WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ALAN NEWELL, *Applicant*

vs.

METROPOLITAN WATER DISTRICT;
permissibly self-insured, administered by TRISTAR, *Defendants*

Adjudication Numbers: ADJ11055389; ADJ11054646; ADJ10719681
San Bernardino District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact, Orders and Award issued by the workers' compensation administrative law judge (WCJ) on April 6, 2026. Therein, the WCJ found that

Applicant contends that the WCJ should have issued a joint award of 100% permanent disability. Applicant argues that there is no substantial evidence supporting apportionment and that the disability in each case should have been added pursuant to the holdings of *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.) and *Vigil v. County of Kern (Vigil)* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc).

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

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after

reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code[1] section 5950 et seq.

I.

Preliminarily, we note that 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.
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> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

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

Here, according to Events, the case was transmitted to the Appeals Board on May 27, 2026 and 60 days from the date of transmission is Sunday, July 26, 2026. The next business day that is 60 days from the date of transmission is Monday, July 27, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).) This decision is issued by or on Monday, July 27, 2026, 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

[1] All further statutory references are to the Labor Code, unless otherwise noted.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on February 24, 2026, and the case was transmitted to the Appeals Board on May 27, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under section 5909(b)(2) because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on May 27, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by section 5909(b)(1). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on May 27, 2026.

II.

The WCJ provided the following discussion in the Report:

> **INTRODUCTION**
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> Applicant, Alan Newall, born [], while employed on November 1, 2016, as maintenance/heavy equipment, Occupational Group No. 480, at Los Angeles, California, by Metropolitan Water District, sustained injury arising out of and in the course of employment to his back and left shoulder. He also sustained injury arising out of and the course of employment during the period January 18, 1994, through November 17, 2016, to his bilateral shoulders, bilateral wrists, bilateral knees, back, and neck.
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> The employee's earnings were $1,692.65 per week, warranting indemnity rates of $1,128.43 for temporary disability and $290 if permanent disability is less than 100%. The parties stipulated applicant had been adequately compensated for all periods of temporary total disability through the present. At the time of the above injuries, the employer was permissibly self-insured, now administered by Tristar. Dr. Chester Hasday was utilized by the parties as an AME in orthopedics for both claims.
>
> This matter was previously submitted for decision on October 21, 2024. On April 7, 2025, an Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration issued wherein the issues of permanent disability, apportionment, and attorney fees were deferred pending further

development of the record. Applicant was awarded further medical treatment to cure or relieve from the effects of the injuries in ADJ11055389 and ADJ11054646 pursuant to the April 7, 2025, Findings of Fact.

The matter was returned for Trial wherein all stipulations, issues, exhibits and testimony from the prior Minutes of Hearing and Summary of Evidence on October 21, 2024, were incorporated, and the August 26, 2025, deposition of Dr. Hasday was accepted into evidence as Joint Exhibit V. The cases were resubmitted to address the issues of permanent disability, apportionment, and attorney fees on December 3, 2025. The undersigned issued Findings of Fact and Awards in each case and a Joint Opinion on Decision on January 20, 2026. Applicant, through his attorney of record, filed a timely, verified, Petition for Reconsideration. Defendant filed an Answer to Petition for Reconsideration on February 20, 2026.

DISCUSSION

1. Apportionment

Applicant contends that Dr. Hasday's opinions on apportionment are conclusory and should not be followed. Applicant asserts that Dr. Hasday only vaguely references "degenerative disc disease" in his apportionment discussion does not explain exactly what condition(s) he is considering. However, the findings in the diagnostics were discussed, and Dr. Hasday confirmed during his deposition that these diagnostics were the support for his apportionment findings.

> Q: All right. Now, as far as apportionment is concerned, that was one of the issues that was addressed in the WCAB decision, and in looking at your report on Pages 9 and 10, I see summarized the X-rays that were done for the various body parts, and in your impression section, which is on Page 31 and 32, you do reference degenerative conditions which supported your apportionment findings. Do you still stand by the apportionment findings as stated in your initial report?
>
> A: Yes.
>
> (Joint Exhibit V page 46 lines 1-10.)

