WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

STEPHEN CHAPLIN, *Applicant*

vs.

CITY AND COUNTY OF SAN FRANCISCO,
permissibly self-insured, administered by INTERCARE, *Defendant*

Adjudication Numbers: ADJ7024529 (MF); ADJ10576891
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the October 2, 2025 Findings and Award, issued by a workers' compensation administrative law judge (WCJ), which found in relevant part that applicant, while employed as a transit operator for defendant, sustained injury arising out of and in the course of employment (AOE/COE) on February 18, 2009 to his bilateral knees, left elbow and lumbar spine (ADJ7024529) and injury AOE/COE during the period of December 13, 2014 to December 13, 2015 to his bilateral hips, bilateral knees and lumbar spine (ADJ10476891); that there is no new and further injury in case number ADJ7024529 over and above the previously stipulated Award of 31% permanent disability; and that the injury during the period of December 12, 2014 to December 13, 2015 to both hips, both knees, and lumbar spine has caused the applicant to be permanently and totally disabled (ADJ10476891).

Defendant contends that pursuant to Labor Code section 4664(c)(1)[1], applicant cannot be 100% disabled for his bilateral hips, bilateral knees, and lumbar spine because he received a prior award of 10% permanent disability for the left knee, 7% permanent disability for the right knee, and 15% permanent disability for the lumbar spine. The Petition further contends that the reporting of Panel Qualified Medical Evaluator (PQME) Samuel Graves, M.D., does not constitute substantial medical evidence and cannot support an award of 100% permanent disability as it is

[1] All further references are to the Labor Code unless otherwise stated.

based on an inadequate medical examination and lacks objective findings to support its conclusions.

Applicant has filed an Answer, asserting that Dr. Graves' reporting constitutes substantial evidence of permanent and total disability, that the WCJ correctly applied section 4664, that Dr. Graves properly used the Range of Motion (ROM) method to evaluate impairment of the lumbar spine, and that Dr. Graves' recommendation to add impairments complies with the requirements of *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686 (Appeals Bd. en banc).

The WCJ has prepared a Report and Amended Report, both dated October 22, 2025, recommending that we deny the Petition.

We have considered the allegations of the Petition for Reconsideration, the Answer thereto, and the contents of the WCJ's Reports with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Amended Report, which we adopt and incorporate, and for the additional reasons given below, we will deny reconsideration.

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

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on October 22, 2025, and 60 days from the date of transmission is Sunday, December 21, 2025. The next business day that is 60 days from the date of transmission is Monday, December 22, 2025 (See Cal. Code

Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, December 22, 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 October 22, 2025, and the case was transmitted to the Appeals Board on October 22, 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 October 22, 2025.

Turning to the merits of the Petition, we note that in addition to the reasons set forth in the WCJ's Report, which justify the award of permanent and total disability, the August 13, 2013 Stipulated Award was for a total of 31% permanent disability, with individual ratings for each affected body part set forth in paragraph 9 of the Stipulations with Request for Award.[3] Section 4664 limits "accumulation of all permanent disability awards issued with respect to any one region of the body." (Lab. Code, § 4664.) Taking each region of the body separately, by subtracting the 15% set forth in paragraph 9 of the Stipulated Award for the lumbar spine from 100%, 85% is available for other awards of permanent disability *of the spine* in applicant's lifetime under section 4664(c)(1)(D). Similarly, subtracting 17% for the left knee (10%) and right knee (7%), 83% is available for other awards of permanent disability *of the lower extremities*, including the hip joints, under section 4664(c)(1)(F). The WCJ's ratings for the lower extremities, which now include the bilateral hips as well as the knees, exceeds the 83% that is available for a further award of

[2] 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.

[3] We note that the Award itself only refers to "Permanent disability indemnity in accordance with section 3," but we assume that this also encompasses paragraph 9 of the Stipulations with Request for Award.

permanent disability of the lower extremities under section 4664(c)(1)(F), but this is of no consequence because 83% for the lower extremities, when added to 47%, or even 32%[4] for the lumbar spine, exceeds 100%. Accordingly, we agree with the Award of 100% permanent disability for the bilateral hips, knees, and lumbar spine.

