WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

NANCY ARNOLD, *Applicant*

vs.

SUBEQUENT INJURIES BENEFITS TRUST FUND, et. al., *Defendants*

Adjudication Number: ADJ12660754

Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Subsequent Injuries Benefits Trust Fund (SIBTF) seeks reconsideration of the amended "Findings and Award" (F&A) issued on December 16, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant met the threshold for obtaining SIBTF benefits and that applicant's subsequent industrial disability, when combined with her prior nonindustrial disability resulted in applicant sustaining 100% permanent total disability.

SIBTF argues that the findings of fact failed to include findings as to prior disability or the subsequent industrial disability. SIBTF further argues that the WCJ failed to issue findings as to the compensability of the alleged psychiatric disability, when compensability of psyche was in dispute and that the evidence does not support finding an industrial injury to the psyche. SIBTF further argues that Labor Code[1], section 4660.1, precludes compensability of the psychiatric permanent disability. SIBTF further argues that the WCJ erred in adding applicant's disabilities instead of combining them under the Combined Values Chart (CVC). Finally, SIBTF argues that applicant's claim of psychological disability is barred because applicant settled the matter with her employer via Compromise and Release (C&R).

[1] All future references are to the Labor Code unless noted.

We received an answer from applicant.

The WCJ filed a Report recommending that the Petition for Reconsideration be denied.

We have considered the allegations in the Petition for Reconsideration, the Answer, the contents of the Report, and we have reviewed the record. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration and as our Decision After Reconsideration, we will rescind the December 16, 2024 F&A and return the matter to the trial level for further proceedings.

FACTS

Applicant worked as a teacher on August 20, 2019, when she claimed to have sustained industrial injury to her head, psyche, cervical spine, and in the form of headaches, post-concussive disorder, vestibular dysfunction, and irritable bowel syndrome. (Minutes of Hearing and Summary of Evidence, October 8, 2024, p. 2, lines 3-6.)

The orthopedic qualified medical evaluator (QME) took the following history of injuries:

> She observed a physically disabled child needed help/comfort. She was attending to this child. Sitting together on the elevated landscape apron. At this moment, Daniel, a 4-year-old autistic child, walk toward her, and forcefully head-butted the examinee in the head, right temporal area. According to her the blow to the right side of her head caused immediate pain on the right side of her head as well as sudden right bend of her neck. She noticed pain from her neck radiate to both shoulders. She was dazed, nauseated, but did not pass out. She was able to gradually stand up with help. The incident was reported to her school administration. She was referred to the Kaiser ER the same day. She was evaluated and treated at Kaiser.

(Joint Exhibit 2, Report of Paul Tsou, M.D., February 4, 2021, p. 3.)

Applicant was diagnosed with a concussion by her attending physicians. (Joint Exhibit 3, Report of Clarke Epsy, M.D., September 4, 2020, p. 3.) Applicant was also diagnosed with a cervical sprain. (Joint Exhibit 2, Report of Paul Tsou, M.D., February 4, 2021, p. 35.)

Applicant settled her claim against the employer via Compromise and Release (C&R), which was approved on October 11, 2021. (Joint Exhibit 6, Compromise and Release.) Although a claim of injury to the psyche is listed on the Application for Adjudication, the C&R did not include resolution of psyche as a body part. Applicant did not obtain a QME evaluation to her

psyche prior to entering the C&R. Thus, the issue of industrial causation of injury to the psyche was not resolved.

A history of applicant's psychological injury, including a discussion of diagnoses and causation was summarized as follows:

> 1) Major depressive disorder, single episode, severe. 2) Pain disorder with related psychological factors. 3) Post-traumatic stress disorder.
>
> Final Current Global Assessment of Functioning of 51.
>
> Highest Global Assessment of Functioning prior to industrial injury was 90.
>
> Final Discussion and Conclusions: As a result of the industrial injury, the subsequent level of disability, and non-resolution of pain, the applicant suffered anxiety and depression.
>
> Thus, apart from the fact that the applicant sustained physical industrial injuries, she had also sustained a psychological emotional injury as a consequence of her industrial physical injuries.
>
> Psychological assessment indicated that she was suffering from psychological symptoms as a result of the specific injury she sustained on August 20, 2019, while employed by LAUSD was subjected to a life altering event in the form of a physical injury that led to pain throughout her body.
>
> Her symptoms were as a direct result of the events that took place during and out of the course of her employment and were consistent with the clinical findings.