Dr. Hasday obtained a complete history from applicant and reviewed multiple diagnostic reports and medical records in connection with his physical examination. Applicant's history of prior arduous work and prior injuries is supported by applicant's own testimony and was documented in the medical records jointly offered by the parties. Dr. Hasday identifies a multitude of degenerative diagnostic findings and uses his extensive medical expertise to provide a persuasive opinion on apportionment. Wherefore, as the basis for his opinion is easily found throughout his reporting the undersigned did not find good cause to disregard the apportionment findings of Dr. Hasday.

Applicant also disputes that apportionment should not be allowed between the cumulative trauma and the specific injury. Dr. Hasday discusses the specific injury of November 1, 2016, and the cumulative trauma claim and his reporting apportions 20% of the disability for the left shoulder and 10% of the disability for the lumbar spine to the specific injury of November 1, 2016. (Joint Exhibit W page 39.) Applicant contends that defendant did not meet their burden on apportionment, and therefore applicant's specific injury of November 1, 2016, warrants an award of 83% based upon adding the 38% for the left shoulder and 45% for the lumbar spine and then a separate award of 100% for the cumulative trauma.

However, providing two separate awards for the exact same disability is not supported by the law and would result in an impermissible double recovery for the applicant. If apportionment assigned by Dr. Hasday for the two injuries is not deemed substantial medical evidence, the appropriate remedy would be to rate the injuries together and issue one award for both injuries. Pursuant to Benson, "[…] there may be limited circumstances when the evaluating physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to an employee's overall permanent disability. In such limited circumstances, when the employer has failed to meet its burden of proof, a combined award of permanent disability may still be justified." (*Benson v. Workers' Comp. Appeals Bd.,* 170 Cal. App. 4th 1535, 1536.)

Nevertheless, applicant is correct that defendant has the burden of proof on apportionment to establish the percentage of permanent disability caused by factors other than the industrial injury consistent with *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 at 613. Although Dr. Hasday's would be improved by a cohesive explanation in the "apportionment section" addressing how and why each of the conditions and injuries are currently causing disability, the discussion throughout his reporting, easily connect the dots between the evidence and his apportionment position. As such, the undersigned finds that Dr. Hasday's opinion on apportionment is persuasive and is supported by substantial medical evidence and should not be disregarded.

Nonetheless, should the Appeals Board agree with applicant and find that defendant did not elicit sufficient support to meet their burden of proof with respect to apportionment, the appropriate remedy would be a joint un-apportioned award.

2. Rebuttal of The Permanent Disability Ratings Schedule (PDRS)

Applicant contends that the undersigned [erred] in finding that Dr. Hasday's reporting does not support a rebuttal of the CVC component of the PDRS. Applicant contends that Dr. Hasday's opinion on how to combine the disabilities

is consistent with the holding in *Vigil (Sammy) v. County of Kern*, 89 Cal. Comp. Cases 686 and should be followed. Although Dr. Hasday opines that addition should be used to add the combined neck and upper extremity value to the combined lower back and lower extremity values, he deviates from the pathways outlined in *Vigil*.

In *Vigil*, the Appeals Board held en banc that: "The Combined Values Chart (CVC) in the Permanent Disability Ratings Schedule (PDRS) may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either: (a) there is no overlap between the effects on ADLs as between the body parts rated; or (b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs." (*Vigil (Sammy) v. County of Kern*, 89 Cal. Comp. Cases 686 at 693.) However, Dr. Hasday does not rely on either of these situations to support his disregard for the CVC.

Applicant contends that Dr. Hasday's method is appropriate considering footnote 7 of the *Vigil* decision, wherein the court stated: "We emphasize that our goal is to explain the known methods of rebutting the CVC and not to exclude the unknown." (*Vigil (Sammy) v. County of Kern*, 89 Cal. Comp. Cases 686 at 693.) The undersigned does not find this argument compelling because applicant seeks to advance an alternative rebuttal path that uses the concept of minimal overlap, minimal impact and frequency are used interchangeably. Dr. Hasday's explanation is contradictory and inconsistent, which does not rationally support rebuttal of the CVC pursuant to *Vigil*.