We agree with the WCJ that Dr. Graves properly added the disabilities of the hips, knees, and lumbar spine instead of combining them by using the Permanent Disability Rating Schedule (PDRS)'s Combined Values Chart (CVC). Dr. Graves described how these body parts have overlapping effects on activities of daily living (ADLs) in a way that is increased or amplified, as required by the en banc opinion in *Vigil*, cited *supra*. The fact that the doctor did not specifically use the words "overlap," "increase," or "amplify" is of no significance; it is the explanation that counts. As stated in *Vigil*, there are no "magic words" that are required to rebut the use of the CVC. Instead, a physician must set forth a well-reasoned analysis explaining how and why ADL overlap exists. As we stated en banc in *Vigil*, if parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term "synergy," was used, it is imperative that parties focus instead on how a cogent analysis of the facts of the case, including the impact and interaction of ADLs, was used to support a conclusion based on reasoning. (*Vigil*, *supra*, 89 Cal. Comp. Cases 686, 693.) We agree with the WCJ's Report that the reporting of Dr. Graves has met this standard.

With respect to Dr. Graves' use of the ROM method to assess impairment of the lumbar spine, we agree with applicant that the criteria for use of the ROM method are met. We also agree that it is ultimately of no consequence to the outcome in this case, as a 28% whole person impairment of the lumbar spine based on a Diagnosis-Related Estimate (DRE) Lumbar Category V in Table 15-3 at page 384 of the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* adjusts to 47%, as shown in the WCJ's Report. This, added to the 83% that is allowed for the lower extremities under section 4664(c)(1)(F), exceeds 100% and justifies the 100% Award of permanent disability.

Accordingly, we deny the Petition for Reconsideration.

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[4] We note that while it appears that section 4664(c)(1)(D) does not require reduction of any spinal permanent disability under 85%, and the evidence does not clearly establish overlap under section 4664(b), we accept the WCJ's Report's subtraction of 15% for the Stipulated Award from the 47% permanent disability for a net of 32% lumbar disability attributed to cumulative injury, because with or without the subtraction the end result is the same: a 100% permanent disability award.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

I DISSENT (see attached dissenting opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 22, 2025

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

STEPHEN CHAPLIN
RATTO LAW FIRM, P.C.
OFFICE OF THE CITY ATTORNEY, SAN FRANCISCO

CWF/*cs*

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

AMENDED

REPORT AND RECOMMENDATION

ON PETITION FOR RECONSIDERATION

AND

NOTICE OF TRANSMISSION OF MATTER

TO THE RECONSIDERATION UNIT OF THE APPEALS BOARD

I
INTRODUCTION

Date of Injury:	February 18, 2009	(ADJ7024529)
	CT – 12/13/2015	(ADJ10576891)
Applicant's Ocupation:	Transit Operator	
Applicant's Age on DOI:	51 (ADJ7024529)	
	58 (ADJ10576891)	
Parts of Body Injured:	Bilateral Knees, Left Elbow, Lumbar Spine (ADJ7024529)	
	Bilateral Hips, Bilateral Knees, Lumbar Spine (ADJ10576891)	
Identity of Petitioner:	Defendant, City & County of San Francisco, PSI	
Timeliness:	The petition was timely filed on October 15, 2025	
Verification:	Verified as required pursuant to Code of Civil Procedure §446.	
Date of Findings and Award:	October 2, 2025	
Petitioner's Contentions:	Petitioner contends the WCJ erred by: 1) by disregarding Labor Code 4664 (c)(1) and finding applicant permanently totally disabled and 2) relying on Panel QME Dr. Samuel Graves' reporting as it does not constitute substantial medical evidence.	
Respondent's Contentions:	To date no Answer has been filed by Respondent.	

II

FACTS

APPLICANT, Stephen Chaplin, born [], sustained injury arising out of and in the course of said employment on February 18, 2009 (ADJ7024529) and the period of December 13, 2014 to December 13, 2015 (ADJ10576891). The parts of body injured for the date of injury February 18, 2009 (ADJ7024529) were the BILATERAL KNEES, LEFT ELBOW and LUMBAR SPINE. The parts of body injured for the period of December 13, 2014 to December 13, 2015 (ADJ10576891) were the BILATERAL HIPS, BILATERAL KNEES and LUMBAR SPINE.

