WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PUNI PAU, *Applicant*

vs.

CAL FIRE, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ9159725, ADJ7757931
Riverside District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted defendant's Petition for Reconsideration of the "Findings and Award" (F&A) issued on October 24, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant sustained industrial cumulative injury which rated to 100% permanent total disability, without apportionment, based upon the reporting of applicant's vocational evaluator.

Defendant contends that the award of permanent total disability is not supported by substantial evidence. Defendant further contends that applicant's award should be reduced pursuant to Labor Code[1] section 4664(c)(1) because applicant has received a prior stipulated award to the spine and lower extremities. Next, defendant contends that applicant's award of permanent disability is subject to apportionment under section 4663 pursuant to the reporting of the agreed medical evaluators (AMEs). Finally, defendant contends that applicant failed to rebut application of the Combined Values Chart (CVC).

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

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

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will rescind the October 24, 2022 F&A and return this matter to the trial level for further proceedings.

FACTS

In case number ADJ7757931, applicant, while working as a fire captain, sustained an admitted cumulative injury through the period ending on November 10, 2010 to his neck, back, right knee, and left hip. (Minutes of Hearing and Summary of Evidence, September 20, 2022, p. 3, lines 11-14.) The parties further stipulated that this claim was settled by Stipulations with Request for Award, which rated applicant's permanent disability to 65%. (*Id*. at p. 3, lines 23-25.) The parties rated applicant's prior disability as follows:

NECK	15.01.01.00 – 25[5] – 32 – 490I – 41 – 45
LUMBAR	15.03.01.00 - 5[5] – 6 – 490I – 9 – 10
L HIP	17.03.03.00 – 12[5]- 16 – 490I – 22 – 24
R KNEE	50% (17.05.03.00 – 8[2] – 490I – 14 – 16) 8
CVC	45 + 24 + 10 + 8 = 65% Permanent Disability

(Stipulations with Request for Award, September 6, 2012, p. 8.)

Applicant timely filed a petition to reopen the award of permanent disability.

In case number ADJ9159725, applicant, while working as a fire captain, sustained an admitted cumulative injury through September 2013 to his ears, sinus, lungs, neck, bilateral hands, bilateral wrists, low back, left hip, bilateral knees, bilateral ankles, bilateral feet, bilateral shoulders, bilateral elbows, and in the form of hearing loss, headaches, sleep. (Minutes of Hearing and Summary of Evidence, September 20, 2022, p. 2, lines 7-13.) It was further found that applicant sustained injury in the form of hypertension and irritable bowel, which no party has appealed. (Findings and Award, October 24, 2022, p. 1.)

1. Medical Evidence

Applicant was evaluated by multiple AMEs. Applicant's orthopedic complaints were evaluated by Michael Luciano, M.D., who authored six reports in evidence and was deposed. (Joint Exhibits 4 through 10.) Dr. Luciano took a history, from which he found applicant sustained cumulative injury to multiple body parts, specifically noting the following factors of disability:

PERMANENT OBJECTIVE FACTORS OF DISABILITY:

1. History of C4-C5 fusion.
2. Electrodiagnostic studies report indicating cervical radiculopathy.
3. Decreased range of motion of the cervical spine.
4. Muscle guarding, cervical spine.
5. Decreased range of motion, bilateral shoulders.
6. Decreased motor strength, bilateral shoulders.
7. MRI scan report, bilateral shoulders, indicating impingement syndrome/labral tear.
8. Positive Tinel's sign, bilateral elbows. . .
9. Electrodiagnostic studies report indicating bilateral cubital tunnel syndrome.
10. Positive Tinel's sign, bilateral wrists.
11. Electrodiagnostic studies report indicating bilateral carpal tunnel syndrome.
12. MRI scan report, lumbar spine, indicating lumbar disc disease.
13. Decreased range of motion, lumbar spine.
14. Muscle guarding, lumbar spine.
15. Status post L4-L5 laminectomy.
16. Status post left total hip replacement surgery.
17. Decreased range of motion, left hip.
18. Antalgic gait.
19. Decreased motor strength, bilateral quadriceps.
20. Crepitation, bilateral knees.

(Exhibit 9, Report of AME Michael Luciano, M.D., November 3, 2020, pp. 37-38.)

