**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**BRYCE STROM,** ***Applicant***

**vs.**

**DANNY'S CONSTRUCTION COMPANY, LLC;**
**LIBERTY MUTUAL INSURANCE COMPANY,** ***Defendants***

**Adjudication Number: ADJ16435725**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration of the Finding and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on December 22, 2025, wherein the WCJ found that applicant's April 4, 2022 injury "did not constitute or result from a violent act and was not a catastrophic injury pursuant to Labor Code section 4660.1 and 3208.3[1] which would entitle applicant to increased permanent disability for the psyche aspect or erectile dysfunction, as set forth in the attached Opinion on Decision."

Applicant contends that he is not subject to the limitations in section 4660.1 subdivision (c)(1) regarding his psyche or sexual dysfunction permanent disability claims; that he met his burden of proof under section 4660.1(c)(2)(A), demonstrating that he was a victim of a violent act; that he met his burden of proof under section 4660.1(c)(2)(B) proving that his injury is a catastrophic injury; and that he is thus entitled to an increased impairment rating.

[1] All section references are to the Labor Code, unless otherwise indicated.

The WCJ issued a Report and Recommendation (Report) recommending that the Petition be denied.

Defendant did not file an Answer.

We have considered the allegations of the Petition and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return this matter to the WCJ for further proceedings consistent with this opinion.

**BACKGROUND**

While employed on April 4, 2022 as an ironworker, applicant sustained injury arising out of and in the course of employment to his brain/head, eyes, ears, psyche, reproductive system (erectile dysfunction), left hip, left thigh, and left ankle. In his June 30, 2022 Application for Adjudication of Claim (Application), he alleged that he "fell off moving deck and being suspended swung very hard into metal column."

On April 4, 2022, he presented to St. George Medical Clinic. The Doctor's First Report of Occupational Injury or Illness states that applicant reported that "today while working in a 'protective harness' he dropped and fell from the 4th to the 3rd floor, hitting his L. thigh and lower leg to a construction beam." (Applicant's Exh. 17, at p. 3.) He returned on April 6, 2022, "still experiencing headaches, L hip pain, and L ankle/lower leg pain." (*Id.* p. 1.) In relevant part, he was diagnosed with "persistent symptoms of post-concussive syndrome." (*Ibid.*)

On April 7, 2022, he presented to Concentra and was examined by Sayid Saquib, M.D. The mechanism of injury was described as "The patient fell harnessed 15 feet down from 4th floor to 3rd floor, He swing [*sic*] like a pendulum and hit a metal column." He was diagnosed with a cerebral concussion and contusions on his left ankle and thigh. (Applicant's Exh. 16, at p. 1.)

On April 22, 2022, Dr. Saquib referred him to a neurologist for evaluation and treatment, and for a brain MRI, noting that "The patient is still manifesting cortical function deficit such as forgetfulness, slow speech, struggling to find correct words etc." (Applicant's Exh. 16, at p. 2.)

On May 3, 2022, applicant had a brain MRI, which showed hemorrhagic contusion. (Applicant's Exh. 5, at p. 1; Joint Exh. 11.)

On August 9, 2022, a neurological evaluation was performed by David L. Edelman, M.D. (Applicant's Exh. 14.) By way of history, applicant reported that:

> He was working as an apprentice doing construction when he fell from the fourth floor of a building to the third floor. He hit his head as well as injuring his left ankle and left hip and low back. He is unaware if he sustained a loss consciousness. . . .

> He did try and returned [*sic*] to work but had increased headaches as well as blurred vision and went home after about 2 hours. He was seen again by urgent care and had a CT scan of brain showing evidence of cerebral contusion.

(*Id.* at p. 1.)

Dr. Edelman diagnosed applicant with head trauma with cerebral contusion, post-concussion syndrome including difficult with memory, dizziness and headaches, and injuries to his left hip and ankle. (Applicant's Exh. 14, at p. 4.) Dr. Edelman recommended follow up treatment and additional testing including an EEG, neuropsychological testing and an orthopedic evaluation. (*Ibid.*) Dr. Edelman further reevaluated applicant on September 8, 2022, February 23, and April 20, 2023. (Applicant's Exh. 15; Applicant's Exh. 12; Applicant's Exh. 13.)

On July 27, 2023, Marcel O. Ponton, Ph.D., examined applicant and conducted a complex neuropsychological evaluation. Applicant described the incident as follows:

> On the day of his accident, [applicant] was performing his usual and customary duties. He stated that he was moving a piece of decking. He was working on the fourth floor. He took a step back, and there was debris on the floor. "I did the splits and then I rolled off on the side of the building." He stated that he slipped on "something", he rolled out underneath the safety cable and swung onto a metal column. He stated that he was "dangling" in the air. He fell approximately 10 feet, his harness then locked in place and "I did a pendulum swing back towards the building" and he struck his head on a metal beam. "I remember my hard hat cracked and fell off." He also had bruising on his wrists, and he had a contusion on his left hip. He was in the air for approximately 3 minutes before his coworkers were able to assist him. He shared that they lowered a ladder towards him, and he was able to climb back up. "Thankfully there was a safety rope on the floor underneath." He stated that he was able to take off his safety belt, and his coworkers then helped him walk down to a picnic table. "I was out of it" he described feeling dizzy and disoriented.

(Applicant's Exh. 8, at p. 2.)

Among his reported symptoms were hypervigilance; "Intrusive thoughts of the accident"; and "triggered by seeing people in work sites. 'I get all shaky.' " (*Id.* at p. 5.) After conducting extensive testing, Dr. Ponton opined that:

> Mr. Strom's difficulties with executive functions and attention and concentration would be consistent with the nature and loci of his traumatic brain injury. Mr. Strom sustained a mild complicated or a moderate traumatic brain injury as he sustained a cortical contusion with associated blood products in the right frontal lobe. The MRI indicated that the largest focus along the lateral sulcus and cortex measured

> up to 10 x 5 mm; however, several foci were less than 5 mm. This indicates that Mr. Strom sustained a diffuse injury.
>
> Mr. Strom has been treated for his physical condition, but he has yet to receive any appropriate rehabilitation treatment for his cognitive difficulties resulting from the subject traumatic brain injury.
>
> Mr. Strom has a constellation of symptoms, consistent with post-concussive syndrome and he does have personality change. This issue is critical, as his right frontal contusion may impact him behaviorally more than cognitively over time. This will also impact his mood.

(*Id.* at pp. 36-37.)

Dr. Ponton diagnosed applicant with mild neurocognitive impairment; sleep disorder due to a general medical condition; suicidal ideation, passive; irritability and anger; mood disorder due to known physiological condition with major depressive-like episode; Chronic Pain Syndrome; decreased libido; and male erectile disorder. (*Id.* at p. 37.) Regarding causation, Dr. Ponton concluded that:

> Based on the preponderance of the evidence made available to me, it is within reasonable neuropsychological certainty that the events from work are the substantial and preponderant cause as to all factors combined of Mr. Strom's diagnosis and disability. Causation is entirely industrial.

(*Ibid*.)

Dr. Ponton indicated that applicant had not yet reached permanent and stationary status, as to his neuropsychological impairments, and that he remains totally temporarily disabled and in need of additional treatment. (*Id.* at pp. 37-38.)

On October 17, 2023, applicant was evaluated by Matthew Longacre, M.D., as a qualified medical evaluator (QME) in orthopedics. (Joint Exh. 8.) Applicant told Dr. Longacre that:

> [H]e had been moving a medal [*sic*] deck on the fourth floor with the use of a harness. There had been a bunch a debris on the ground, causing him to slip, doing the splits and rolling off the deck, hitting his head on the metal column, while dangling from his harness. He lost brief consciousness. He was assisted by co-workers. A ladder was brought to him. He was able to unhook himself. He was taken to a table to sit down. He noted pain in his left hip, left thigh and left ankle. He also had a headache and scratches on his left wrists. His injury was reported. His employer as well as the safety officer took his statement and a statement was written by the foreman.

(*Id.* at p. 3.)

