WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ARMOND MARGOUSIAN, ***Applicant***

vs.

4OVER, LLC; NATIONAL UNION FIRE INSURANCE, ***Defendants***

Adjudication Number: ADJ12655039
Van Nuys District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of November 25, 2025, wherein it was found that while employed on August 7, 2019 as a maintenance technician, applicant sustained industrial injury to the right hand, right arm, and psyche, causing permanent total (100%) disability. In finding permanent total disability, the WCJ relied on the reporting of vocational expert Paul Broadus, who opined that applicant's industrial injury precluded applicant from vocational rehabilitation or from employment in the open labor market.

Defendant contends that the WCJ erred in finding permanent total (100%) disability, arguing that the reporting of Mr. Broadus did not constitute substantial evidence. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We agree that the current record does not support a finding of permanent total disability, as Mr. Broadus appears to have gone beyond the work restrictions in the medical reporting in determining that applicant was not susceptible to vocational rehabilitation and was otherwise unemployable. We therefore grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level for further development of the medical and vocational record and decision.

Preliminarily, we note that former Labor Code 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, Labor Code 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.
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> (b)
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> (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 Labor Code 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 December 22, 2025 and 60 days from the date of transmission is February 20, 2026. This decision is issued by or on February 20, 2026, so we have timely acted on the petition as required by Labor Code section 5909(a).

Labor Code 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. Labor Code 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 December 22, 2025, and the case was transmitted to the Appeals Board on December 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 Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2)

provided them with actual notice as to the commencement of the 60-day period on December 22, 2025.

Turning to the merits, applicant sustained a serious crush injury to his dominant right hand, fingers and wrist while attempting to repair a printing machine, when someone turned on the machine while his hand was in it. He was evaluated for his physical injury by agreed medical evaluator orthopedist Kevin Pelton, M.D. Dr. Pelton found that applicant's scheduled AMA Guides rating was a 41% whole person impairment and a 3% whole person impairment pain add-on. (May 7, 2025 report at p. 7.) However, despite being confronted at his deposition with evidence that applicant did have some limited, temporary use of his right hand and fingers, Dr. Pelton opined that applicant had essentially no use of his right hand or wrist, and analogized applicant's impairment as akin to someone with an amputation of the arm/forearm from distal to deltoid insertion to bicipital insertion, which is a 57% whole person impairment. (AMA Guides, Table 16-4, p. 440.) Thus, Dr. Pelton opined that applicant's injury caused whole person impairment of 57% plus a 3% pain add-on pursuant to the principals of *Almaraz v. Environmental Recovery Services* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) (commonly known as *Almaraz II*), where we held that a "scheduled permanent disability rating may be rebutted by successfully challenging the component element of that rating relating to the employee's WPI under the AMA Guides … by establishing that another chapter, table, or method within the four corners of the Guides most accurately reflects the injured employee's impairment." (*Almaraz II*, 74 Cal.Comp.Cases at pp. 1095-1096.)

Discussing applicant's amenability to vocational rehabilitation, Dr. Pelton wrote, "Although I did not have the opportunity to review a Formal Job Analysis the applicant did describe his work duties to me as well as complete an RU-91 in my office today. It is my medical opinion that the applicant's work activities will exceed the permanent work restrictions described above, and therefore he will require employment with less work duty requirements in order to re-enter the· open labor market. He is medically eligible for vocational rehabilitation services and would be an appropriate candidate for the Voucher Program." (November 18, 2021 report at p. 52.) Regarding applicant's work preclusions, Dr. Pelton wrote, "Taking into consideration the above noted impairment rating based on the AMA Guides, 5th Edition, his pain and capacity assessment, it is my opinion that the applicant has a permanent work restriction precluding any work with the right upper extremity." (November 18, 2021 report at p. 52.)

Applicant was also evaluated by psychologist Ludmila Zeltzer, PsyD. Dr. Zeltzer diagnosed applicant with major depressive disorder and stated that applicant scored 51 on the Global Assessment of Functioning (GAF) scale, which corresponds with "Moderate symptoms (e.g., flat affect and circumstantial speech, occasional panic attacks) OR moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or coworkers)." A GAF score of 51 corresponds to a whole person impairment of 29%. (2005 Schedule for Rating Permanent Disabilities at p. 1-16.) With regard to applicant's work restrictions, Dr. Zeltzer wrote that, "there has been no temporary total or temporary partial disability on a purely psychiatric basis" (September 22, 2023 report at p. 26) and that applicant had "No work restrictions at this time." (September 22, 2023 report at p. 27.)