Dr. Luciano assigned permanent work restrictions as follows:

> For the cervical spine condition as diagnosed today, the patient is prophylactically precluded from heavy lifting, repetitive motion and above-shoulder-level work.
>
> For the right shoulder condition as diagnosed today, the patient is prophylactically precluded from at- or above-shoulder-level activity. For the left shoulder condition as diagnosed today, the patient is prophylactically precluded from repetitive above-shoulder-level work.
>
> For the bilateral elbow conditions as diagnosed today, the patient is prophylactically precluded from forceful pushing/twisting. For the bilateral wrist conditions as diagnosed today, the patient is prophylactically precluded from forceful pushing/twisting and power grasping.

> For the lumbar spine condition as diagnosed today, the patient is prophylactically precluded from substantial work. For the left hip condition as diagnosed today, the patient is prophylactically precluded from prolonged walking.
>
> For the bilateral knee conditions as diagnosed today, the patient is prophylactically precluded from kneeling, squatting, stair climbing and walking on uneven ground.
>
> For the bilateral ankles, there are no prophylactic work restrictions indicated.

(*Id*. at pp. 40-41.)

Dr. Luciano assigned 30% whole-person impairment (WPI) to the cervical spine, 26% WPI to the lumbar spine, 31% WPI to the bilateral upper extremities, and 31% WPI to the bilateral lower extremities. (*Id*. at p. 49.)

For applicant's cervical spine and the bilateral upper extremities, Dr. Luciano assigned 90% apportionment to the 2013 cumulative injury and 10% to nonindustrial activities of daily living. (*Id*. at p. 51.)

For the lumbar spine, Dr. Luciano assigned 70% apportionment to the 2013 cumulative injury, 15% to the 2010 cumulative injury and 15% non-industrial. (*Ibid*.)

For the left hip, Dr. Luciano assigned 20% apportionment to the 2013 cumulative injury, 60% to the 2010 cumulative injury and 20% non-industrial. (*Ibid*.)

For the right knee, Dr. Luciano assigned 0% apportionment to the 2013 cumulative injury, 80% to the 2010 cumulative injury and 20% non-industrial. (*Id*. at p. 52.)

For the left knee, Dr. Luciano assigned 80% apportionment to the 2013 cumulative injury, 0% to the 2010 cumulative injury and 20% non-industrial. (*Id*. at p. 52.)

For complaints to the ears, including hearing loss, applicant was evaluated by AME Alfred Roven, M.D., who authored four reports in evidence. (Joint Exhibits 11 through 14.)

Dr. Roven assigned 2% WPI to hearing loss using an *Almaraz-Guzman* analysis. (Joint Exhibit 11, Report of Alfred Roven, M.D., January 15, 2026, p. 15.) Dr. Roven assigned work restrictions as follows:

> In the event this patient should return to gainful employment, he should use the hearing aids in the work place at all times. In the event there is potential for loud noise exposure he should use large earmuffs over the hearing aids.

(*Id*. at p. 16.)

Dr. Roven apportioned applicant's disability 50% to the 2013 injury, 25% to the 2010 injury, and 25% non-industrial. (Joint Exhibits 13 and 14.)

Applicant was evaluated for internal complaints by AME Ernest Levister, Jr., M.D., who authored three reports in evidence. (Joint Exhibits 1 through 3.)

Dr. Levister initially diagnosed applicant with hypertension, which rated to 9% WPI, and found that it was 70% industrial on a cumulative trauma basis. (Joint Exhibit 2, Report of AME Ernest Levister, Jr., M.D., February 15, 2021, p. 11.) Dr. Levister then found that applicant did not suffer from hypertension. (Joint Exhibit 3, Report of AME Ernest Levister, Jr., M.D., January 19, 2022, p. 4.) Dr. Levister stated: "Retrospectively by looking at the data, it appears by reasonable medical analysis that his prior elevated blood pressure readings probably occurred when he was in pain and were not a true reflection of hypertension." (*Ibid*.) However, Dr. Levister found no basis to alter applicant's impairment rating. (*Ibid*.) Dr. Levister found that applicant could proceed with his usual and customary occupation. (Joint Exhibit 2, *supra* at p. 11.)