(Joint Exhibit 3, *supra* at pp. 24-25.)

Dr. Epsy's summary further discussed causation of psychological injury as follows:

> Causation of the applicant's psychiatric disability was due to the stress secondary to the traumatic nature of the industrial injury, and her orthopedic pain and limitations. The development of the psychiatric injury did not occur until the severity and/or chronicity of the pain and attendant limitations reached a certain threshold, at which point these stress factors finally overwhelmed the applicant's coping mechanisms. At the point at which the applicant's actually developed the psychiatric disability, this was due to the stress, which occurred secondary to her overall experience at that point in time. That overall experience included not only the severe

> discomfort from pain, but also the frustration and sadness over a loss of ability to do a number of things in her day to day life - combined with a sense of hopelessness about ever recovering[,]added to fear about what was going to happen in her future, etc.

(*Id*. at p. 26.)

Dr. Epsy diagnosed applicant with 1) post-concussion syndrome and 2) depression and probable PTSD. (*Id*. at p. 59.)

Applicant obtained a report from psychiatrist Marc Nehorayan, M.D. to address her claim of SIBTF benefits. (Joint Exhibit 1, Report of Marc Nehorayan, M.D., October 6, 2022.) Dr. Nehorayan took a history of applicant suffering from anxiety, depression, and PTSD prior to her injury. (*Id*. at p. 8.)

Dr. Nehorayan mixed the analysis of causation of injury with causation of disability opining upon both as follows:

> In evaluation of the applicants apportionment to permanent disability, the psychiatric injury would be apportioned to fifty-three percent (53%) of the applicant's injury that is pre-existing and non-industrial. Forty-seven percent (47%) of the applicant's injury is industrial and creates permanent exacerbation of the applicant's emotional condition. This once again has been analyzed based on the applicant's GAF of 52 (27% WPI) prior to the injury and the deterioration to the GAF of 40 (51% WPI) and increase of 24 % WPI and the permanent exacerbation of the subsequent injury.

(*Id*. at p. 104.)

Dr. Nehorayan further commented upon causation as follows:

> The importance of understanding this is that, in my medical opinion, there is no evidence that the applicant had what is identified to be a new onset of an independent psychiatric injury that was recognized to meet the threshold of predominant cause, from all sources combined for industrial injury. I am aware of the review of Dr. Shamie's report in psychiatry. It is not apparent that, in reviewing this report, he understood the extent of pre-existing conditions that existed, and what the applicant suffered from, even prior to the specific industrial event.
>
> This injury has created a permanent exacerbation of the applicant's condition, with the recognition of the moderate level of disability that already existed, prior to the specific event that occurred in this case.

(*Id*. at p. 100.)

Dr. Nehorayan opined that applicant's industrial disabilities should be added as follows:

> It is based upon reasonable medical probability that the combination of all the conditions, as outlined above, would be additive, based upon a review of the Kite decision, and would satisfy Element #2, recognizing that the subsequent injury produced 35% or more of the disability.

(*Id*. at p. 102.)

DISCUSSION

I.

Former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

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 February 3, 2025, and 60 days from the date of transmission is Friday, April 4, 2025. This decision is issued by or on April 4, 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on February 3, 2025, and the case was transmitted to the Appeals Board on February 3, 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 3, 2025.

II.

As explained in our en banc decision in Todd:

> SIBTF is a state fund that provides benefits to employees with preexisting permanent disability who sustain subsequent industrial disability. The purpose of the statute is to encourage the employment of the disabled as part of a "complete system of [workers'] compensation contemplated by our Constitution." (*Subsequent Injuries Fund of the State of California v. Industrial Acci. Com*. (*Patterson*) (1952) 39 Cal. 2d 83 [244 P.2d 889, 17 Cal. Comp. Cases 142]; *Ferguson v. Industrial Acci. Com*. (1958) 50 Cal. 2d 469, 475 [326 P.2d 145]; *Escobedo v, Marshalls* (2005) 70 Cal. Comp. Cases 604, 619 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc).)
>
> SIBTF is codified in section 4751, which provides:
>
> > If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last

> injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (§ 4751.)