Dr. Hasday discusses the 25-item inventory titled "Questions Concerning Activities of Daily Living (ADL)", which was attached to his February 2, 2021, report. (See Joint Exhibit W page 42-43 of PDF.)

> A. […] The first group of ADLs are what I would consider whole body ADLs, meaning virtually all anatomic parts of the human body are responsible for performing the various activities, and these would be grouped into Items 1, 2, 10 and 19. The first one is personal self-care, described as washing, dressing and bathroom tasks. The second would be lifting and carrying, which would require both the neck, upper extremities, low back and lower extremities in order to perform these. The third, Item 10, would be pushing and pulling, which would also require neck, upper extremities, back, lower extremities. The fourth is Item 19, which is travel ability, which would also require neck and upper extremities and back and lower extremities.

Dr. Hasday opines that the CVC should not be used because the overlapping activities occur infrequently.

> Q. You mentioned as we started that you had through that 25 questionnaire on the ADLs – […] Group 1 was the whole body ADLs, which applied equally to both the upper and lower extremities.· So with that in mind, wouldn't it be more appropriate to use the Combined Value Chart then to add the upper and lower extremities? […]
>
> A.· […] Although these four activities do overlap the neck and the back, it was my statement that they occur very infrequently and only a small part of the total time spent in the universe of activities of daily living, and as such, I did not want to give them undue weight because one of these or two of these might be incredibly important in the work environment, but as we have already determined, we're not discussing the work environment, but rather the non-work environment, hence I don't want to give these particular activities more weight than they deserve. (Joint Exhibit V page 44 line 24 to page 45 line 20.)

Dr. Hasday states that the overlapping activities occur infrequently because "in the world of physical activities, lifting and carrying probably occurs .05 percent or less of the total amount of realtime." (Joint Exhibit V page 27 lines 5-7.) However, Dr. Hasday's conclusion is not supported by any reference to a specific subjective or objective data obtained from his evaluation of the applicant. "In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs." (*Vigil (Sammy) v. County of Kern*, 89 Cal. Comp. Cases 686 at 692.) Instead, Dr. Hasday's conclusion relies on a generalization regarding activities of daily living, rather than an examination of how often applicant engages in a daily living activity and the impact that his specific multiple impairments have on his individual ability to engage in those specific activities. Applicant contends that testimony at Trial addresses the specific limitations on his activities of daily living, this information was not contained within Dr. Hasday's reporting. Wherefore, his Trial testimony has no bearing on the information Dr. Hasday relied upon to reach his conclusion.

Further, the overlapping ADLs are not limited to lifting and carrying. In fact, Dr. Hasday includes "personal self-care, described as washing, dressing and bathroom tasks" within his description of "whole body ADLs."

> "A. […] the activities that do require overlap of the upper and lower extremities, but none of these activities are a substantial part of a normal day's actual time. So these are all things that are done during the day, but they're not predominant activities. People go to the bathroom every day repeatedly. People prepare meals and eat repeatedly. People wash their face repeatedly. They, hypothetically, comb their hair once a day. If they're men, they may shave once a day sometimes. These are things that are done repetitively. People get dressed virtually every day. There are other

activities that are way more sporadic, and they are not the things that control in my opinion whether or not these activities would be considered sufficiently overlapped to rise to the level of synergy.

Q. No, no.

A. Okay. To rise --

Q. You did great until you said the last word.

A. Okay.· Then I'll take that word out.· To rise to the level precluding individually identifying them, understanding that they in generally minimally impact – minimally impact one another, and as I testified in my deposition, having a problem with your back doesn't limit your ability to brush your teeth."

(Joint Exhibit V page 27 line 20 to page 28 line 19.)