2. Vocational Evidence

Applicant was evaluated for vocational feasibility by Ray Largo, who authored two reports in evidence. (Applicant's Exhibits 1 and 2.) Mr. Largo reviewed the reporting from applicant's 2010 cumulative injury and noted that applicant was assigned 5% WPI for the lumbar spine under a diagnosis related estimate (DRE) category two. (Applicant's Exhibit 1, Report of Ray Largo, November 26, 2019, p. 9.) Applicant was assigned 25% WPI via DRE-IV to the cervical spine and 8% WPI to right knee for chondromalacia. (*Ibid*.) Work restrictions were expressly not assigned by the AME in the case, who instead noted as follows:

> "I promised the applicant would not impose work restrictions on him. He is anxious to continue to work for nine more years as a firefighter and forestry firefighter for the employer. Apparently he has pension reasons for doing so. Typically, an individual who is motivated for pension reasons has remarkable capacity to overlook pain. It is one of the most remarkable phenomenon in all of clinical medicine. However, the applicant, especially with respect to his left hip, is teetering on the brink, so to speak. I recommended that he lose a lot of weight fast to reduce the pressure on that joint. He has a surprising restriction of joint motion for someone who thinks he can fight fires. Luckily, the applicant is a fire captain which involves more paperwork and less field activity."

(*Id*. at p. 9.)

Mr. Largo reviewed the work preclusions assigned by Dr. Luciano and opined that applicant was limited as follows:

> Based upon the reporting of Dr. Luciano, Mr. Pa'u is precluded from very heavy as well as heavy work. As such, Mr. Pa'u is limited to **Medium, Light,** and **Sedentary Work.** Utilizing clinical judgment, given Mr. Pa'u's multiple work injuries and impairments, this consultant focused on employment related to the Sedentary and Light Work strength classifications.
>
> This consultant adjusted Mr. Pa'u's profile with respect to work function impairment and then compared his profile to the profile of jobs in the Dictionary of Occupational Titles database to identify job matches.

(*Id*. at pp. 39-40, (emphasis in original).)

Mr. Largo found that applicant was not amenable to vocational rehabilitation and unable to compete in the open labor market. (*Id*. at p. 43.)

Mr. Largo opined that there was no vocational apportionment and that applicant's ability to return to work full duty following his initial 2010 cumulative injury demonstrates such. (*Id*. at p. 48.)

Defendant retained Rebecca Montano, Ph.D., as its vocational expert, who authored two reports in evidence. (Defendant's Exhibits A and B.) Applicant tested near average across all skill sets with normal intelligence levels. (Defendant's Exhibit A, Report of Rebecca Montano, Ph.D., April 3, 2020, at pp. 50-51.)

Dr. Montano concluded that applicant could take on a job initially at 10 hours per week, and then gradually extend to 20 hours per week. (*Id*. at p. 60.) She concluded that applicant could work in various professions, including telemarketing, customer service representative, and dispatcher. (*Id*. at p. 65.) Dr. Montano noted the following in reaching her conclusions: The main drivers for the opinion that Mr. Pa'u is able to return work in one of these positions are primarily based on (I) Medical Records and (2) this Vocational Expert's interview and observation of Mr. Pa'u." (*Ibid*.)

Dr. Montano opined upon vocational apportionment as follows:

> With regard to vocational apportionment, this Vocational Expert believes there is a total of 25% vocational apportionment based on Mr. Pa'u's familial predisposition to high blood pressure (5% Vocational Apportionment), his non-industrial activities leading to non-industrial injury including football injury and exposure to loud noise (5% Vocational Apportionment) his weight management issues (5 % Vocational Apportionment) and his unwaveringly decision that he will only return to work as a firefighter (10% Vocational Apportionment).

(*Id*. at p. 61.)

Both applicant and defendant's vocational evaluators took their own history of applicant's subjective self-reported abilities. (See Applicant's Exhibit 1, *supra* at pp. 30-34; Defendant's Exhibit A, *supra* at p. 45.)

DISCUSSION

1. Standard for finding permanent total disability in accordance with the fact.

As our Supreme Court has explained:

> Permanent disability is understood as the irreversible residual of an injury. (Citation.) A permanent disability is one which causes impairment of earning capacity, impairment of the normal use of a member, or a competitive handicap in the open labor market. (Citation.) Thus, permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity.

(*Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal. 4th 1313, 1320, 57 Cal. Rptr. 3d 644, 156 P.3d 1100 (Brodie).)

The court in *Ogilvie* further explained that the PDRS is rebuttable.

> Thus, we conclude that an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating.

(*Ogilvie v. Workers' Comp. Appeals Bd*., 197 Cal. App. 4th 1262, 1277, 129 Cal. Rptr. 3d 704.)