Applicant received treatment at Casa Colina for his work-related brain injury from September 2023 through at least June 17, 2025. (Applicant's Exhs. 3, 4, 5.) On November 3, 2023, Elliott Block, D.O., noted that applicant's diagnoses included traumatic brain injury due to work-related fall, with hemorrhagic contusions; post-concussive syndrome; post-traumatic headaches; insomnia; impaired attention and short-term memory; depression with pseudobulbar symptoms, and left hip pain. (Applicant's Exh. 5, at pp. 3-4.) The recommendations in that report included ongoing three-day per week, day treatment at the TLC program, as well as ongoing treatment and/or evaluation for the brain injury, insomnia, headache, depression, erectile disfunction, tinnitus, post-traumatic vision syndrome, and hip and neck pain. (*Id.* at p. 4.) Dr. Block's notes indicated,

> The patient's work-related accident included head trauma. Subsequent MRI showed hemorrhagic contusion. He has clear symptoms of post-concussive syndrome (including poor mood, poor sleep, mood lability, difficulty with concentration and memory, erectile dysfunction, tinnitus, headaches) which are new since his accident. Traumatic brain injury and its sequela should be covered on his worker's comp case.

(*Ibid*.)

On March 15, 2024, Yuriy Verpukhovskiy, M.D., evaluated applicant as a QME in neurology. (Joint Exh. 2.) Applicant reported that:

> On 04/04/2022, working on the fourth floor, the examinee slipped off the side of a deck while being harnessed outside of the building, so he swung half a circle into a metal column on the third floor. He had no recollection of the impact, but he does not think that he lost consciousness. He scratched his wrist, had a contusion and a bruise on the left hip area and also pain in the left ankle. He was able to come down using a ladder. One of the coworkers took him to urgent care. . . . He developed headaches, had visual complaints, and has been [treated] at Casa Colina Center.
>
> The examinee, currently a 34-year-old gentleman, suffered a work-related injury on 04/04/2022 when while working outside, slipped off a deck and swung while connected to the safety harness, hit metal column causing blunt head trauma as well as trauma to the left hip and the left ankle. He still experiences very brief and episodic headaches, pain in the hip and ankle, double vision, tinnitus with hearing impairment as well as anxiety, depression, irritability, problem with concentration and memory and word-finding difficulties.

(*Id.* at pp. 3, 8.)

Dr. Verpukhovskiy diagnosed posttraumatic headaches; depression, anxiety, anger, forgetfulness, word finding difficulties, deferred to a psychologist; neck pain, pain the hip, ankle deferred to an

orthopedist; tinnitus, hearing loss deferred to ENT; and diplopia, deferred to an ophthalmologist. (*Id*. at pp. 4-5, 8.)

In a September 1, 2024 supplemental report, Dr. Verpukhovskiy clarified that applicant sustained a neurological injury, also known as a traumatic brain injury, as a result of his injury, as well as a cerebral contusion and post-concussion syndrome. (Joint Exh. 3, at p. 1.) Dr. Verpukhovskiy indicated that that neurological injury resulted in applicant's headaches, double vision, tinnitus, sleep deprivation, problems with concentration, memory and word-finding, and diminished libido, and resulted or contributed to his various psychiatric symptoms. (*Ibid*.)

In the January 16, 2025 Casa Colina treatment notes, Neha Dhadwal, D.O., wrote that applicant was denied TLC day treatment for traumatic brain injury rehabilitation on November 28, 2024 and a request for treatment was resubmitted. (Applicant's Exh. 4, at p. 3.) Dr. Dhadwal explained the necessity for this treatment, writing:

> He has experienced a significant decline in functioning since TLC day treatment was discontinued. He is having more anger outbursts and having more issues with his memory and concentration. This is having severely detrimental effects on the patient's quality of life. *In addition, his anger outbursts, memory issues and emotional lability have caused catastrophic strain on his relationship with his family, including his fiancé and child. He has been forced to resort to sleeping in his truck due to the emotional and mental toll his lability has caused for him and his family.* This was not an issue for him prior to his TBI and this is a direct result of it. … TLC day treatment is recommended because continuous team approach therapies are beneficial for his TBI related sequelae, including issues with memory, attention, pain control, mobility and balance, mood outbursts, memory problem, visual impairment, and fatigue.

(*Id*. at pp. 3-4, emphasis in original.)

Applicant's IMR final determination letter, dated August 21, 2025, approved his treatment request for a five day per week, 4-6 hours per day, six-week day treatment interdisciplinary program at Casa Colina. (Applicant's Exh. 1, at p. 1.) The IMR determination was that the program is medically necessary based on applicant's traumatic brain injury. (*Id.* at pp. 3-4.)

On January 24, 2025, a psychiatric evaluation of applicant was conducted by Gennady Musher, M.D., Ph.D. (Joint Exh. 6.) The testing revealed that applicant had moderate anxiety, moderate to severe clinical depression, and a marked degree of hopelessness. (*Id.* at pp 6-8.) Applicant's diagnoses included unspecified neurocognitive disorder and major depressive disorder single episode, severe. (*Id.* at p. 10.) Dr. Musher recommended medications for depression/anxiety

and insomnia and ongoing monitoring by a psychiatrist. (*Ibid.*) Dr. Musher provided ongoing treatment. (Joint Exhs. 4, 5.) In a follow-up evaluation conducted by Dr. Musher on June 12, 2025, he noted that applicant has failed to respond to five different antidepressant medication trials, and applicant reported suicidal and depressive thoughts. (Joint Exh. 7; Applicant's Exh. 10, at p. 2.) Dr. Musher diagnosed applicant with "Major Depressive Disorder Recurrent Episode, Severe - depressed, angry, irritable - will benefit from rTMS therapy for Treatment Resistant Depression," and referred applicant for a full course of TMS therapy. (*Ibid.*)

A QME evaluation in psychiatry was subsequently conducted by Kyle Jasper, M.D, QME, on April 22, 2025, with a report dated May 19, 2025. (Joint Exh. 1.) After reviewing extensive medical records and diagnostic studies, conducting testing, and interviewing applicant, Dr. Jasper diagnosed applicant with "Major Depressive Disorder, single episode, current episode moderate, without psychotic features," history of traumatic brain injury, and a provisional diagnosis of unspecified neurocognitive disorder, with a GAF rating of 55, indicating moderate symptoms or moderate difficult with social/occupational functioning. (*Id.* at pp. 61-62.) Regarding causation, Dr. Jasper found that applicant's psychiatric injury is related to his traumatic brain injury, and concluded, "With reasonable medical probability (>51%) the actual events of employment were the predominant cause to have produced a psychiatric injury." (*Id*. at p. 64.) Applicant is not yet permanent and stationary. (*Ibid.*)

On June 6, 2025, applicant was diagnosed by Barton H. Wachs, M.D. with erectile dysfunction. (Applicant's Exh. 10, at pp. 7-9.) Dr. Wachs did not address causation.

The matter proceeded to trial on August 5, 2025 and September 16, 2025. The parties stipulated to injury AOE/COE to applicant's brain/head, eyes, ears, psyche, reproductive system (erectile dysfunction), left hip, left thigh, and left ankle, and that employer has furnished all medical treatment. (8/5/25 Minutes of Hearing, at p. 2.) The stipulations included the statement that, "today's trial is on limited issues, and while Defendant admits injury and treatment for the above listed body parts, including psyche, the dispute is regarding whether there will be PD add-ons." (*Ibid.*) The issues at trial were: 1) Whether Applicant is entitled to an increase in psyche PD impairment rating as a result of what Applicant claims qualifies under Labor Code section 4660.1, as either a catastrophic injury, or a violent act, or as a direct injury that does not need to go through the analysis of these exceptions…; 2) Whether the erectile dysfunction is a direct injury, or subject to an exception, such as catastrophic or violent act. (*Id*. at pp. 2-3.)