Applicant was evaluated by vocational expert Paul Broadus who wrote in his July 16, 2024 report:

> From an orthopedic standpoint, Mr. Margousian has no functional use of his right, dominant hand. All of the work that he has done for his entire career has required good use of both hands. Accordingly, he has no skills to transfer to other occupations. Additionally, almost all unskilled or semi-skilled jobs require significant use of the hands.
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> Pain is also a major issue for Mr. Margousian, as noted by Dr. Pelton, who reports, "The applicant does appropriately qualify for a 2% whole person impairment increase secondary to his interference with his activities of daily living as a result of the residual pain from his industrial injury. The impairment is over and above what has been calculated and described above."
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> Chronic pain is known to be a problem related to work activities. Studies regarding the effect of pain and fatigue on work performance report factors including:
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> • Reduced ability to do complex planning
> • Reduced decision-making ability
> • Reduced communication skills
> • Reduced productivity
> • Reduced attention and vigilance
> • Reduced ability to handle stress on the job
> • Reduced reaction time—both in speed and thought
> • Loss of memory or ability to recall details
> • Failure to respond to changes in surroundings or information provided
> • Inability to stay awake
> • Increased tendency for risk-taking
> • Increased forgetfulness

> • Increased errors in judgment
> • Increased sick time, absenteeism and rate of turnover
> • Increased accident rates
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> All of these would be problems for Mr. Margousian, no matter what the occupation. He would not be able to maintain a regular schedule on any job or keep up with the work demands required by employers.
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> Additionally, Mr. Margousian has been evaluated on a psychiatric basis by Ludmila Zeltzer, PsyD, PQME. She has diagnosed Major Depressive Disorder, unspecified, and assigned a GAF score of 51. This is in the category defined as, "Moderate symptoms (e.g., flat affect and circumlocutory speech, occasional panic attacks) or moderate difficulty in social, occupational, or school functioning (e.g., few friends, conflicts with peers or co-workers)."
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> While she does not impose work restrictions, she testified in her deposition that Mr. Margousian "has difficulty partaking in activities of daily living due to emotional distress, waking up in the morning, participating even in evaluation had difficulty for him. He has difficulty bathing and showering, brushing his teeth, combing his hair, getting dressed, difficulty urinating, writing, typing, seeing clearly due to depression and fatigue, reclining, climbing stairs, grasping onto things, holding, lifting, writing, driving a car, complete loss of sexual libido, inability to achieve orgasm, and also falling and maintaining a healthy sleep cycle."
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> Considering all of these factors in combination, Mr. Margousian has no functional use of his dominant right hand. All of his skills are related to occupations which require the use of both hands. He does not have skills which transfer to occupations where this would not be necessary. Almost all unskilled or semi-skilled occupations require significant hand use. He suffers from chronic pain, which further limits him and interferes with his activities of daily living. He has psychiatric impairment. Accordingly, from a vocational standpoint, Mr. Margousian is 100% disabled. He is not amenable to rehabilitation and is not employable in the open labor market.

A permanent disability rating may be rebutted by showing an applicant's diminished future earning capacity is greater than that reflected in the computation of the rating. (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624]; *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 1119].) In analyzing this issue, the *Ogilive* court wrote:

> Another way the cases have long recognized that a scheduled rating has been effectively rebutted is when the injury to the employee impairs his or her rehabilitation, and for that reason, the employee's diminished future earning

> capacity is greater than reflected in the employee's scheduled rating. This is the rule expressed in *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [193 Cal. Rptr. 547, 666 P.2d 989]. In *LeBoeuf*, an injured worker sought to demonstrate that, due to the residual effects of his work-related injuries, he could not be retrained for suitable meaningful employment. (*Id.* at pp. 237-238.) Our Supreme Court concluded that it was error to preclude LeBoeuf from making such a showing, and held that "the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating."