The standard for finding permanent total disability via *Ogilvie* rebuttal follows:

> The proper legal standard for determining whether applicant is permanently and totally disabled is whether applicant's industrial injury has resulted in applicant sustaining a complete loss of future earning capacity. (§§ 4660.1, 4662(b); see also 2005 PDRS, pp. 1–2, 1–3.) …
>
> A finding of permanent total disability in accordance with the fact (that is complete loss of future earnings) can be based upon medical evidence, vocational evidence, or both. Medical evidence of permanent total disability could consist of a doctor opining on

> complete medical preclusion from returning to work. For example, in cases of severe stroke, the Appeals Board has found that applicant was precluded from work based solely upon medical evidence. (See i.e., Reyes v. CVS Pharmacy, (2016) 81 Cal. Comp. Cases 388 (writ den.); see also, Hudson v. County of San Diego, 2010 Cal. Wrk. Comp. P.D. LEXIS 479.)
>
> A finding of permanent total disability can also be based upon vocational evidence. In such cases, applicant is not precluded from working on a medical basis, per se, but is instead given permanent work restrictions. Depending on the facts of each case, the effects of such work restrictions can cause applicant to lose the ability to compete for jobs on the open labor market, which results in total loss of earning capacity. Whether work restrictions preclude applicant from further employment requires vocational expert testimony.
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> * * *
>
> … [P]er *Ogilvie* and as described further in *Dahl*, the non-amenability to vocational rehabilitation must be due to industrial factors. (*Contra Costa County v. Workers' Comp. Appeals Bd*., (*Dahl*) 240 Cal. App. 4th 746, 193 Cal. Rptr. 3d 7.)

(*Soormi v. Foster Farms*, 2023 Cal. Wrk. Comp. P.D. LEXIS 170, *11-12, citing *Wilson v. Kohls Dep't Store*, 2021 Cal. Wrk. Comp. P.D. LEXIS 322, *20–23.)

As explained above, the purpose of the AMA Guides is to assign impairment based upon a person's loss of ADLs. Most workers' compensation cases do not involve total disability. Most cases involve assignment of partial disability via the AMA Guides. Thus, doctors generally assign causation based on the causation of the rated impairment in the AMA Guides.

What appears to be a point of confusion in many cases is that the focus of causation and apportionment changes when using *Ogilvie* rebuttal because the defined impairment changes.

When applicant is seeking to rebut the PDRS using *Ogilvie*, disability is no longer rated as an impairment under the AMA Guides. Instead, the impairment is now the *work restrictions* assigned to applicant from the industrial injury. The disability is the effect of those work restrictions on applicant's ability to rehabilitate and compete in the open labor market. Accordingly, causation and apportionment, when analyzed under an *Ogilvie* rebuttal, must focus on the ***cause of the work restrictions***. As applicant is seeking an award of 100% disability, the cause of the work restrictions contributing to applicant's inability to work must be 100% industrial, without apportionment.

Where applicant seeks to rebut the PDRS and prove permanent total disability, applicant must prove the following:

1) Applicant has been assigned a work restriction(s), which requires substantial **medical** evidence.

2) The work restriction(s) precludes applicant from rehabilitation into another career field, which requires **vocational** expert evidence.

3) The work restriction(s) precludes applicant from competing on the open labor market, which requires **vocational** expert evidence.

4) **The cause of the work restriction(s) is 100% industrial**, which requires substantial **medical** evidence.

To be clear, we are focused only on those restrictions that contribute to the vocational expert's findings. An applicant may have multiple work restrictions, some of which are non-industrial or prior industrial. If the industrial work restrictions, standing alone, preclude applicant from rehabilitation and preclude applicant from competing on the open labor market, applicant has met their burden on causation of disability. If applicant's preclusion from rehabilitation and work is caused or contributed by either non-industrial work restrictions or partially industrial work restrictions, applicant fails their burden on causation of disability.

In the en banc decision in *Nunes v. State of California, Dept. of Motor Vehicles* (June 22, 2023) 2023 Cal. Wrk. Comp. LEXIS 30 [88 Cal.Comp.Cases 741] ("*Nunes I*"), the Appeals Board held that Labor Code section 4663 requires a **reporting physician** to make medical determinations in a case, including determinations on the issue of apportionment. The Board further held that vocational evidence may be used to address issues relevant to the determination of permanent disability, and that vocational evidence must address apportionment, but that a vocational evaluator may not opine on issues that require expert medical evidence. The Board affirmed these holdings in *Nunes v. State of California, Dept. of Motor Vehicles* (August 29, 2023) 23 Cal. Wrk. Comp. LEXIS 46 [88 Cal.Comp.Cases 894] ("*Nunes II*").