Applicant was the only witness. He testified in relevant part as follows:

> On 4/4/2022, applicant's job was as an apprentice iron worker. He was on the 4th floor, removing a piece of decking from the floor, and he slipped on the debris and went under the safety cable, falling by the side of the building, and swung into a metal column. It was like a pendulum swing. He doesn't remember hitting the column. He just remembers standing there with his hard hat off. Workers came over to him after, taking him to the picnic bench where they'd usually meet up in the mornings.
>
> He had a safety hard hat at the time of impact. He saw the hat sometime after, and he saw that it was cracked. He doesn't know what body parts struck at the time. After the impact, they took pictures of his injuries. He believes the body parts were the left ankle, foot, hip, thigh, wrist, and his head. He doesn't remember if he lost consciousness when he hit the column.
> . . .
> At the time of injury, there was a hole in the floor. (Applicant draws a picture to demonstrate what the area looked like when he fell/swung against the metal pole.) He was inside the building, removing flooring, and usually on the outside of the building there are safety cables so you don't fall out or over. His harness was hooked up to the safety cable on one side of the column and he was on the other side of the column, so when he removed the flooring, he slipped under the safety cable and swung around into the column. He was hanging next to the pole but was also able to stand because the safety cables below are about three or four feet up and he was able to stand on it. He was on the 4th floor at the time. The reason for the safety cables are so no one goes off the side of the building, and the harnesses are for any time you're over six feet up or if you're going to open a hole.

(9/16/25 Minutes of Hearing (further) and Summary of Evidence, at pp. 4-6.)

He further testified that "he had fear for his life" when he fell, but he did "expect the harness to catch him." (*Id*. at p. 7.)

The WCJ issued the resulting F&O as outlined above.

## DISCUSSION

### I.

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

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.

(b)

(1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.

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

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 January 27, 2026 and 60 days from the date of transmission is Saturday, March 28, 2026. The next business day that is 60 days from the date of transmission is Monday, March 30, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 30, 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 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 January 27, 2026, and the case was transmitted to the Appeals Board on January 27, 2026. 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

[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.

the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on January 27, 2026.

**II.**

An employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a), 3202.5.)

Section 3208.3(b) provides:

> (1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.
>
> (2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.
>
> (3) For the purposes of this section, "substantial cause" means at least 35 to 40 percent of the causation from all sources combined.

(Lab. Code, § 3208.3(b).)

"Predominant as to all causes" for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd*. (*Garcia*) (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].) This predominant causation threshold applies to psychiatric injuries pled as a compensable consequence of a physical injury. (*Lockheed Martin Corp. v. Workers' Comp. Appeals Bd*. (*McCullough*) (2002) 96 Cal.App.4th 1237, 1249 [67 Cal.Comp.Cases 245].) The Court of Appeal in *McCullough* opined that for a compensable consequence psychiatric injury, "the precipitating physical injury constitutes an 'actual event[] of employment' within the meaning of [section 3208.3(b)(1)]." (*Ibid*.)

Before considering whether the issue of section 4660.1 and how if applies, if at all, *we emphasize that it must first be determined to what extent applicant's injuries to his brain, head and psyche are physical injuries.* The predominant cause standard in section 3208.1 does not apply to physical injuries, and the prohibition in section 4660.1 against compensation for impairment does not apply to the impairment caused by a physical injury. Hence, based on the medical evidence, to the extent that any of applicant's sequalae are directly attributable to an organic injury

to his brain, even those that manifest as "psychiatric," an impairment rating based on the physical injury to his brain is not subject to section 4660.1. Moreover, we note that any impairment caused by a physical injury to the brain can be taken into account when determining whether an injury is catastrophic under section 4660.1. As discussed below, much of the medical evidence seems to indicate that applicant sustained an organic injury to his brain, a physical injury.

Neuropsychological evaluator, Dr. Ponton, evaluated applicant in July 2023, and diagnosed a traumatic brain injury. He opined that applicant "sustained a mild complicated or a moderate traumatic brain injury as he sustained *a cortical contusion with associated blood products in the right frontal lobe*." (Emphasis added.) He noted that applicant had yet to receive "any appropriate rehabilitation treatment for *his cognitive difficulties resulting from the subject traumatic brain injury*." (Emphasis added.) He further stated that applicant had "a constellation of symptoms, *consistent with post-concussive syndrome and he does have personality change. This issue is critical, as his right frontal contusion may impact him behaviorally more than cognitively over time. This will also impact his mood*." (Emphasis added.) (Applicant's Exh. 8, at pp. 36-37.) Thus, Dr. Ponton concluded that applicant's injury was to his brain, which is a physical, and not a psychological injury.

Similarly, on November 3, 2023, Dr. Block at Casa Colina indicated that applicant sustained an injury to his brain: "The patient's work-related accident *included head trauma. Subsequent MRI showed hemorrhagic contusion. He has clear symptoms of post-concussive syndrome (including poor mood, poor sleep, mood lability, difficulty with concentration and memory, erectile dysfunction, tinnitus, headaches)* which are new since his accident." (Emphasis added.) (Applicant's Exh. 5, at p. 4.)

Applicant's IMR final determination letter, dated August 21, 2025, approved his treatment request for a five day per week, 4-6 hours per day, six-week day treatment interdisciplinary program at Casa Colina; the IMR determination was that the program is medically necessary based on applicant's "*traumatic brain injury.*" (Emphasis added.) (Applicant's Exh. 1, at pp. 3-4.)

QME in neurology Dr. Verpukhovskiy opined in his September 1, 2024 report that applicant *sustained a neurological injury, that is, a traumatic brain injury, as a result of his injury, as well as a cerebral contusion and post-concussion syndrome*. (Joint Exh. 3, at p. 1.) Dr. Verpukhovskiy indicated that *the neurological injury resulted in applicant's headaches, double*

*vision, tinnitus, sleep deprivation, problems with concentration, memory and word-finding, and diminished libido, and resulted in or contributed to his various psychiatric symptoms*. (*Ibid.*)

In his May 2025, psychiatric evaluation of applicant, QME Dr. Jasper diagnosed applicant with major depressive disorder, single episode, current episode moderate, without psychotic features, *history of traumatic brain injury, and a provisional diagnosis of unspecified neurocognitive disorder*. (Joint Exh. 1, at pp. 61-62.) Regarding causation, Dr. Jasper wrote: "I find that there is clear psychiatric injury. The applicant's depression and irritab[ility] that appears to be temporally related following a traumatic brain injury is consistent with a diagnosis of major depressive disorder… He does not have any previous psychiatric diagnoses for which his current symptoms would be considered to be an exacerbation of." (*Id*. at p. 64.) Dr. Jasper concluded, "With reasonable medical probability (>51%) the actual events of employment were the predominant cause to have produced a psychiatric injury." (*Ibid*.) However, *Dr. Jasper did not indicate what percentage of applicant's psychological symptoms were actually symptoms of his traumatic brain injury condition, which symptoms were directly caused by the industrial accident and what percentage were the compensable consequence of applicant's traumatic brain injury.*

Thus, as explained subsequently, the record requires further development by way of further medical reporting.

**III.**

Section 4660.1 governs permanent disability for injuries occurring on or after January 1, 2013. (Lab. Code, § 4660.1.) Subdivision (c) of section 4660.1 requires:

> (1) Except as provided in paragraph (2), the impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.
>
> (2) An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:
>
> (A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.
>
> (B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.

(Lab. Code, § 4660.1(c)(1)-(2).)

Section 4660.1(c) thus bars an increase in an injured worker's permanent impairment rating for a psychiatric injury that is a compensable consequence of a physical injury occurring on or after January 1, 2013. However, an injured worker may receive an increased impairment rating for a compensable consequence psychiatric injury if the injury that the psychiatric injury resulted from is due to: (1) being a victim of a violent act or direct exposure to a significant violent act, or (2) a catastrophic injury. (Section 4660.1(c)(2).)