Parties previously resolved ADJ7024529 via Stipulations with Request for Award on August 23, 2013 for 31%. Applicant timely filed a Petition to Re-Open ADJ7024529 on February 6, 2014.

In both cases the parties utilized Panel QME Smauel Graves' who issued numerous reports from April 26, 2012 up to June 25, 2025 (Joint Exhibits AA – KK), in addition to being deposed on April 25, 2025 (Joint Exhibit LL).

Parties would proceed to trial before Workers' Compensation Judge Nicholas Tse on August 20, 2025 on ADJ7024529 and ADJ10576891. A Findings and Award and Opinion on Decision would issue on October 2, 2025 finding:

1. APPLICANT, STEPHEN CHAPLIN, born [], while employed as a *TRANSIT OPERATOR, for the CITY AND COUNTY OF SAN FRANCISCO, sustained injury arising out of and in the course of said employment on February 18, 2009 (ADJ7024529) and the period of December 13, 2014 to December 13, 2015 (ADJ10576891).*

2. The parts of body injured for the date of injury February 18, 2009 (ADJ7024529) were the BILATERAL KNEES, LEFT ELBOW and LUMBAR SPINE. The parts of body injured for the period of December 13, 2014 to December 13, 2015 (ADJ10576891) were the BILATERAL HIPS, BILATERAL KNEES and LUMBAR SPINE.

3. The applicant's position of a *TRANSIT OPERATOR warranting an occupation code of 250.*

4. The applicant's earnings on February 18, 2009 (ADJ7024529) were $1,375.51 per week and for the period of December 13, 2014 to December 13, 2015 (ADJ10576891) were $997.73 per week.

5. Applicant's injuries for the period of December 13, 2014 to December 13, 2015

(ADJ10576891) became permanent and stationary on September 11, 2020.

6. There is no New & Further injury in ADJ7024529 over and above the previously , Stipulated and Award permanent disability of 31%.

7. The injury in ADJ10576891 has caused the applicant to be permanently and totally disabled.

8. There is no factual basis for apportionment.

9. There is need for further medical treatment.

10. Applicant's counsel has provided legal services reasonably valued at 15% of the awards of permanent total disability indemnity in ADJ10576891.

Applicant was Awarded the following:

1. Permanent and Total Disability indemnity at a *rate of $665.15 per week beginning November 28, 2017 and paid every other week, less credit for indemnity paid for periods after said date and less credit for the attorneys' fee allowed herein.*

2. Further medical treatment that is reasonable and necessary to cure or relieve the effects of the industrial injury.

3. A 15% fee on indemnity awarded herein has been found reasonable. Said fee shall first be satisfied from accrued and payable permanent total disability to date and then from the commuted value of the permanent and total disability award. Said commutation shall be done "sideways" unless parties agree otherwise. Applicant Counsel is told the Attorney Fees

On October 15, 2025, Defendant, City & County of San Francisco, PSI, (hereinafter referred to as "Petitioner" timely filed a Petition for Reconsideration alleging:

1. *That by the order, decision or award made and filed by the appeals board or a workers' compensation judge, the board acted without or in excess of its powers;*
2. *That the evidence does not justify the findings of fact;*
3. *That the findings of fact do not support the order, decision or award.*

More specifically Petitioner alleges the following:

1. *Applicant cannot be 100 percent disabled for his bilateral hips, bilateral knees and lumbar*

spine when he received a *prior award of 10 percent permanent disability for the left knee,* 7 *percent permanent disability for the right knee, and 15 percent permanent disability for the lumbar spine as this violates Labor Code Section 4664(c)(1).*

2. Panel QME Dr. Graves' reporting does not constitute substantial medical evidence and cannot support an award of 100 percent disability as it is based on inadequate medical examinations and lacks objective findings to support its conclusions.

At the time of this Report and Recommendation no Answer has been filed by Applicant.

III

DISCUSSION

A. ***APPLICATION OF LABOR CODE 4664(C)(1)***

Petitioner contends in their Petition for Reconsideration that the Workers' Compensation Judge failed to apply Labor Code Section 4664(c)(1) in his award of 100% Permanent Total Disability to the Applicant. Labor Code Section 4664(c)(1) states the following:

(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.