The preexisting disability may be congenital, developmental, pathological, or due to either an industrial or nonindustrial accident. (*Escobedo*, *supra*, 70 Cal. Comp. Cases at p. 619.) It must be "independently capable of supporting an award" of permanent disability, "as distinguished from [a] condition rendered disabling only as the result of 'lighting up' by the second injury." (*Ferguson*, *supra*, 50 Cal. 2d at p. 477.)

Furthermore, there is no specific statute of limitations with respect to the filing of an application against SIBTF; an application against the fund will not be barred "where, prior to the expiration of five years from the date of injury, an applicant does not know and could not reasonably be deemed to know that there will be substantial likelihood he will become entitled to subsequent injuries benefits, [] if he files a proceeding against the Fund within a reasonable time after he learns from the board's findings on the issue of permanent disability that the Fund has probable liability." (*Subsequent Injuries Fund v. Workmens' Comp. Appeals Bd*. (*Talcott*) (1970) 2 Cal. 3d 56, 65 [84 Cal. Rptr. 140, 465 P.2d 28, 35 Cal. Comp. Cases 80].)

In a claim for SIBTF benefits, an employee must establish that a disability preexisted the industrial injury. (§ 4751.) Evidence of a preexisting disability may include prior stipulated awards of permanent disability or medical evidence. In order to be entitled to benefits under section 4751, an employee must prove the following elements:

> (1) a preexisting permanent partial disability;
>
> (2) a subsequent compensable injury resulting in additional permanent partial disability:

> (a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or [*582] more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or
>
> (b) the subsequent permanent disability must equal to 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;
>
> (3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and
>
> (4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. (§ 4751.)
>
> Once the threshold requirements are met, section 4751 specifically provides that applicant "shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury … ." (§ 4751; emphasis added.) "[E]ntitlement to SIBTF benefits begins at the time the applicant becomes entitled to permanent disability payments." (*Baker v. Workers' Comp. Appeals Bd*. (*Guerrero*) (2017) 13 Cal. App. 5th 1040, 1050 [220 Cal. Rptr. 3d 761, 82 Cal. Comp. Cases 825].)

(*Todd v. Subsequent Injuries Benefits Trust Fund*, (2020) 85 Cal. Comp. Cases 576, 580-582 (Appeals Board en banc).)

1. Compensability of injury to the psyche.

Section 5313 requires a WCJ to state the "reasons or grounds upon which the determination was made." The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful." (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision "must be based on admitted evidence

in the record" (*Hamilton*, *supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(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. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, "the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton*, *supra*, at p. 475.)

In *Rolda v. Pitney Bowes, Inc.* (2001), 66 Cal.Comp.Cases 241, 245-246 (Appeals Board en banc), we addressed the factors that a psychological evaluator must consider in opining on causation of psychological injury and disability under section 3208.3. Per *Rolda*, the evaluator is required to list all factors causing psychological injury, address the percentage of causation that each factor contributes to psychological injury, list all factors causing psychological permanent disability, and address the percentage of causation that each factor contributes to permanent disability.

To constitute substantial evidence ". . . 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 v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "When the foundation of an expert's testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions." (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

First, SIBTF correctly notes in its petition for reconsideration that the WCJ failed to issue any finding of fact as to causation of injury to applicant's psyche. Without such a finding, and to allow all parties due process, proper procedure is to return to the trial level. (See *Gangwish v. Workers' Comp. Appeals Bd*. (2001) 89 Cal.App.4th 1284.) Upon return, applicant must establish through substantial medical evidence, predominant causation as to her claim of injury to the psyche pursuant to our holding in *Rolda*, *supra*. The evaluator has not broken down the elements that contribute to the aggravation of applicant's psychological injury, including industrial and non-industrial causes. The evaluator improperly conflated causation of psychological permanent disability with causation of injury. The current record is insufficient to determine causation of injury.

2. Compensability of psychological permanent disability

Next, and if applicant's psychological injury is found to be industrial, the current medical record does not delineate what portions of applicant's psychological permanent disability may be compensable pursuant to section 4660.1.

Section 4660.1(c) states:

> (c) (1) Except as provided in paragraph (2), there shall be no increases in impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury. Nothing in this section shall limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.
>
> (2) An increased impairment rating for psychiatric disorder shall not be subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:
>
> > (A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.
> >
> > (B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.