In our en banc opinion in *Wilson v. State of CA Cal Fire*, we defined "compensable consequence" and explained the interplay between that concept and the prohibition against increased ratings for psychiatric injuries in section 4660.1(c):

> An injury must be proximately caused by the employment in order to be compensable. (Lab. Code, § 3600(a)(3); see also *Clark, supra*, 61 Cal.4th at pp. 297-298.) Proximate cause in workers' compensation requires the employment be a contributing cause of the injury. (*Clark, supra*, 61 Cal.4th at pp. 297–298 [outlining this standard and analyzing the difference between causation in tort law and causation in workers' compensation].) Causation of an injury may be either direct or as a compensable consequence of a prior injury. More precisely, an injury may be directly caused by the employment. Alternatively, a subsequent injury is a compensable consequence of the first injury where it "is not a new and independent injury but rather the direct and natural consequence of the" first injury. (*Carter v. County of Los Angeles* (1986) 51 Cal.Comp.Cases 255, 258 (Appeals Board en banc).) The "first injury need not be the exclusive cause of the second but only a contributing factor to it … So long as the original injury operates even in part as a contributing factor it establishes liability." (*State Compensation Ins. Fund v. Industrial Acc. Com.* (*Wallin*) (1959) 176 Cal.App.2d 10, 17 [24 Cal.Comp.Cases 302].) In other words, if the first injury is a contributing cause of the second injury, the second injury is a compensable consequence of the first injury. Whereas the first injury is directly caused by the employment, a compensable consequence injury is indirectly caused by the employment via the first injury.
>
> As discussed above, the proscription against an increased rating for psychiatric injuries in section 4660.1(c) does not apply to psychiatric injuries directly caused by events of employment.

(*Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393, 403-404 (Appeals Bd. en banc).)

Thus, a multi-step analysis is required to determine if any of the exceptions apply to the prohibition on increased impairment ratings, in section 4660.1(c), for sleep dysfunction, sexual dysfunction, and/or psychiatric disorder. The first step in this analysis is determining if the injury was directly caused by the employment or is a compensable consequence of the employment.

Medical evidence is required for this determination. (*Wilson*, *supra*, 84 Cal.Comp.Cases at 414, citing *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 245 (Appeals Board en banc) [Determination of causation of a psychiatric injury requires competent medical evidence. The evaluating physicians must render an opinion as to whether the psychiatric injury was predominantly caused by actual events of employment].)

The causation threshold for a psychiatric injury is predominant as to all causes combined. (*Ibid*; Lab. Code § 3208.3(b)(1).) The prohibition on an increased impairment rating in section 4660.1, subdivision (c), "does not apply to psychiatric injuries directly caused by events of employment." (*Wilson, supra*, at p. 403; *City of Los Angeles v. Workers' Comp. Appeals Bd*. (*Montenegro*) (2016) 81 Cal.Comp.Cases 611 (writ den.); Lab. Code § 4660.1(c)(1).) If the psyche injury or sexual disfunction injury is directly caused by employment, no further steps are required; the increased impairment rating is applicable.

If, on the other hand, a psychiatric injury is found not to be directly caused by the events of employment, then the second step of the analysis requires the fact finder to determine if the injury is a compensable consequence of the first injury. If so, then the third step applies: determining if the compensable psychiatric injury resulted from the injured worker being a victim of a violent act, or if the injury was a catastrophic injury. (Lab. Code, § 4660.1(c)(2)(A)-(B).) If either exception applies, the prohibition on increased ratings is overcome.

We observe that the Appeals Board has defined a violent act within the meaning of section 4660.1(c)(2) as an act characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 405.) The determination of whether a physical injury is the result of a violent act requires an evaluation of the mechanism of injury in light of the event causing the injury. This focus on the *mechanism* of injury comports with the statute's language, which emphasizes the *event causing the injury*, rather than the injury itself: the statute expressly refers to being a victim of or direct exposure to a violent "act." The word "injury" is not in this subsection. The focus in evaluating whether an injury qualifies for the exception in section 4660.1(c)(2)(A) is therefore on the mechanism of injury, not on the injury itself. (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 406 [Emphasis in original].)

In *Larsen v. Securitas Security Services* (2016) 81 Cal.Comp.Cases 770 [2016 Cal. Wrk. Comp. P.D. LEXIS 237], the panel decision cited in *Wilson*, a security guard was struck by a car

from behind while on a walking patrol causing her to fall, hit her head and lose consciousness. The panel defined "violent act" as "*an act that is characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening* and concluded that being hit by a car under these circumstances constitutes a violent act" and applicant was thus entitled to additional permanent disability for her psyche injury as an exception to section 4660.1(c). (*Id.* at p. 775, emphasis added.) Other panel decisions have found that an injury was the result of a violent act under the following circumstances: a landscaper falling from a tree hitting his head multiple times and losing consciousness (*Greenbrae Mgmt. v. Workers' Comp. Appeals Bd.* (*Torres*) (2017) 82 Cal.Comp.Cases 1494 (writ den.)); a truck driver being pinned and crushed in his vehicle for approximately 35-40 minutes with a fractured neck (*Madson v. Michael J. Cavaletto Ranches* (2017) [2017 Cal. Wrk. Comp. P.D. LEXIS 95]); a candle maker's partial finger amputation in a machine (*Lopez v. General Wax Co., Inc.* [2017 Cal. Wrk. Comp. P.D. LEXIS 291]); a car accident after the brakes failed when the applicant attempted to avoid hitting a pedestrian resulting in collision with a cement pillar (*Allen v. Carmax* [2017 Cal. Wrk. Comp. P.D. LEXIS 303]); and a video technician being crushed by a 600 to 800-pound LED screen that fell on him from a rolling cage cart after a concert. (*Baigmoradi v. NEP Group, Inc.* [2025 Cal. Wrk. Comp. P.D. LEXIS 189].)

Here, the WCJ concluded that the violent act exception to the rule in section 4660.1, subdivision (c) does not apply to applicant's claims. (F&O, at p. 1.) The WCJ explained "we must look at what the WCAB has found in multiple cases, and that is that the applicant's own slipping or falling does not create a violent act. It must be a result of something outside the applicant at the mechanism of injury itself [*sic*]." (Opinion, at p. 3; Report at p. 2.)

First, we observe that nothing in our decisions created a distinction between an applicant's own acts and "something outside the applicant at the mechanism of injury itself [*sic*]." The WCJ's reasoning was flawed: none of the panel decision relied upon by the WCJ includes the requirement that a "violent act" must involve "something outside the applicant" or other than "applicant's own body." (Opinion, at pp. 3-4; See *Torres v. Greenbrae, supra*; *Guerrero v. Ramcast Steel Fabrication* (2017 Cal. Wrk. Comp. P.D. LEXIS 285); *Lopez v. General Wax Co., Inc., supra*; *Zarifi v. Group 1 Auto* (2018 Cal. Wrk. Comp. P.D. LEXIS 300); *Allen v. Carmax* (2017 Cal. Wrk. Comp. P.D. LEXIS 303).) Rather, each of these decisions focused on the mechanism of injury and based its conclusion on whether there was a strong, extreme or intense physical force that led to

the injury. The WCJ's inference here, that the injury could not have been caused by a violent act since the injury was not caused "something outside [applicant's] own body" is simply not supported by our prior decisions. Applicant suffered a traumatic brain injury with a brain bleed, after his head hit a metal pole. Using the WCJ's own analysis, applicant's injury was caused by "something outside the applicant at the mechanism of injury itself [*sic*]." That is, even if the WCJ was correct that a violent act must include a force outside applicant's own body, that rule would not apply here, since applicant's injuries here were indeed caused by forces outside his own body, including his safety harness, which was attached to a safety cable, that caught him when he fell from the fourth to the third floor, and then swung him into "a metal column" "like a pendulum swing." (9/16/25 Minutes of Hearing, at pp. 4-6; Applicant's Exh. 8, at p. 2; Applicant's Exh. 17, at p. 3.)

The WCJ analogized applicant's fall to slipping on the sidewalk, falling down, and hitting his head, but the mechanism of injury here was quite different and more severe. (Opinion, at p. 4.) Notably, applicant testified that they wore safety harnesses when they were more than six feet off the ground or where there was an open hole. The circumstances here involved a fall from a much higher distance than someone who tripped and fell on a sidewalk, and here, applicant struck the pole with an increased velocity as a result of the safety harness catching him and swinging him around and hitting his body and head on a metal pole. (9/16/25 MOH, applicant's testimony, at pp. 4-6.) None of these factors would be present in a simple trip and fall. Moreover, applicant's head hit the pole with enough force to crack his hard hat and cause a traumatic brain injury. (9/16/25 MOH, applicant's testimony, at p. 5; Applicant's Exh. 8, at p. 2; Applicant's Exh. 1, at pp. 3-4; Joint Exh. 1, at p. 64; Applicant's Exh. 5, at pp. 3-4.) This mechanism of injury appears to fall well within the definition of violent act as "an act that is characterized by … strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening." (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 405; *Larsen*, *supra,* at pp. 774-775.) Thus, based on the evidence currently available, it appears that applicant met his burden to show that he was a victim of a violent act, and that he was thus entitled to an increased impairment rating for his psyche injury pursuant to section 4660.1(c)(2)(A).