Applicant's vocational expert's report does not constitute substantial evidence as the evaluator has improperly interjected his own medical opinions into the case regarding applicant's work restrictions, which were taken, in part, by the vocational expert himself. A vocational evaluator does not create medical facts in a case. Vocational experts review the medical record created by the doctors and reach conclusions as to applicant's vocational feasibility based upon

that record. If the vocational expert believes that applicant's restrictions may differ from those contained in the medical record, the proper procedure is to develop the medical record. If a vocational expert requires a detailed analysis as to applicant's functional limitations, the parties may consider obtaining a functional capacity examination from an appropriate medical expert. However, the vocational expert cannot take it upon themselves to conduct their own assessment of applicant's functional capacity.

Applicant's vocational expert opined that applicant could perform medium level work based upon applicant's work restrictions. Then, the expert, without explanation, opines that in his "clinical judgment", applicant was actually limited to light or sedentary work. That opinion, upon which the entire report is based, is a medical opinion, which was expressed by a non-medical expert, and thus, it does not constitute substantial evidence.

Next, the expert attempts to assign 100% permanent total disability across all of applicant's cases based upon the vocational evaluator's opinion on apportionment, which again does not constitute substantial evidence because the vocational evaluator is not a medical expert.

To the extent that applicant wishes to prove permanent total disability, applicant needs to establish which injury caused the work restrictions.[2] The vocational evaluator noted that applicant was not assigned work restrictions for the 2010 cumulative injury, but that was not based upon an expert medical analysis, but instead based upon applicant's personal request that restrictions not be assigned because applicant wished to return to work full duty. Applicant needs to establish the industrial causation of work restrictions. This requires clarification as the AME simply provided an opinion on work restrictions without advising what injury caused which restriction.

To the extent that defendant seeks apportionment based upon causation, defendant must establish that the work restrictions contributing to applicant's inability to rehabilitate and inability

[2] As explained in the en banc opinion in *Benson*, limited situations may exist where a joint and several award of permanent disability may issue across multiple dates of injury. (*Benson v. Permanente Med. Group*, (2007), 72 Cal. Comp. Cases 1620, 1634 (Appeals Board en banc), (emphasis added).)Where some aspects of the industrially caused permanent disability form two or more separate industrial injuries that cannot reasonably be parceled out, then a combined joint and several award of permanent disability must issue even though other aspects of the industrially caused permanent disability from those injuries can be parceled out with reasonable medical probability. (See, e.g. *Alea North American Insurance Co. v. Workers' Comp. Appeals Bd*. (*Herrera*) (2018) 84 Cal. Comp. Cases 17 [2018 Cal. Wrk. Comp. LEXIS 123] (writ den.); *Flowserve Corp. v. Workers' Comp. Appeals Bd*. (*Espinoza*) (2016) 81 Cal. Comp. Cases 812 [2016 Cal. Wrk. Comp. LEXIS 92] (writ den.); *Northrop Grumman Systems v. Workers' Comp. Appeals Bd*. (*Dileva*) 80 Cal. Comp. Cases 749 [2015 Cal. Wrk. Comp. LEXIS 78] (writ den.); *Christiansen v. Facey Med. Found*., 2024 Cal. Wrk. Comp. P.D. LEXIS 2, *12.) However, if that is the case, the doctor must provide a substantial medical opinion explaining why the disability cannot be parceled out.

to compete on the open labor market are caused by something other than the industrial injury. Presently, the only medical opinions on apportionment in this case are those related to applicant's impairments under the AMA Guides. These opinions are not germane when applicant is seeking to rebut application of the AMA Guides.

Here, applicant failed to prove that the work restrictions assigned are 100% industrial because no party posed that question to any of the doctors. This proof requires medical evidence. As we are clarifying this issue and in keeping with our duty to accomplish substantial justice, the prudent course is to return this matter to the trial level for further discovery.

2. Apportionment under section 4664(c)

Next, defendant argues that it is entitled to a reduced award of disability after application of section 4664(c), which states:

> (c) (1) The accumulation of all permanent disability awards issued with respect to any one region of the body in favor of one individual employee shall not exceed 100 percent over the employee's lifetime unless the employee's injury or illness is conclusively presumed to be total in character pursuant to Section 4662. As used in this section, the regions of the body are the following:
>
> (A) Hearing.
>
> (B) Vision.
>
> (C) Mental and behavioral disorders.
>
> (D) The spine.
>
> (E) The upper extremities, including the shoulders.
>
> (F) The lower extremities, including the hip joints.
>
> (G) The head, face, cardiovascular system, respiratory system, and all other systems or regions of the body not listed in subparagraphs (A) to (F), inclusive.