(§ 4660.1(c).)

As to whether applicant's psychological permanent disability is compensable, again, the evaluator needs to break down the causes of such disability. Section 4660.1(c) does not preclude increases in impairment ratings when the psychiatric disability is *directly caused by the industrial injury*. (See *Ricablanca v. California Dep't of Corrections & Rehabilitation*, 2017 Cal. Wrk. Comp. P.D. LEXIS 147; *City of Los Angeles v. Workers' Comp. Appeals Bd*. (*Montenegro*) (2016), 81 Cal.Comp.Cases 611 (writ den.) [holding that impairment caused by sexual dysfunction arising directly from the industrial injury is not precluded under section 4660.1(c)] See also, *Russell Madson v. Michael J. Cavaletto Ranches*, (ADJ9914916) (2017), 2017 Cal. Wrk. Comp. P.D. LEXIS 95 [holding that impairment to the psyche caused directly by the events of employment is compensable].)[2]

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[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Board En Banc); *Griffith v. Workers' Comp.*

It is not possible to determine on the present medical record whether applicant's impairment to the psyche was caused directly by the injury, or as a result of applicant's compensable physical injury, or a combination of the two. According to Dr. Epsy, applicant's disability was caused both by stress secondary to the traumatic nature of the industrial injury, which would be compensable, and her orthopedic pain and limitations, which would generally be non-compensable. If a portion of applicant's psychiatric disability is non-compensable, then the WCJ should analyze whether applicant's injury was either the result of a violent act or catastrophic injury. Presently, no detailed opinion addresses the issue of compensability of disability under section 4660.1. Accordingly, the prudent course is to return this issue to the trial level for further development of the record.

3. Use of the CVC

In *Todd*, the Appeals Board held, in pertinent part, that:

> (1) Prior and subsequent permanent disabilities shall be added to the extent they do not overlap in order to determine the "combined permanent disability" specified in section 4751; and
>
> (2) SIBTF is liable, under section 4751, for the total amount of the "combined permanent disability", less the amount due to applicant from the subsequent injury and less credits allowable under section 4753.

(*Todd*, *supra* 85 Cal. Comp. Cases at p. 589.)

Here, the WCJ added applicant's disabilities from her industrial injury, including disability to the psyche, head concussion, and neck. However, the holding in *Todd* does not support this method of addition. While it may be permissible to add the industrial impairments within the subsequent industrial injury, that may only occur where applicant has successfully rebutted the CVC.

In a recent en banc decision, the Appeals Board clarified the process for rebutting the CVC.

> One element of the PDRS is the Combined Values Chart (CVC). The purpose of the CVC is described within the PDRS, which cites to the American Medical Association Guides to the Evaluation of

Appeals Bd. (1989) 209 Cal.App.3d 1260, 1264, fn. 2, [54 Cal.Comp.Cases 145].) Here, we refer to *Montenegro, supra,* because it considered a similar issue. We recommend that practitioners proceed with caution when citing to a panel decision and verify its subsequent history.

> Permanent Impairment, 5th Edition (2001) (AMA Guides), which is adopted and incorporated for purposes of rating permanent disability under the 2005 PDRS. (Lab. Code, §§ 4660, 4660.1; Hoch, Andrea, Schedule for Rating Permanent Disabilities, (2005), p. 1-11; AMA Guides, pp. 9-10.) In sum, impairment under the AMA Guides is designed to reflect how a disability affects a person's activities of daily living ("ADLs") (self-care, communication, physical activity, sensory function, non-specialized hand activities, travel, sex, and sleep). (AMA Guides, pp. 2-9.) CVC "values are derived from the formula A + B(1-A) = combined value of A and B, where A and B are the decimal equivalents of the impairment ratings." (AMA Guides, p. 604.)5
>
> Impairments to two or more body parts are usually expected to have an overlapping effect upon the activities of daily living, so that generally, under the AMA Guides and the PDRS, the two impairments are combined to eliminate this overlap.

(*Vigil v. County of Kern*, 2024 Cal. Wrk. Comp. LEXIS 23 at *7-8, (Appeals Board en banc).)