This explanation is inconsistent with Dr. Hasday's contention that the overlapping activities occur infrequently.

Dr. Hasday then appears to shift the discussion to minimal impact, rather than overlapping activities of daily living, to support his use of addition. However, this theory of adding because there is minimal impact, is contrary to his earlier explanation addressing when impact justifies the use of addition.

"A. is combining that an adequate representation of the additional burden? Very often, for instance, in hip replacements, although we combine the hip replacements, in reality, other than some minor additional difficulties of getting dressed and putting their shoes and socks on, having the second hip impairment does not really materially add any additional impairment to that person's ADLs, so --

Q. Again, you're back to synergy, and I don't want to talk about --

A. I'm – it's not synergy. I'm dealing with your issue of minimal impact. If there's minimal overlap, that's minimal impact, and there's no justification when there is just minimal involvement to do anything but combine the two extremities. None whatsoever. It has to be substantial."

(Joint Exhibit V page 20 line 13 to page 21 line 1.)

Considering his explanation, it is hard to reconcile his final opinion that adding is warranted in the present matter due to minimal impact.

Dr. Hasday further discusses which activities of daily living he opines are impacted by both the low back and neck.

> "Q. Fair enough.· What about the low back? What activities of daily living in your mind are impacted by the condition of Mr. Newell's low back?
>
> A. Walking, climbing stairs, sitting, standing or walking, kneeling, bending and stooping which are exclusively back and lower extremities, but also the first four we spoke about, which are personal self-care, lifting and carrying, pushing and pulling and travel ability, are also impacted by the applicant's low back.
>
> Q. You did indicate earlier that those are in part also impacted by the condition of his neck; correct?
>
> A. The last four I spoke --
>
> Q. Correct.
>
> A. -- would be considered overlapping neck and back.
>
> Q. But despite the fact that they overlap, do you agree that the overlap is generally so minimal as to provide – that adding still provides a more accurate method of combining rather than using the CVC for the low back versus the upper body?
>
> A. Yes.
>
> Q. And why?
>
> A. Well, you know, I answered that in detail in my deposition, and I will answer it generically now, that for the majority of ADL tasks that are done most frequently in the course of the day, there is not very much overlap of the neck and upper extremities to the back and lower extremities other than the few things we already identified. They are predominantly -- back and lower extremities are predominantly neck and upper extremities.
>
> (Joint Exhibit V page 36 line 25 to page 38 line 3.)

However, this statement is contradicted by his earlier discussion addressing the frequency of self-care activities and therefore is not persuasive. Again, later in his deposition, Dr. Hasday explains that a person with only "half a body" would still be able to do most of the self-care, food preparation and eating activities.

> "Q. So what you're saying, as we discussed with the neck and the upper extremities, is that there is overlap, but you feel that it is sufficiently

minimal, that it's still more appropriate to add versus combine with the upper body?

A. Again, in this particular case, I can't use somebody has only half a body, but if somebody had only half of the body, the upper half of the body or lower half of the body, would they still be able to do most of these ADLs, and the answer is yes. You don't need the upper half of your body in order to sit, walk, stand, squat, go up or down stairs. The lower half of the body can do that by itself. Similarly, other than the fact that you need to be high enough over the sink, you can do most self-care, most food preparation, and most eating activities with the complete absence of the lower extremities and back. So the answer is on a functional basis, they do not overlap very much. They can be done in the absence of the other body part --

Q. Understood.

A. -- hence, there would be no reason to reduce one because of the other." (Joint Exhibit V page 38 lines 4 to 23.)

Dr. Hasday then opines that having overlapping activities of daily living should not be used to reduce the value.

"They can exist exactly in the same fashion with or without the presence of the other. Having one does not alter the ADL limiting effects of the first. So at that point in time there's no reason to reduce the impact of one on the theory that it is somehow mitigated by the presence of the other. It's not. It's independent of the presence of the other, hence in my opinion, they are entirely able to be evaluated in a vacuum by themselves, and as a result they should be added, not reduced in any way."
(Joint Exhibit V page 42 line 10 to 19.)