(§ 4664(c).)

A recent panel decision discussed the burden that defendant has to obtain a reduction under section 4464(c).[3]

[3] 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 citeable authority and the Appeals Board may consider these decisions to the extent that their

Where defendant seeks to apply section 4664(c), and there is a dispute, defendant must do the following:

1) Establish a prior award(s) of disability.

2) Establish through expert medical evidence which body systems were impacted by the prior disability.

3) Establish a current award of disability.

4) Establish through expert medical evidence which body systems are impacted by the current disability.

If applicant's disability is found to span across multiple body systems, applicant is entitled to assign the disability to the body system that will achieve the highest rating.

The purpose of 4664(c) is to preclude accumulation of disability beyond 100% "with respect to any *one* region of the body". The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Almaraz-Guzman*) (2010) 187 Cal. App. 4th 808, 822 [115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837].) It has consistently been held that where applicant's disability can be rated using multiple methods, applicant is entitled to the higher rating. (*Ogilvie v. Workers' Comp. Appeals Bd.*, 197 Cal. App. 4th 1262, 1277, 129 Cal. Rptr. 3d 704 [permitting rebuttal of the rating schedule with alternative higher rating based upon diminished future earnings]; see also, *Grossmont Union High School District v. Workers' Comp. Appeals Bd.* (*Burns*) (1997) 62 Cal. Comp. Cases 687, [1997 Cal. Wrk. Comp. LEXIS 4483] (writ denied) [establishing dual-occupational rule, which allows for higher of two ratings when applicant's occupation spans two categories]; *Hartford Accident & Indemnity Company v. Workers' Comp. Appeals Bd.* (*Suttner*) (1990) 55 Cal. Comp. Cases 127, [1990 Cal. Wrk. Comp. LEXIS 2346] (writ denied); see also, *Dalen v. Workmen's Comp. Appeals Bd.* (1972) 26 Cal. App. 3d 497, 506 [103 Cal. Rptr. 128, 37 Cal. Comp. Cases 393] (*Dalen*); see also, *Weyerhaeuser Co. v. Workers' Comp. Appeals Bd.* (*Acosta*) (2003) 68 Cal. Comp. Cases 99 (writ den.) (*Acosta*)).) We see no reason to deviate from prior logic.
Where a disability impacts multiple body systems, it may be assigned to any of the impacted systems, and it should be assigned to the body system that will generate the higher rating. (See e.g., *Serrano v. GMC*, 2013 Cal. Wrk. Comp. P.D. LEXIS 28 [Finding that 4664(c)(1) does not apply where fibromyalgia affected multiple body systems and not just applicant's upper extremities.].) However, a finding of

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

> fact that a disability spans multiple body systems may only issue if such a finding is supported by substantial medical evidence. As we are clarifying this issue for the first time and the parties did not directly ask the evaluators in this case to address body systems under section 4664(c), we will return this matter to the trial level for further development of the record.

(*Stranak v. City of Los Angeles*, 2024 Cal. Wrk. Comp. P.D. LEXIS 179 at *11-12)

For the reasons discussed in *Stranak*, we do not find that defendant has established a reduction per section 4664(c) on the current record. However, as we are returning this matter to the trial level, defendant may develop the record accordingly.

3. CVC Rebuttal

Defendant next argues that applicant failed to rebut the CVC chart. However here, applicant's rating was not based upon the PDRS and did not utilize the opinions of the AME as to rebuttal of CVC. Thus, the issue raised by defendant is not ripe for adjudication. To the extent that CVC rebuttal may become an issue at a later date, and to the extent that the current opinions on CVC rebuttal could be construed as conclusory, the parties may wish to review the recent en banc decision in *Vigil v. County of Kern*, 89 Cal.Comp.Cases 686, (Appeals Board en banc).

Accordingly, as our Decision After Reconsideration we will rescind the February 25, 2021 F&A and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award issued on October 24, 2022, is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

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.

PUNI PAU
WHITING, COTTER & HURLIMANN
STATE COMPENSATION INSURANCE FUND

EDL/mt

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