While Dr. Nehorayan opined that applicant's disabilities should be added pursuant to the panel decision in *Kite*, his opinion was conclusory and without adequate analysis as to applicant's ADLs as explained above. The holding in *Todd* supports adding a prior disability with the subsequent disability for purposes of determining overall SIBTF benefits. *Todd* does not support adding multiple impairments within the subsequent disability per *Vigil*. Such a method requires applicant to rebut the use of the CVC, which is presently not supported by the record.

4. Claim preclusion and issue preclusion.

SIBTF argues that applicant dismissed her claim of injury to psyche with prejudice as part of her C&R with the employer and thus, applicant is precluded from arguing that her injury to the psyche is industrial. This is not true. We have seen similar arguments raised in the past by both applicants and SIBTF as to what effect a C&R with the employer has upon subsequent proceedings with SIBTF.

As explained by our Supreme Court:

> The claim preclusion doctrine, formerly called res judicata, "prohibits a second suit between the same parties on the same cause of action." (Citation.) "Claim preclusion arises if a second suit involves (1) the same cause of action (2) between the same parties (3) after a final judgment on the merits in the first suit." (Citation.)

(*Kim v. Reins International California, Inc*. (2020) 9 Cal. 5th 73, 91.)

As relating to the prior C&R in this matter, claim preclusion does not apply because SIBTF was not a party to the C&R.

SIBTF also argues that applicant is barred under the doctrine of issue preclusion. Issue preclusion, also known as collateral estoppel, applies to bar a party from relitigating an issue already decided if the following requirements are met: (1) "the issue sought to be precluded from re-litigation must be identical to that decided in a former proceeding"; (2) "this issue must have been actually litigated in the former proceeding"; (3) "it must have been necessarily decided in the former proceeding"; (4) "the decision in the former proceeding must be final and on the merits"; and (5) "the party against whom preclusion is sought must be the same as, or in privity with, the party to the former proceeding." (*Branson v. Sun-Diamond Growers of California*, 24 Cal.App.4th 327, (1994) (quoting *Lucido v. Superior Court*, 51 Cal.3d 335, 341, (1990), cert. denied, 500 U.S. 920 (1991).)

Here, the C&R did not include psyche as a body part in paragraph one. Paragraph three of the C&R states: "This agreement is limited to settlement of the body parts, conditions, or systems and for the dates of injury set forth in Paragraph No. 1 and further explained in Paragraph No. 9 despite any language to the contrary elsewhere in this document or any addendum." The addendum to the C&R states: "Claims of injury to any body part, system, or condition not listed in this Compromise and Release is hereby dismissed with prejudice, contingent on Order Approving C&R." The Order Approving C&R contains no language dismissing unlisted body parts or otherwise modifying the effect of paragraph three. Accordingly, the C&R did not resolve any issue related to applicant's psychological injury and applicant is not precluded from proving industrial causation to her psyche.

5. Conclusion

In this case, the WCJ failed to issue a finding of fact as to the compensability of injury to the psyche. The present record does not contain a *Rolda*-compliant analysis. These failures lead us to conclude that the F&A should be rescinded and returned to the trial level for correction in the first instance. Upon return, the parties should obtain an analysis as to the compensability of psychological permanent disability, which requires a breakdown as to the causes of said disability per *Rolda* and whether disability was directly caused by the injury, or was a compensable consequence of applicant's physical complaints. Finally, and to the extent that applicant seeks to calculate her subsequent industrial disability without using the CVC, applicant must provide

substantial medical evidence to the rebut the CVC per our holding in *Vigil*. Absent such evidence, the multiple disabilities should be combined to determine the total subsequent disability, and then pursuant to the holding in *Todd*, the prior disability and subsequent disability should be added together.

Accordingly, we will grant reconsideration and as our Decision After Reconsideration, we will rescind the December 16, 2024 F&A and return the matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED that SIBTF's petition for reconsideration of the F&A issued on December 16, 2024, is **GRANTED**.

IT IS FURTHER ORDERED as our Decision After Reconsideration that the F&A issued on December 16, 2024, is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 4, 2025

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

NANCY ARNOLD
MICHAEL BURGIS & ASSOCIATES, P.C.
OFFICE OF THE DIRECTOR, LEGAL UNIT, LOS ANGELES
JACOBS ASSOCIATES
LAUGHLIN, FALBO, LEVY & MORESI, LLP

EDL/mc

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