It has long been held that a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workmen's Comp. App. Bd*. (1968) 69 Cal.2d 399 at 407.) However, the explanation provided should also rationally support the ultimate conclusion. "In relying on a physician's opinion, the Board may not isolate a fragmentary portion of the physician's report or testimony and disregard other parts that contradict or nullify that portion." (*Rodriguez v. Workers' Comp. Appeals Bd.*, 21 Cal. App. 4th 1747 at 1758-1759.) In order to constitute substantial medical evidence, doctors should provide a well-reasoned analysis which logically supports the conclusion they reach.

When viewed as whole, Dr. Hasday's explanation for his conclusion demonstrates his personal disagreement with use of the combined values chart, rather than a well-reasoned explanation of why the impairments impacted

applicant's individual ability to participate in activities of daily living and therefore warrant a higher level of disability than afforded by the CVC. Dr. Hasday states that adding creates a more accurate rating of his true level of disability, but his reasoning does not support the conclusion he reaches. It is clear, that Dr. Hasday simply believes that the impairments should be added without regard to the CVC.

The caselaw following *Vigil* supports adding in the absence of overlap where the impairments are in distinct, nonoverlapping systems and create separate and independent impacts on the applicant's activities of daily living. They also support adding in cases where there is overlap, but the disability is amplified in light of the overall impairment. Footnote 7 was clearly not intended to be used ad hoc as a loophole to make every case rate the way a doctor desires to rate it. Simple addition of impairment overstates disability because it assumes impairments stack linearly even though each additional impairment affects the remaining unimpaired portion of the person. Wherefore, the CVC should only be disregarded where there is a well-reasoned explanation demonstrating that the individual's disability is amplified in such a manner that the CVC does not accurately represent the impact.

Here, Dr. Hasday's reporting does not adequately address why the disability that applicant is experiencing is greater than what is anticipated in the AMA Guides, and his opinion regarding adding impairments is not found to be persuasive. Accordingly, the undersigned finds that applicant did not meet his burden with respect to rebutting the CVC component of the PDRS.

3. Permanent Disability

Applicant contends that the PDRS was rebutted and that apportionment is not valid and therefore, applicant is entitled to an award of 100% permanent disability for the cumulative trauma claim and 83% for the specific injury.

For the reasons discussed above, and as outlined in the January 20, 2026, Opinion on Decision, the undersigned continues to find that applicant did not rebut the PDRS and that there is a valid basis for apportionment. Wherefore, the undersigned finds applicant sustained 93% disability for the cumulative trauma claim and 13% for the specific injury.

Nonetheless, should the Appeals Board agree with applicant and find that defendant did not elicit sufficient support to meet their burden of proof with respect to apportionment, the appropriate remedy would be a joint un-apportioned award which would be rated jointly as follows:

Cervical: 15.01.01.00- 6%- [1.4]8- 480I- 12- 16%

Right Upper Extremity: 36 C 21 C 7 C 3 = 54%

Right Shoulder 16.02.02.00- 18%- [1.4]25- 480G- 28- 36%
Right Wrist 16.04.01.00- 10%- [1.4]14- 480G- 16- 21%
Right Carpal Tunnel Syndrome 16.01.02.07- 3%- [1.4]4- 480G- 5- 7%
Right ulnar nerve sensory 16.01.02.03- 1%- [1.4]1- 480G- 2- 3%

Left Upper Extremity: 38 C 16 C 7 C 3 = 53%
Left Shoulder 16.02.02.00- 19%- [1.4]27- 480G- 30- 38
Left Wrist: 16.04.01.00- 7%- [1.4]10- 480G- 12- 16%
Left CTS: 16.01.02.07- 3%- [1.4]4- 480G- 5- 7%
Left ulnar nerve sensory 16.01.02.03- 1%- [1.4]1- 480G- 2- 3%

Left Knee: 17.05.10.08- 20% [1.4]28- 480H- 34- 43%

Right Knee: 17.05.10.08- 15% [1.4]21- 480H- 26- 33%

Lumbar Spine: 90% [15.03.01.00-20%- [1.4]28- 480I- 36- 45] 41%

54 C 53 C 43 C 41 C 33 C 16 = 96% Final PD

Permanent Disability of 96% equates to 849.25 weeks, payable at $290 per week for a total of $246,282.50. Permanent disability is payable beginning the fourteenth day after temporary total disability ends. Defendant is entitled to credit for any permanent disability payments previously made.