As to applicant's contention that the evidence establishes that his psychiatric injury resulted from a catastrophic injury, we observe that where the physical injury is not loss of a limb, paralysis,

severe burn, or severe head injury, the WCJ must evaluate the medical evidence against applicable factors to determine whether the nature of the physical injury is catastrophic, including:

1. The intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury.

2. The ultimate outcome when the employee's physical injury is permanent and stationary.

3. The severity of the physical injury and its impact on the employee's ability to perform activities of daily living (ADLs).

4. Whether the physical injury is closely analogous to one of the injuries specified in the statute: loss of a limb, paralysis, severe burn, or severe head injury.

5. If the physical injury is an incurable and progressive disease.

(*Wilson*, *supra*, 84 Cal.Comp.Cases at pp. 414-415.)

The determination of whether an injury is catastrophic under section 4660.1(c)(2)(B) is a fact-driven inquiry, that requires the WCJ to "consider… all the medical evidence, and other documentary and testimonial evidence of record." (*Id.* at p. 414.) The inquiry is limited to looking solely at the *physical* injury, without consideration for the psychiatric injury in evaluating the nature of the injury. (*Ibid*.) As explained above, to the extent that applicant's sequalae are a result of the physical injury to his brain, meaning that factor number 4 may apply, they also may be included in the determination of whether applicant's injury was catastrophic, including their effect on applicant's ADLs under factor 3.

Here, the WCJ concluded that applicant's physical injury was not catastrophic on the grounds that it was not a "severe, mangling injury" like in the *Guerro* case; that there was "minimal PD and restrictions" recommended in the reporting of Drs. Verpukhovskiy, Longacre and Jasper; that applicant returned to work after the injury and only reported the headaches, blurred vision and psyche issues later; that he was not in a "catastrophic state" on the day of the injury or the first few days afterwards; and that this was not a severe brain injury, spinal cord injury with paralysis, limb amputation or severe burn as described in section 4660.1(c)(2)(B). (Report, at pp. 5-9; Opinion at pp. 4-8.)

We have several concerns regarding the grounds cited by the WCJ in reaching the conclusion that the injury here was not catastrophic. First, the WCJ discussed the medical reporting of Drs. Verpukhovskiy, Longacre and Jasper, and appeared to disregard the other medical evidence, including the MRI findings and other medical reports. (Opinion, at pp. 5-6.)

Our next concern is that the WCJ emphasized that applicant's condition in the days after his injury did not appear to be serious or catastrophic, noting that he was sent back to work on the day of injury, and that he "did not mention his head" on the day of injury, and was not in a "catastrophic state" at the time of injury or immediately thereafter. (Opinion, at p. 6.) These observations are relevant, but the inquiry cannot stop there. The medical evidence as a whole must be considered, and the determination of whether the injury was catastrophic must include an evaluation, by the WCJ, of the first *Wilson* factor: the "intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury." (*Wilson*, *supra*, at pp. 414-415.) Here, the evidence indicates that it took a few days for applicant's head injury to reveal itself, and a few weeks or longer, for applicant to receive the diagnoses of post-concussion syndrome, traumatic brain injury, and the MRI finding of hemorrhagic contusion. Moreover, his treatment for his head and psyche injuries is ongoing. Even the IMR physician approved applicant's treatment at Casa Colina for "the effects of his traumatic brain injury."

Lastly, the WCJ conflated violent act with catastrophic injury, discussing the mechanism of injury, rather than the nature of the injury itself. (Report at p. 8 ["Perhaps if the applicant…had lost his footing and the harness broke, cause him to fall into a surface, that could be considered a catastrophic injury…"].) Although mechanism of injury is the primary concern in determining the violent act exception, it has little relevance in determining if applicant's injuries were catastrophic, which must focus, instead on the medical evidence, and the applicability of the five *Wilson* factors, as indicated above. (*Wilson*, *supra*, 84 Cal.Comp.Cases at pp. 414-415.)

We reach no conclusion about whether, based on the evidence currently available, applicant met his burden to prove that he sustained a catastrophic injury and was thus entitled to an increased impairment rating for his psyche injury pursuant to section 4660.1(c)(2)(B). Given our concerns discussed above, however, should the further developed record establish that applicant's psychiatric injury was more than fifty percent a compensable consequence of his physical injury, then the record should be additionally developed to include witness testimony, and possibly further medical reporting, as to the *Wilson* factors and the WCJ's determination thereon.

**IV.**

Unfortunately, the record does not contain clear medical evidence from the QME in psyche regarding which symptoms were caused by applicant's physical injury to his brain, what portion

of applicant's psychiatric injuries were directly caused by the April 4, 2022 incident, and what percentage of his psyche injury was a compensable consequences of his physical injury, as required. (*Wilson, supra,* 84 Cal.Comp.Cases at 414.) The record also contains inadequate medical evidence explaining specifically how the accident either directly or indirectly resulted in applicant's psyche injury. In addition, the WCJ made no findings on these issues, as required. Consequently, we are unable to determine the preliminary issue of whether section 4660.1 applies, and thus cannot reach the issue of whether applicant may be entitled to an increased impairment rating under section 4660.1 because his injury resulted from him being a victim of a violent act or was a catastrophic injury. In order to determine what portion of applicant's injury was actually a physical injury to his brain, what percentage of applicant's psychiatric injury was directly caused by the 2022 accident and what percentage was a compensable consequence of the injury sustained that day, we conclude that the record should be developed.

Regarding applicant's erectile disfunction claim, although applicant was diagnosed with this condition by both Dr. Ponton and Dr. Wachs, and Dr. Ponton found the injury to be industrial and due to his traumatic brain injury, neither doctor addressed the question of what percentage of applicant's injury was directly caused by the April 4, 2022 accident and what percentage was a compensable consequence. (Applicant's Exh. 8, at p. 37; Applicant's Exh. 10, at pp. 7-9.) Applicant did not testify about his erectile disfunction, and there is no clear evidence in the medical record to determine whether the injury was caused by the physical injury to his brain, so additional medical evidence may be required.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (*McClune v. Workers' Comp. Appeals Bd*. (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261]; see also *Tyler v. Workers' Comp. Appeals Bd*. (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; §§ 5701, 5906.) The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd*. (2000) 79 Cal.App.4th 396, 403-404 [65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd*.

(*McKernan*) (1999) 74 Cal.App.4th 928, 937-938 [64 Cal.Comp.Cases 986].) The preferred procedure to develop a deficient record is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Per *McDuffie*, if the existing physicians cannot cure the need for development of the record, the selection of an agreed medical evaluator (AME) should be considered by the parties. If the parties cannot agree to an AME, then the WCJ can appoint a physician to evaluate applicant pursuant to section 5701.

As explained above, we are unable to determine whether section 4660.1 applies. As such, we cannot rule definitively on the subsequent issues of the applicability of the violent act and catastrophic injury exceptions to section 4660.1.

Accordingly, we grant reconsideration, rescind the WCJ's F&O, and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Finding and Order issued on December 22, 2025 is **GRANTED.**

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Finding and Order issued on December 22, 2025, is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**I DISSENT (*See Dissenting Opinion*),**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MARCH 30, 2026**

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

**BRYCE STROM**
**LAW OFFICES OF JERRY G. PETRYHA**
**HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP**

**MB/*ara***

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

## DISSENTING OPINION OF COMMISSIONER RAZO

I respectfully dissent. I disagree with my colleagues that the record requires development with respect to applicant's psychiatric injury. For the reasons stated in the WCJ's Report, which I adopt and incorporate, and for the reasons below, I would deny the petition for reconsideration.