Petitioner further cites the WCAB Panel Decision of *McGowan v. City of L.A.,* 2015 Cal. Wrk. Comp. P.O. LEXIS 24, in support of their position that the WCJ failed to apply Labor Code

Section 4664(c)(1).

In McGowan, the injured worker alleged a new injury to his bladder, which rated to 100% PD. (Id. at *5). The injured worker had a prior award of 20% permanent disability for bladder cancer then a second award of 67% permanent disability for heart and cardiovascular system. (Id. at *6-7). Applicant subsequently filed a new injury for hearing loss, sexual dysfunction, and bladder cancer. (Id. at *7). The Workers' Compensation Judge in *McGowan* awarded a 100% Permanent Total Disability award not subtracting the prior awards. The WCAB determined it was inappropriate and that the alleged injuries in the prior awards and the new injury al fell into the same "region of the body" and that Labor Code Section 4664(c)(1) mandated that the prior awards be subtracted and overturned the Workers' Compensation Judges' decision and awarded 13% permanent disability. (Id. At *17).

"In order to apply the 100% cap on the accumulation of permanent disability awards provided by Section 4664(c), defendant must preliminarily establish the prior award to the same region of the body." *(Caldwell v. State Comp. Ins. Fund,* 2010 Cal. Wrk. Comp. P.O. LEXIS 571, *6). Thus, the burden is on defendant to establish that Labor Code Section 4664(c)(1) should apply. In the present matter, the facts are not analogous to *McGowan.* In *McGowan,* the prior awards and the new injury all dealt with injuries to the applicant's bladder, heart, cardiovascular system, hearing loss and sexual dysfunction, all falling within the legislatively defined single region of the body pursuant to Labor Code Section 4664(c)(1)(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."

In the case of Mr. Chaplin he had a prior award to his bilateral knees, left elbow and lumbar spine (ADJ7024529) and to his bilateral knees, bilateral hips and to his lumbar spine (ADJ10576 891). Thus, both claims involved multiple "regions of the body" as defined by Labor Code Section 4664(c,)(1), in this case having injuries to three different regions of the body:

(D) The spine.

(E) The upper extremities, including the shoulders.

(F) The lower extremities, including the hip joints.

Thus, based on the plain language of the Labor Code Section 4664(c)(1), Applicant is not being awarded a 100% Permanent Total Disability award for a single region.

As such, pursuant to Labor Code Section 4664(b):

If the applicant has received a *prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury. This presumption is* a *presumption affecting the burden of proof.*

Apportionment of the prior 2013 award of 31% in ADJ7024529 was subtracted as follows:

AMA Strict Rating

Left Knee

90% -(17.05.04.00 - 30 -[1.4] 42 -250F -42 -50%) 45% -10% (Prior Award)= 35%

Left Hip

90% -(17.03.04.00 -30 -[1.4] 42 -250F -42-50%) 45%

Right Hip

90% -(17.03.04.00-30-[1.4] 42 -250F-42 -50%) 45%

Right Knee

100% -(17.05.04.00-20 -[1.4] 28 -250F -28 - 34%) 34% -7% (Prior Award)= 27%

Lumbar Spine

100% -(15.03.01.00 -28 - [1.4] 39-250F -39 -47%) 47% -15% (Prior Award)= 32%

AMA Strict Rating (Alternative)

Right Lower Extremity

100% -(17.05.04.00 -40 -[1.4] 56 -250F-56 - 64%) 64% -7% (Prior Award)= 57%

Left Lower Extremity

90% -(17.05.04.00-40 -[1.4] 56 -250F -56-64%) 58% - 10% (Prior Award)= 48%

Lumbar Spine

100% –(15.03.01.00--28 –[1.4] 39–250F –39 -47%) 47% –15% (Prior Award)= 32%

PQME Graves DC opinion on Kite/Vigil was considered and found to be substantial medical evidence and addition was utilized rather than the CVC to provide a final PD for ADJ10576891 as follows:

AMA Strict Rating

Addition - 45 + 45 + 45 + 34 + 47 = 100%

AMA Strict Rating (Alternative)

Addition - 64 + 58 + 47 = 100%

Based on the foregoing Petitioner's contention is not found to have any legal authority or merit.

