Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 Cal.App.3d 720, 728 [41 Cal.Comp.Cases 81, 87].)

In *Athens Administrators v. Workers' Comp. Appeals Bd.* (*Kite*) (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater than that reflected through use of the CVC, the impairments should be added for purposes of accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic

QME opined that due to a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," "the best way to combine the impairments to the right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment." *(Id*. at p. 5.) Accordingly, the WCJ in *Kite* found that the impairment for the applicant's hips would be calculated based upon the addition method rather than through the combined values formula.

Subsequent to *Kite*, the Appeals Board issued the en banc case of *Vigil* wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish 1) The ADLs impacted by each impairment, and 2) That the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs. (*Vigil*, *supra*, at pp. 688-689.)

Here, Dr. Morello outlined a number of ADLs affected by applicant's lumbar and right shoulder impairments, including: difficulty with using the restroom and cleaning herself afterwards, washing her feet and back, trimming toenails, putting on clothing, socks, and shoes, combing her hair, lifting, carrying, walking on flat or uneven ground or surfaces, standing, sitting, climbing stairs or ladders, running, crawling, squatting, kneeling, and twisting or bending at the waist. (Exhibit 9, pp. 21:20-22:4.) Regarding the right arm specifically, applicant noted difficulties with balancing, reaching, working at heights, doing shoulder level work, pushing, pulling, opening jars, lifting heavy pots and pans, cleaning windows and mirrors, mopping, sweeping, vacuuming, scrubbing, riding in a car for longer than 30 minutes, and sleeping on the right side. (*Id*. at p. 22:4-18.)

In his January 8, 2024 report, Dr. Morello further indicated that applicant "suffers from conditions involving multiple body systems/regions and associated disabilities" which "have a synergistic effect upon each other" resulting in an "overall disability…larger than [that represented using the AMA Guides[']s 'Combined Values Chart.'" (Exhibit 3, p. 23.) He therefore recommended that the right shoulder and lumbar spine impairments be added rather than combined to "most accurately reflect the injured worker's overall disability." (*Ibid*.)

Based upon the totality of the evidence, including the above noted report and testimony of Dr. Morello, we believe that applicant fulfilled the requirements outlined under *Vigil* to successfully rebut the CVC. We therefore affirm the WCJ's decision to add rather than combine the lumbar spine and right shoulder impairments.

IV.

Lastly, defendant contends that the WCJ incorrectly rated the lumbar spine by adding the various ROM/pain add-on, sensory, and motor loss impairments and rating them in one string rather than separating them into three separate rating strings, combining them, *then* adding that figure to the final figure for the right shoulder. (Petition, p. 23.) The WCJ concedes that she made an error in rating the lumbar spine and agrees that the final rating should reflect a 73% rather than 78% permanent disability based upon defendant's method.

We have reviewed the reports of Dr. Morello and defendant's proposed ratings, in conjunction with the AMA Guides and PDRS, and agree that the ROM/pain add-on, sensory, and motor loss impairments should be rated separately and combined prior to them being added to the permanent disability for the right shoulder. As noted above, Dr. Morello recommended that the right shoulder and lumbar spine impairments be added rather than combined to more accurately reflect applicant's "overall disability," but no such statements were made regarding the component parts of applicant's lumbar spine. (Exhibit 3, p. 23.)

Accordingly, we grant defendant's Petition for the limited purpose of amending the permanent disability to reflect a 73% rather than 78% permanent disability with corresponding changes to attorney's fees, but otherwise affirm the WCJ's F&A.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued on October 6, 2025, is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award of October 6, 2025 is **AFFIRMED**, **EXCEPT** as **AMENDED** below:

FINDINGS OF FACT

8. Applicant has sustained permanent disability as a result of the specific injury herein of 73% after adjustment for age and occupation, payable at the rate of $290.00 per week, for 481.25 weeks, for a total of $139,562.50, less credit to Defendants for any permanent disability indemnity advanced, plus a life pension thereafter;

10. Applicant's attorney has earned a reasonable attorney's fee of 15% of the permanent disability awarded herein in an amount of $20,934.37 to be commuted from the far end of Applicant's award, and 15% of the present value of the life

pension. Applicant's counsel shall provide this Court with calculations from the Disability Evaluation Unit as to the present value of the life pension so that an additional award of attorney's fees can be specifically made.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 19, 2025

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

GLORIA ROBLES
LAW OFFICES OF NOEL HIBBARD
LLARENA, MURDOCK, LOPEZ & AZIZAD, APC

RL/*cs*

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