Upon expiration of the permanent disability award, applicant is entitled to life pension at a rate of $278.31 a week, and shall have that payment increased annually commencing on January 1, after the payment of life pension begins and each January 1, thereafter, by an amount equal to the percentage increase in the State Average Weekly Wage as compared to the prior year set forth in Labor Code Section 4629(c).

The undersigned continues to recommend a reasonable attorney's fee of 15% of applicant's permanent disability awards and 15% of the life pension award.

(Report, at pp. 1-11.)

III.

We highlight the following legal principles that may be relevant to our review of this matter:

Apportionment is the process utilized to segregate permanent disability or the residuals caused by an industrial injury from those attributable to other industrial injuries or to nonindustrial factors, to allocate legal responsibility fairly. (*Brodie v. Workers' Comp. Appeals Bd*. (2007) 40

Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565]; Marsh v. Workers' Comp. Appeals Bd. (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787.].)

The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 927–928 [71 Cal.Comp.Cases 1687].) Instead, apportionment of permanent disability is "based on causation" and the "employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment." (Lab. Code, §§ 4663(a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (*Escobedo*) (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc).) Apportionment now includes pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Pursuant to *Escobedo*, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its conclusions. (*Id*. at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion (*Ibid*.) and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson, supra*, 72 Cal.Comp.Cases at p. 1622.)

The burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, *9]; *Moraido v. County of San Diego* [2024 Cal. Wrk. Comp. P.D. LEXIS 375, *13, fn. 3]; *Arias v. William Roofing Co*. [2024 Cal. Wrk. Comp. P.D. LEXIS 29. *5]; *Matias v. Naturipe Berry Growers* [2024 Cal. Wrk. Comp. P.D. LEXIS 52, *4]; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, *15].)

Pursuant to *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680], impairments "are generally combined" using the combined values chart (CVC) found in the permanent disability

rating schedule (PDRS). However, the "scheduled rating is not absolute" and other methodologies may be used to calculate permanent disability. (*Id*. at p. 614.) Thus, while the PDRS is prima facie evidence of an employee's permanent disability, it is rebuttable. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084, 1106 (Appeals Board en banc); see *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc); *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360, 167 Cal. Rptr. 3d 1.) Ultimately, however, the goal in rating impairments is accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].)

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater than that reflected through use of the CVC, the impairments should be added for purposes of accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic QME opined that there was a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," and, as such, "the best way to combine the impairments to the right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment." (*Id*. at p. 5.) Accordingly, in *Kite*, the WCJ found that the impairment for the applicant's hips should be added rather than combined.

Subsequent to *Kite*, the Appeals Board issued *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688–689 (Appeals Board en banc) wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish that 1) the activities of daily living (ADLs) impacted by each impairment, and 2) the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs. In footnote seven (7), the Appeals Board emphasized that its "goal is to explain the known methods of rebutting the CVC and not to exclude the unknown." (*Id*. at 697, fn 7.)

Lastly, it is well established that decisions by the Appeals Board 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, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence'

means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) 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).) Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

Here, it appears from our preliminary review that the record may not be complete regarding the issue of apportionment. Taking into account the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

IV.

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com*. (*Savercool*) (1923) 191 Cal.724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com*. (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the

commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp*. *Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp*. *Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, this is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

V.

Accordingly, we grant applicant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 27, 2026

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

ALAN NEWELL
LERNER, MOORE, CUNNINGHAM, SILVA & RUBEL
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP

PAG/cm

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