B. SUBSTANTIAL MEDICAL EVIDENCE OPINION OF PQME SAMUEL GRAVES DC

Petitioner alleges that the Workers' Compensation Judge erred in relying on the expert medical opinion of PQME Samuel Graves DC. In particular, Petitioner alleges that PQME Graves had inconsistencies in his reporting wherein he originally noted a worsening of Applicant's condition in 2013 in his August 27, 2014 report, which was prior to the alleged 2015 date of injury. (Joint Exhibit BB). Additionally, Petitioner alleges that PQME Graves opinion as to *Kite* and *Vigil* do not comport to the requirements of the two cases as he fails to address the impact of each impairment on the activities of daily living.

It first must be noted that it is well settled that medical issues can only be proven by expert medical opinion, and that lay testimony alone, no matter how persuasive it might otherwise be, is not sufficient to determine such issues. *Brannon v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Comp.Cases 333 (writ denied); *Peter Kiewit Sons v. Industrial Acc.* Com. (McLaughlin) (1965) 234 Cal.App.2d 831 [30 Cal.Comp.Cases 188]; *City & County of San Francisco v. Industrial Acc.* Comm. (Murdock) (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]. Here PQME Graves had evaluated and reported on this case from April 26, 2012 up to June 25, 2024 and issued eleven (11) reports in this matter. (Joint Exhibits AA-KK). On top of that he was deposed by the parties once on April 25, 2025. Case law is settled that deference should be given to the expert medical opinions in this matter. And it is not the place of the Workers' Compensation Judge to substitute his own opinions for those of the expert medical legal opinions in a matter. Further, any decision by the Appeals Board or a WCJ must be supported by substantial evidence. *(Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280- 281 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627,637 [35 Cal.Comp.Cases 16]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 419 [33 Cal.Comp.Cases 659].) The opinion of a

single physician may constitute substantial evidence, unless it is erroneous, beyond the physician's expertise, no longer germane, or based on an inadequate history, surmise, speculation, conjecture, or guess. *(Bolton,* supra, 34 Cal.3d at p. 169; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; see also *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 (Appeals Board en banc).)

Here Petitioner is picking out select portions of only a few selected reports to claim that the opinions of PQME Graves is not substantial medical evidence. When looking at the totality of the reporting and the fact that the Panel QME has been evaluating the Applicant from 2012 up until 2024, one can clearly see that the PQME has had a complete history and has seen the Applicant through a long progression of his two injuries with the Petitioner. Nothing pointed out by the Petitioner shows that the opinion is "erroneous, beyond the physician's expertise, no longer germane, or based on an inadequate history, surmise, speculation, conjecture, or guess," for his reporting to be considered not substantial evidence.

As to the *Kite* and *Vigil* contentions by Petitioner, that the PQME did not adequately address the AOL's affected and the overlap. As pointed out in my Findings and Award and Opinion on decision the PQME addressed those issues at the following portions of his February 11, 2021 report (Joint Exhibit HH):

> This examiner would agree with the QME's determination that there is a synergistic effect of the same body part when addressing bilateral impairment. As previously discussed, Mr. Chaplin completed bilateral total hip and knee replacement surgeries. Based on the AMA Guides, Table 17-34 (page 548) and Table 17-35 (page 549) were utilized to determine the rating for the hip and knee replacement results, respectively. Then Table 17-33 (page 546-547) was utilized to provide impairment estimates. The impairment rating determination for the ipsilateral knee and hip injuries were then combined as recommended by the Guides. But when considering the effects of the impairments, it is clear that having bilateral impairment would result in greater impairment. If the injured worker had an impairment to only one extremity, the body could then attempt to compensate for that impairment on the opposite side. This is why clinically compensable injuries are found to the opposite extremity. However, when both extremities are affected, the injured worker has no way to compensate for the injuries which can result in an increased impairment overall. Therefore,

"combining" the impairments, as utilized in the combined values chart, would lower the whole person impairment. This would not be an accurate method in determining impairment as the contralateral lower extremity has no overlapping impairment. The bilateral hip replacements were determined to be poor and the bilateral knee replacements were determined to be fair and poor. Mr. Chaplin has a significant impairment. He requires the assistance of his wife with activities of daily living. He needs assistance with getting up and moving around. He has difficulty climbing stairs and walking for distances.