(*Ogilvie*, supra, at p. 1274.)

Making such a showing requires vocational expert evidence that an applicant is not amenable to rehabilitation and is not otherwise employable. (*Applied Materials v. Workers' Compensation Appeals Bd.* (2021) 60 Cal.App.5th 1042, 1097-1098 [86 Cal.Comp.Cases 331].) However, this expert evidence must constitute substantial medical evidence, and the vocational expert may not opine on matters that require expert medical evidence. (*Nunes v. State of California* (2023) 88 Cal.Comp.Cases 741 *(Nunes I)* [Appeals Bd. en banc]; *Nunes v. State of California* (2023) 88 Cal.Comp.Cases 894 *(Nunes II)* [Appeals Bd. en banc].) The vocational expert must apply the work preclusions determined by the medical experts and determine based on those preclusions whether an applicant is precluded from vocational retraining or being otherwise employable.

Here, applicant sustained a very serious injury and disability. However, the only work restriction listed by the reporting physicians was loss of use of the right upper extremity. Nevertheless, Mr. Broadus went beyond this description discussing chronic pain, speculating on numerous ways it could affect applicant's work and even concluding that it would preclude the applicant from working a normal work schedule, despite the fact that none of this appeared in Dr. Pelton's reporting. While it is true that Dr. Pelton did include a 3% pain add-on to applicant's permanent disability ratings (both the scheduled and the *Guzman* rating), Dr. Pelton did not opine that this pain would cause additional work preclusions beyond loss of use of the right upper extremity. Similarly, while Mr. Broadus uses applicant's psychological injury and disability to buttress his findings of unemployability and lack of amenability to rehabilitation, Dr. Zeltzer imposed no work restrictions on the applicant.

While the WCJ points to the seriousness of the applicant's injury and disability as a basis for the 100% award, even accepting that applicant's disability is akin to amputation below the elbow, such a disability rates at 57% whole person impairment. As the Court of Appeal noted in

Dahl, supra, "The first step in any *LeBoeuf* analysis is to determine whether a work-related injury precludes the claimant from taking advantage of vocational rehabilitation and participating in the labor force. This necessarily requires an individualized approach. For example, in *Gottschalks v. Workers' Comp. Appeals Bd.* (2003) 68 Cal.Comp.Cases 1714, 1716 (writ den.), one of the compensation cases cited in Ogilvie, the WCAB denied an employer's petition for reconsideration of a 100 percent disability rating where Oxycontin, a medication used to treat the claimant's industrial injury, had a "'severe [e]ffect'" on the claimant's ability to work. The focus was on the limitations flowing from the claimant's particular condition, not the earning potential of similarly situated individuals who might be subject to different limitations. It is this individualized assessment of whether industrial factors preclude the employee's rehabilitation that *Ogilvie* approved as a method for rebutting the Schedule. The *Ogilvie* court did not sanction rebuttal of the statutory Schedule by a competing empirical methodology—no matter how superior the applicant and her expert claim it may be." (*Dahl*, 240 Cal.App.4t at p. 758.) Thus, the analysis must be on how applicant's specific work preclusions preclude him from rehabilitation and employment.

We therefore find that Mr. Broadus's reporting did not constitute substantial evidence, as his analysis included work restrictions that were not based on the medical record. We find that the record should be developed, allowing the medical experts to review Mr. Broadus's report and functional capacity evaluation, and further explain applicant's work preclusions.

The WCAB has a duty to further develop the record when there is a complete absence of (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-395 [62 Cal.Comp.Cases 924]) or even insufficient (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]) evidence on an issue. The WCAB has a constitutional mandate to ensure "substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, we grant reconsideration, rescind the WCJ's decision, and return this matter to the trial level so that this matter can be reanalyzed and decided on a more complete record. The parties and the WCJ may also reanalyze any other outstanding issue. We express no opinion on the ultimate resolution of any issue in this matter.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of November 25, 2025 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of November 25, 2025 is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings and decision consistent with the opinion herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 20, 2026

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

ARMOND MARGOUSIAN
SIMONIAN & SIMONIAN
COLEMAN CHAVEZ & ASSOCIATES

DW/oo

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