This case asks us to answer the narrow question of whether the exceptions to Labor Code section 4660.1(c) apply. The general rule is that an increase in an injured worker's permanent impairment rating for a psychiatric injury, sexual disfunction or sleep disfunction, is prohibited, when the injury is a compensable consequence of a physical injury that occurred on or after January 1, 2013. (Lab. Code, § 4660.1(c)(1).) The statute contains two exceptions: an increased impairment rating for a compensable consequence psychiatric injury can be applied to the injured worker if the underlying injury is due to: (1) being a victim of a violent act or direct exposure to a significant violent act, or (2) a catastrophic injury. (Lab. Code, § 4660.1(c)(2).) The burden is on applicant to prove that either exception applies.

Here, applicant failed to meet his burden. Both exceptions are fact-based. The violent act exception requires applicant to make a showing regarding the mechanism of injury, proving that the injury was sustained as a result of an act characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. (*Wilson*, *supra*, 84 Cal.Comp.Cases at p. 405.) The WCJ considered the evidence in light of our en banc Opinion in *Wilson* and explained in the Opinion on Decision that determining whether the injury applicant sustained rose to the level of a violent act "is a very fine line…." (Opinion, at p. 4.) Ultimately, the WCJ determined that there was no violent act here.

The evidence cited by the WCJ in reaching this decision included the fact that "the pole was a stationary object, and it was applicant's losing his footing and falling against the pole and hitting his head that caused the injury"; that there was no evidence that the floor broke or that applicant fell through it; that the injury was caused by "applicant's own bodily movements"; and that applicant "fell or slipped from where he was harnessed, he admittedly swung around and hit his head on a stationary pole. There was nothing else in between, nor any outside forces caused injury except his own body swinging around." (Opinion, at pp. 3-4.) After considering the evidence cited by the WCJ, I find no basis upon which to disturb the WCJ's finding that the mechanism of injury here did not rise to the level of a violent act.

Similarly, applicant failed to prove that his psyche injury resulted from a catastrophic injury. The statute defines catastrophic injury as "including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury." (Lab. Code, § 4660.1(c)(2)(B).) Here, none of the listed injuries was applicable. In this situation, the *Wilson* en banc opinion provides guidance in the form of a list of five factors that must be considered by the WCJ in determining if an injury is equivalent to the listed injuries and can thus be categorized as a catastrophic injury. These factors include: 1. The intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury; 2. The ultimate outcome when the employee's physical injury is permanent and stationary; 3. The severity of the physical injury and its impact on the employee's ability to perform activities of daily living; 4. Whether the physical injury is closely analogous to one of the injuries specified in the statute, and 5. If the physical injury is an incurable and progressive disease. (*Wilson*, *supra*, 84 Cal.Comp.Cases at pp. 414-415.)

Here, the WCJ based her finding on an analysis of the evidence in light of the applicable *Wilson* factors, as well as comparing the facts here to those in a number of other cases addressing the definition of catastrophic injury. (Opinion, at pp. 4-7.) The WCJ explained in the Report:

> The Wilson case dealt with a firefighter and an extreme injury and subsequent hospitalization, coma, renal failure, etc., that almost cost him his life. The Applicant here does not fit any of the *Wilson* factors. Otherwise, anyone who hits their head and has some residual PD or need for lifetime medical care (which is what workers' compensation is for), would also qualify for a psyche/ED PD add-on. This would lead to absurd results, certainly not what the legislature intended when enacting this Labor Code Section and setting forth its strict exceptions. The exceptions do not apply here.

(*Id*. at p. 7.)

The evidence cited by the WCJ in the Opinion on Decision, to support the finding that applicant's injury was not catastrophic, included evidence that applicant "had no amputations or serious surgery needs and he has received what I would consider conservative to an average amount of treatment…" and that applicant's injury was not a " 'severe, mangling injury' that resulted in a partial amputation" as described in *Guerrero.* (Opinion at pp. 4-5, citing *Guerrero v. Ramcast* [2017 Cal. Wrk. Comp. P.D. LEXIS 285]. The WCJ's also cited the medical evidence, as follows:

> I reviewed the medical reports submitted. I noted that Dr. Verpukhovskiy's 3/15/23 MMI neuro report indicated a 1% WPI for headaches and provided conservative future medical care. He also found other conditions including the sleep, double vision, psyche, etc., which no one is denying applicant has residual medical conditions because of this injury, but I also noted that there was an MMI report for the left knee from Dr. Longacre (ortho) dated 10/17 /23 (2% WPI for left foot) and another MMI report on 6/25/24 (4% WPI for left hip). His future medical care was conservative, not requiring any surgery or extensive pain management. Dr. Jasper in his 5/19/25 report indicated applicant should continue on medication and have work restrictions of reduced work hours with ongoing outpatient evaluations.
>
> Also, applicant actually returned to work after the injury of 4/4/22, with restrictions, but then was taken off again in May 2022, per Dr. Longacre's 6/25/24 report. His current complaints at the time were left hip and heel/foot, and the headaches, blurred vision (occasionally), and psyche. He was taking Ibuprofen plus Wellbutrin & Nuedexta. These are not extraordinary treatments or life-altering future medical care considerations that might rise to a "catastrophic result."
>
> I looked at the records reviewed by the doctors too. For example, Dr. Longacre's review of records (starting at page 6, in the 6/25/24 report) shows me that even when applicant went on 4/4/22 to the occupational medicine location at St. George's, he said he tripped and fell from the 4th to the 3rd floor, hitting his left thigh and lower leg to a beam. He did not mention his head at all at the time, and he was not in a severe condition then. In fact, he was released that very day to return to work to modified duty of sit-down work only. Then 2 days later, on 4/6/22, there was still no psyche complaint but he did now mention the head and his diagnosis included post-concussive syndrome. The point is even at the time of injury, or immediately after, he was not in a "catastrophic" state. His headaches were "worse with activity" which meant he was able to do activities, versus being in a coma or having an arm amputated or multiple fractures. This just did not happen here, despite the lingering effects of the injury. The fact applicant has residuals from an injury does not mean his injury can now be considered catastrophic.

(Opinion, at pp. 5-6)

I observe that the WCJ adequately assessed the applicability of the catastrophic injury exception, and I agree with the WCJ's determination that applicant failed to meet his burden to prove that his injuries were catastrophic. Thus, the statutory exception that permits an increased impairment rating for a compensable consequence psychiatric injury, when that injury is catastrophic, does not apply. (Lab. Code, § 4660.1(c)(2)(B).)

For the foregoing reasons, I discern no good cause to develop the record or further delay final adjudication of this matter. The parties have jointly submitted the relevant issues for decision and the WCJ has appropriately decided those issues. Accordingly, I would deny applicant's petition for the reasons set forth in the WCJ's Report.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MARCH 30, 2026**

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

**BRYCE STROM**
**LAW OFFICES OF JERRY G. PETRYHA**
**HANNA, BROPHY, MACLEAN, MCALEER & JENSEN, LLP**

**MB/*ara***

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

**Report And Recommendation**
**On Petition For Reconsideration**

| | | |
|---|---|---|
| 1. | Findings And Orders | 12/22/2025 |
| 2. | Identity of Petitioner | Applicant's Attorney |
| 3. | Verification | Yes |
| 4. | Timeliness | Petition is timely |
| 5. | Petition for Reconsideration Filed | 1/13/2025 |

## I.

## INTRODUCTION/RELEVANT FACTS

The case involves a specific injury on April 4, 2022, when Applicant lost his footing while wearing a harness and hard hat when he was working at a building site, but he did not fall and hit the ground, instead swinging around in the harness and hitting a stationary pole. Injury was admitted to the brain/head, eyes, ears, psyche, reproductive system (erectile dysfunction, hereinafter referred to as "ED"), left hip, left thigh, and left ankle. Defendant has provided reasonable and necessary treatment through the present. The issue here is whether Applicant would get the psychiatric and ED permanent disability (hereinafter "PD") add-ons and/or whether they are a separate/direct injury resulting from physical injury. Applicant argues that the exception under LC §4660.1(c) applies, in conjunction with the violent act exception under LC§ 3208.3(b)(2). The 'catastrophic injury' argument was raised in the Petition for Reconsideration, although I did discuss that as well in the Opinion on Decision dated 12/22/2025.