Adding the lower extremity impairments would be a more accurate method of combining the impairment ratings for his lower extremities.

In regards to addition of the lower extremity and lumbar spine impairments, PQME Graves DC states the following:

(T)his examiner reviewed several studies to seek clear facts regarding the relationship between the lumbar spine and the hip joint. The reports listed below in the references were reviewed. The studies were all recent studies addressing the relationship of the spine, pelvis, and hip and their relation to one another and their effect on hip replacement. These studies discussed the importance of the interaction between the hip and lumbar spine in regular motion as well as the importance in spinal and hip surgical procedures.

Please note that one of the studies provided the following statement: "hip and lumbar spine pathologies often occur in combination, which may result in substantial disability"

Spinopelvic mobility was discussed which is the interaction of the hip, pelvis, and spine. This interaction is essential in balancing the mass of the torso as well as coordinating hip motion with the activities of standing and sitting. The studies addressed how changes in this interaction can have a profound affect on the body.

The studies discussed that any factor that affects the mobility of one part (spine, hip, or pelvis) will result in effects to the other parts. If there is stiffness (hypermobility)

in one region, it will typically result in increased motion (hypermobility) in another region. One study provided the following example:

"Orthopaedic surgeons have long understood that, after a spine] fusion the vertebral segment cephalad to the fusion has more stress because it must move more. This same stiff spine can force the femoral side of the hip to flex more with sitting, or extend more with standing, and this excessive hip motion can cause impingement of the greater trochanter on the pelvis".

This example was discussed in several studies. When there is reduced pelvic mobility, it forces an increase in hip mobility to accommodate the changes to posture, such as sitting or standing. This increased mobility can result in impingement of the hip.

The studies discussed several factors that affect pelvic mobility, such as hip stiffness, degenerative disease of the spine and/or hip, spinal fusion, and other factors that affect the motion of either the hip or spine.

Based on these studies, it can be concluded that there is a clear relationship between the lumbar spine and the hip joints that they do so in an interdependent fashion. The regions clearly work together in a synergistic fashion.

Mr. Chaplin has undergone several surgical procedures. The most recent and most significant procedures were the L4-5 lumbar discectomy as well as the bilateral knee and hip total joint replacement surgeries. These procedures have had a profound effect on the patient's mobility. He requires assistance with his activities of daily living as well ambulation. There is clear dysfunction to the lumbar spine as well as the bilateral hip and knee joints.

Therefore, based on the studies reviewed and the Kite decision, it is in this examiner opinion that the proper method of combining the lumbar spine impairment and the lower extremities in this case would be to add the impairment ratings.

Based on the foregoing I find that PQME Graves opinion on addition over the CVC comports with the opinions of *Kite* and *Vigil*.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

V

NOTICE OF TRANSMISSION

Pursuant to Labor Code, Section 5909, the parties and the Appeals Board are hereby notified that this matter has been transmitted to the appeals board on date set out below.

DATE: 10/22/2025

Respectfully submitted,

NICHOLAS E. TSE

Workers' Compensation Judge

DISSENTING OPINION OF COMMISSIONER RAZO

I respectfully dissent.

I believe the stipulated award for the spine and the lower extremities must be subtracted from the current award of 100% permanent disability under section 4664. I also question whether Dr. Graves' opinions constitute substantial medical evidence on the issue of impairment, including his decision to use of the ROM method to rate lumbar spine impairment. Moreover, in my opinion, Dr. Graves' recommendation to add disability of the bilateral knees, bilateral hips, and lumbar spine does not meet the requirements of *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686 (Appeals Bd. en banc).

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie*, *supra*, at p. 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Id*.)

Thus, I would grant defendant's Petition for Reconsideration to properly develop the record as to the deficiencies in Dr. Graves' conclusions as set forth in the Petition.

Accordingly, I respectfully dissent.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 22, 2025

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

STEPHEN CHAPLIN
RATTO LAW FIRM, P.C.
OFFICE OF THE CITY ATTORNEY, SAN FRANCISCO

CWF/*cs*

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