Defendant is not denying the psychiatric body part as a compensable consequence, but denies that any PD from either psyche or ED should be added/included, because this was not an exception such as a violent act or an injury separate and distinct from the orthopedic injury, which would warrant its own award of PD (for a psyche or ED "direct injury"). This WCJ agreed with the defendant's analysis and thus found there would be no psyche or ED add-ons for PD; hence the present Reconsideration.

The trial proceeded forward on 8/5/2025 and was completed on 9/16/25, with time given to the parties to file trial briefs, with a submission date of October 3, 2025. A Findings and Order (and Opinion on Decision) issued by the undersigned WCJ on December 22, 2025. Applicant's attorney filed a timely, verified Petition for Reconsideration on 1/13/2026, challenging this judge's conclusion that the injury here was not a violent act nor a catastrophic injury. Defendant has not filed an Answer as of 1/27/2026.

Based upon the below discussion and the submitted trial record, it is the undersigned WCJ's recommendation that the Petition for Reconsideration be denied.

## II

## DISCUSSION

There are many cases that discuss the violent act exception and also what constitutes catastrophic injuries. I will discuss various relevant cases herein, in the context of our pending case of the applicant being harnessed to a pole on an elevated surface, wearing a hard hat, losing footing and swinging around and hitting the pole, causing injuries.

In **Larsen v. Securitas** (2016 WCAB panel decision; 81 CCC 770), Applicant was hit from behind by a car. The result was loss of consciousness at the time and then resulting psyche/neuro issues. The question in that case was whether the act of the car hitting and the resultant injury could be considered a violent act. The WCAB found that this did constitute a violent act for the exception under LC §4660.1 (c)(2) to apply, since it involved a strong physical force hit the Applicant, and was defined as "with extreme/intense force". Applicant here had no knowledge of the 'hit' until it happened, and the hit itself was himself hitting the pole, not the pole hitting him. Mr. Strom testified he did not know what happened so he had no time to fear an injury or death, because he hit his head on the pole and then woke up, and that was it. It is noted however that the WCAB does not define a violent act to mean that Applicant needs to know or not know about the impending impact for the exception to apply. So whether he saw it coming or not does not matter.

So since Applicant's knowledge of the impending injury is not a prerequisite for the exception to apply, we must look at what the WCAB has found in prior cases, and that is that the Applicant's own slipping or falling does not create a violent act. It must be a result of something outside the Applicant as the mechanism of injury itself. Here, the pole was a stationary object, and it was the Applicant losing his footing and falling against the pole and hitting his head that caused the injury.

In the case of **Torres v. Greenbrae** (2017 Cal.Wrk.Comp. P.O. LEXIS 230), a tree trimmer was suspended from the harness just like the Applicant in this case. But, in that case, the branch broke which caused Applicant to fall and then hit the tree on his way down, more than once. There was an active breaking of something outside of Applicant's control or body which caused the fall. Here, there was no evidence the floor broke and Applicant slipped, and had the floor broken, he would have gone through the floor, not swing around and hit his head. What actually happened here was Applicant slipped or lost his footing and swung around the pole, hitting his head. If every case of an Applicant slipping and falling and hitting an object was considered a violent act, then the exception might as well be removed completely. This is a slippery slope that may result in unintended consequences, namely every case now "back dooring" the psyche add-on since no human being exists in a vacuum. There is always going to a surface or stationary object to stop the person from falling into the center of the earth.

The intent of enacting LC §4660.1 and its exceptions was to curtail the abuse of "add-ons" and compensable consequences while simultaneously acknowledging events such as bank robberies where someone is pistol-whipped, and so it involved a physical injury but also with violence involved, hence a violent act. This was later expanded of course, per the subsequent case law since the 1990s.

I looked at the Guerrero v. Ramcast case (2017 Cal.Wrk.Comp. P.O. LEXIS 285), where an Applicant lost his balance (like our Applicant here). But, in that case, something significant happened after that... In that case, his foot hit the controls, then the machine (punch press) caught his hand and cut off his fingers. This was found to be a violent act. In the **Guerrero** matter, his foot hit the control on a machine which then caused the machine to turn on and cause severe injury/amputation. This was something outside his own body, not a stationary object (a pole) that Applicant's own body swung into and stopped. Also, I would find the foot hitting the controls causing the finger amputation to be very sudden and extraordinary, something one would not anticipate from just falling.

Then I turned to the **Lopez v. General Wax** case (2017 Cal.Wrk.Comp.P.D.LEXIS 291). In that case too, Applicant's finger was amputated by a running machine. This case also was considered a violent act, as it appears the WCAB is interpreting violent act to be something more than just an Applicant falling to the ground. Something more has to happen. Otherwise, every single case involving a falling Applicant will be now called a violent act, and that is a slippery slope that serves only to eviscerate that intent of the legislature in enacting the Code in the first place.

In the case of **Zarifi v. Group 1 Automotive** (2018 Cal. Wrk.Comp.P.D.LEXIS 300), Applicant walked into a glass wall & was injured, and the WCAB found this was not a violent act. The glass wall was a stationary object which the Applicant walked into himself. So there is a clear distinction being made by the WCAB between Applicant's own bodily movements causing injury versus outside forces such as machinery which happened to be running while Applicant fell or slipped, causing significantly more harm than the fall itself would or could cause; whereas here, there was nothing else beside the Applicant & a pole.

In the **Allen v. Carmax** case (2017 Cal.Wrk. Comp.P.D. LEXIS 303), the Applicant's car brakes failed, causing him to crash and cause injury. The violent act exception applied in that case, where this was not an ordinary accident, but caused by a brake failure. The car was the mechanism of injury, not Applicant's own body. In Allen, the WCAB reasoned that the psychiatric impairment was directly arising from the accident, not the physical injuries. In the case here, Mr. Strom testified he was not afraid nor did he know what happened until he came to, after he hit his head, so it would not be a separate psychiatric injury itself.

This is not to say it was Applicant's own negligence or anything of that sort. The point is when the Applicant fell or slipped from where he was harnessed, he swung around and hit his head on a stationary pole. There was nothing else in between, nor any outside force causing injury. It is a very fine line and I do not find this to be a violent act.

Similarly, if Applicant slipped on the sidewalk and fell and hit his head, that would not be a violent act. It was his body's own movements, and there is a clear distinction the case law between someone's body movements versus some outside forces or extreme circumstance that could rise to the level of a violent act. And as stated above, something has to stop the falling so the person does not continue to fall through the earth. Is every slip/trip and fall going to be categorized as a violent act?

Applicant argues application of **Wilson v. CA State Fire** case (84 CCC 393; 2019 Cal. Wrk. Comp. LEXIS 29). Therein, the WCAB indicated the trial judge should review the intensity of treatment, severity of injury, and whether the physical injury could be analogized to the violent act exception (the result is so bad that it could be considered a violent act even after the fact). Applicant argues this was a very forceful impact and therefore a violent act and a catastrophic injury. Applicant did have a head injury here, and he did require medical treatment and had disability after the fact. Psychiatric issues also arose at some point, but does this rise to the level of a violent act where the psyche is not discussed in the very beginning? For example, if someone is beat up, it is obviously a physical injury and a separate psychiatric injury. I do not agree that this case rises to a violent act, even if Applicant has had 3 years of treatment since injury.

Even if the Court was to go down the slippery slope of the post-injury treatment, it would not seem this case's facts would not justify application of the violent act exception. Applicant had no amputations or serious surgery needs, and he has received what I would consider conservative to an average amount of treatment based on the mechanism of injury and conditions that he has right now. Even if the WCAB was to consider post-injury treatment as part of what constitutes a violent act, I do not believe this case qualifying as such.

Also, the Wilson court was about catastrophic injuries and LC §4660.1 (c)(2)(B), not violent acts. And this case would not constitute a catastrophic injury anyway It should not be confused with the violent act and those lines should not be blurred. That is why there are two different exceptions - one is violent act, and the second is catastrophic injury. It appears Applicant is arguing that his ongoing treatment until now and potential brain injury means this is a catastrophic injury. Again, this is a slippery slope, to define 'catastrophic' as what I consider, after 25 years, an average workers' compensation case that includes a head injury and psyche/ED compensable consequences.

But I will discuss the "catastrophic" issue further here, since Applicant is arguing that as well. The Wilson case talked about multiple factors like the severe outcome of a physical injury for the 'catastrophic' exception to apply. Applicant in that case was hospitalized for 2 weeks, in a coma, with renal and respiratory failure. His life was in danger and he was placed on a respirator. Wilson honed in on the mechanism of injury rather than the injury itself. The Court in that case defined the violent act to mean something that is a strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. The Court also differentiated between the violent act and the catastrophic injury, which concentrated more on the nature of injury, not the mechanism of injury itself.

In **Guerrero**, Applicant had a "severe, mangling injury" that resulted in a partial amputation, so that was considered catastrophic. Catastrophic could include a violent act but also can consider the severity of the consequences of the physical injury. The Applicant's injury and resultant treatment in Mr. Strom's case did not rise to that level to be considered a violent act or to be a catastrophic injury.

In this case, Dr. Verpukhovskiy provided a 3/15/23 MMI report in neurology with a 1% WPI for headaches and conservative future medical care. He found other conditions including sleep, double vision, psyche, etc., which no one denies he has, but I also noted that there was an

MMI report for the left knee from Dr. Longacre (ortho) dated 10/17/23 giving 2% WPI for the left foot and another MMI report dated 6/25/24 giving 4% WPI for left hip. Future medical care was conservative, not requiring any surgery or extensive pain management. Dr. Jasper's 5/19/25 report indicated Applicant should continue medications and provided work restrictions of reduced work hours with ongoing outpatient evaluations. So this is not a catastrophic condition with minimal PD and restrictions. If this was to be considered catastrophic, then every case will be fitting the exception as well.

Further, Applicant returned to work immediately after the 4/4/22 injury, with restrictions, but then was taken off in May, per Dr. Longacre's 6/25/24 report. Catastrophic injury would not have had applicant be able to work at all. I also noted that his current complaints at the injury time were left hip and heel/foot, and then came the headaches, blurred vision (occasionally), and psyche. He was taking Ibuprofen plus Wellbutrin & Nuedexta. These are not extraordinary treatments or life-altering future medical care considerations that might rise to a "catastrophic result". Also, these are not things that he had immediately- they came later on. If the psyche/ED claims were to be considered violent act or catastrophic direct injuries and not a result of a physical injury, then they should have been immediately mentioned as well as the physical body parts. But they weren't- they arose later one, and thus are what compensable consequences are, which is what the whole purpose of the PD limitations of LC 4660 were intended to cover.

I also reviewed the records reviews of the doctors. For example, in Dr. Longacre's review of records (starting at page 6, in his 6/25/24 report), even when Applicant went on the date of injury (4/4/22) to the occupational medicine location (St. George's), he said he tripped and fell from the 4th to the 3rd floor, hitting his left thigh and lower leg on a beam. He did not mention his head at all at the time, and he was not in a severe/dire/unconscious condition. He was not kept at or sent to the hospital. In fact, he was released that same day to return to work to modified duty at a sit-down job. Then 2 days later, on 4/6/22, there was no psyche/ED complaint but he mentioned now how his head hurt & got a diagnosis including post-concussive syndrome.

The point is even at the same day or few days after the injury, he was not in a "catastrophic" state. His headaches were "worse with activity" which meant he was able to do some activity versus being in a coma or having fingers amputated or having multiple fractures. This just did not happen here, despite the lingering effects of the injury. The fact Applicant has compensable consequences from an injury does not mean his injury should now, 3 or 4 years later, be considered catastrophic. If so, then every Applicant with any PD or WPI will delay the case for years and then claim the injury is catastrophic because of the length and extent of treatment involved. The PD schedule is intended to account for permanent disability and the intent of LC §4660.1 is quite clear, and this case's facts just do not rise to the level of a violent act or a catastrophic injury or what the true intent of those exceptions was meant for, and I did not find this to be a 'direct injury' to the ED or psyche resulting from the same physical injury.

Also, this was not a severe brain injury, spinal cord injury that resulted any paralysis, limb amputation, or severe burn where one could conclude it was a catastrophic injury per LC §4660.1 (c)(2)(B). This was not raised as a separate_issue at trial but has been discussed alongside the violent act exception.

Under Wilson, the court outlined some factors' to consider in discussing catastrophic injuries: the intensity/seriousness of treatment received from the injury (here, it was fairly conservative / average); the ultimate outcome when applicant is MMI (he is not MMI by al the doctors yet but he did get a few MMI reports (discussed above), all of which were minimal impairments); the severity of the physical injury and its impact on the ability to perform ADLs (there is no showing applicant cannot function in his ADLs and he was able to ambulate and testify at trial without issue, and also was released to modified duties the day of injury and later found MMI with minimal WPI's); whether the physical injury is closely analogous to one of the injuries specified in the statute: loss of limb, paralysis, severe burn, or severe head injury (he does not qualify for any of these and even his head injury is not severe); and if the physical injury is an incurable/progressive disease (that does not exist here). The Wilson case dealt with a firefighter and an extreme injury and subsequent hospitalization, coma, renal failure, etc., that almost cost him his life. The Applicant here does not fit any of the Wilson factors. Otherwise, anyone who hits their head and has some residual PD or need for lifetime medical care (which is what workers' compensation is for), would also qualify for a psyche/ED PD add-on. This would lead to absurd results, certainly not what the legislature intended when enacting this Labor Code Section and setting forth its strict exceptions. The exceptions do not apply here.

I also reviewed some "catastrophic injury" cases per LC §4660.1(c)(2)(B) that have issued by the WCAB, some before and some after the Wilson case and its factors. In **Madson v. Cavaletto Ranches** (2017 Cal. Wrk. Comp. P.D. LEXIS 95), it was found that the psychiatric injury was due to a serious truck accident (overturned and pinned him down) because it was a violent act, not a compensable consequence of the orthopedic injury. It was found not to be an overlay there. In **Bolivar v. Heredia/UEBTF** (2022), the panel found applicant's finger was partially amputated which was analogous to loss of a limb and was found to be a violent act and a catastrophic injury. Also, in **Baigmoradi** (2025), the panel found applicant's injury was due to a violent act after being crushed by a 600-800 pound LED screen. Our case here does not fit into these types of intense or extreme injuries.

In **Sosa v. WCAB** (888 CCC 127; 2022 Cal. Wrk. Comp. LEXIS 76; *writ denied*), applicant suffered a physical injury when trying to stop an ice machine from falling, and that was not considered a violent act, and thus applicant was not provided separate psyche injury/PD. In **McCain v. Wallis Construction** (2022 panel decision), it was found that the applicant slipping and falling was not a violent act, even where there were psychiatric consequences of the physical injuries. The psyche injury was not compensable slipped and fell and was struck in the elbow by a weedwhacker. I find that our case at hand is very similar to this injury, and even with the McCain injury, there was a weedwhacker. Our case does not have anything extra involved except the pole that he was harnessed to.

Also, in **Smith v. Calistoga Elementary School** (2023 Cal. Wrk. Comp. P.D. LEXIS 39), the panel found that there was no violent act and no psyche add-on when the applicant was unexpectedly/accidentally knocked down by a student and fractured her wrist. McCain involved an 'outside force' (more than what the present case has) and even there, no violent act was found.

Perhaps if applicant in the present case had lost his footing and the harness broke, causing him to fall onto a surface, that could be considered a catastrophic injury (depending on the

immediate result/impact), but all that happened here was applicant swinging around, being stopped by a pole while swinging and still in the harness, and hitting the pole. This does not bring the injury into the 'violent act' exception, nor was the result of injury or the impact catastrophic.

The ED follows the same logic as the above regarding the psyche add-on, and therefore would not qualify for the PD either, as I do not find this was a "direct injury" to the testicles or penile region (other than the left hip which is nearby), nor any mention of those body parts in the beginning of the case, so the fact that defendant has accepted this body part's treatment and TTD, as well as the psyche, will not be disturbed by this WCJ, but they did not result in an exception qualifying them for the PD add-on.

## III.

## CONCLUSION

Wherefore, it is respectfully requested that the Petition for Reconsideration be denied.

DATE: January 27, 2026

Karinneh Aslanian
Workers' Compensation Judge