WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRISTOPHER SHEEAN, ***Applicant***

vs.

STATE OF CALIFORNIA DEPARTMENT OF CORRECTIONS, legally uninsured, administered by STATE COMPENSATION INSURANCE FUND, ***Defendant***

Adjudication Number: ADJ11139524
Van Nuys District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the April 20, 2026 Findings of Fact and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found, in pertinent part, that while employed by defendant from August 1, 2016 through August 1, 2017 as an inmate laborer, applicant sustained injury arising out of and in the course of employment (AOE/COE) to his lower back, neck, knees, hips, ankles, wrists, upper gastrointestinal system, hypertension, coronary heart disease, and right elbow; that good cause has been shown to prove applicant has incurred new and further disability; that applicant's impairments to his lower extremities and low back should be added under *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686 (Appeals Board en banc); and that applicant's injury caused permanent disability of 100%.

Defendant contends that the WCJ did not properly apply the requirements of *Vigil* to justify rebuttal of the Combined Values Chart (CVC) and further, that the medical reports and testimony of qualified medical evaluator (QME) Arthur Garfinkel, M.D., fail to constitute substantial medical evidence. Defendant further contends that the WCJ violated its due process rights by making a finding as to the percentage of permanent disability without first obtaining a formal rating and without providing the rating details and method.

We have received an Answer from applicant. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny the Petition.

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

I.

Former Labor Code[1] 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 May 26, 2026, and 60 days from the date of transmission is Saturday, July 25, 2026. The next business day after 60 days from the date of transmission is Monday, July 27, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, July 27, 2026, so that we have timely acted on the petition as required by section 5909(a).

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

[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.

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 WCJ, the Report was served on May 26, 2026, and the case was transmitted to the Appeals Board on May 26, 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 the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on May 26, 2026.

II.

Based upon our review of the record, we agree that the evidence is sufficient to support the WCJ's finding that good cause has been shown for applicant's petition to reopen, and that applicant has sustained new and further disability. We also will not disturb the WCJ's findings that applicant's low back and lower extremity impairments should be added together in determining permanent disability, and that applicant is now permanently and totally disabled.

All decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

We agree with the WCJ that the expert opinions of Dr. Garfinkel in orthopedics and QME Paul Grodan, M.D., in internal medicine constitute substantial medical evidence. The medical

expert opinions of Dr. Garfinkel that formed the basis for the finding of 100 percent permanent disability have probative value, are more than a mere scintilla, and are reasonable in nature, credible, and of solid value. The remainder of the evidentiary record herein, including applicant's unrebutted testimony at trial, affords no reason to disbelieve Dr. Garfinkel's conclusions, which apply correct legal standards to the issue of whether applicant's low back and lower extremity disabilities should be added or combined.

We previously noted in *Vigil*, cited *supra*, that the CVC in the Permanent Disability Ratings Schedule (PDRS) may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either (a) there is no overlap between the effects on ADLs as between the body parts rated; or (b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs. (*Vigil*, *supra*, 89 Cal. Comp. Cases at p. 689.)

In this case, Dr. Garfinkel's testimony establishes that applicant's lumbar spine and lower extremity impairments do not operate in isolation but instead interact in a manner that amplifies his overall functional loss. Although Dr. Garfinkel originally limited his additive analysis to the lower extremities, he later determined that the lumbar spine must also be included because "the lumbar spine and the lower extremities sort of work together in terms of bending, twisting, squatting, and all the other stuff." (Court's Exhibit Y9, Deposition of Arthur Garfinkel, M.D., dated August 6, 2025, at p. 7, lines 3–10.) He then clarified that the lumbar spine and both lower extremities, specifically the hips and knees, should be added instead of combining them on the CVC because even though they overlap in terms of their effect on ADLs, together they amplify that effect. (*Id*. at p. 7, lines 11-13, 17-22, p. 8, lines 17–24.)

When Dr. Garfinkel was questioned by defense counsel on this issue, he once again confirmed that "the additive approach should be used for the lumbar spine and lower extremities" because "the activities overlap and unfortunately are amplified." (*Id*. at p. 19, lines 5–8.) He then identified the affected ADLs, including dressing, undressing, donning and doffing shoes and socks, prolonged walking, standing, ascending and descending stairs or inclines, prolonged sitting, rising from a chair, running errands, getting in and out of motor vehicles, sexual activity, travel and sleep. (*Id*. at p. 19, lines 7–23.)

Applicant's testimony at trial confirmed the functional overlap described by Dr. Garfinkel. Applicant testified that since his previous Award of 78 percent permanent disability, he underwent

a left hip replacement, a right hip replacement, a revision of the right hip, and a left ankle fusion with screws. (Minutes of Hearing and Summary of Evidence of March 18, 2026, p. 3, lines 20–22.) He further testified that his low back requires 45 minutes to an hour in the morning before he can stand up straight, and that prolonged sitting requires almost 15 minutes before he can stand up and straighten. (*Id*. at p. 3, lines 23–25.) Although he can function to some degree with significant discomfort in his back, he avoids many activities, including bending. (*Id*. at p. 4, line 24 to p. 5, line 1.) He is also unable to bend because of his knees, and he will "plop down" when sitting. (*Id*. at p. 4, lines 12-13.) He cannot pick up his keys if he were to drop them, because both of his knees will lock up. (*Id*. at p. 5, lines 6-7.) He walks with a significant limp. (*Ibid*.) This testimony is consistent with Dr. Garfinkel's opinion that applicant's disability of the lumbar spine and lower extremities together have an amplified effect on bending, standing, sitting, walking, and other ADLs.

The opinions of Dr. Garfinkel are also consistent with our analysis in *Vigil*. The fact that Dr. Garfinkel has previously used the term "synergistic" does not negate the validity of his conclusion that back and lower extremity disabilities should be added because together they have an amplifying effect on ADL limitations. All other body parts—the neck, upper extremities, hypertension, coronary artery disease, and upper gastrointestinal system—should have their respective disabilities combined on the CVC. However, as noted by the WCJ, when the impairments assessed by Dr. Garfinkel for the lumbar spine and lower extremities are adjusted for occupation, age, and apportionment as required by sections 4660.1 and 4663, the resulting permanent disability is 29% for the right hip, 29% for the left hip, 32% for the low back, 23% for the right knee, and 13% for the left knee, which, if added, produces a total of 126%. Accordingly, while the combination of these impairments when combined with the remaining impairments would theoretically be well in excess of 126%, impairment to the other industrially injured body parts has no effect on the level of permanent disability, because a permanent disability award cannot exceed 100 percent for a single injury. (Lab. Code, § 4664(c)(2).)

Because the percentages of permanent disability of the low back, hips, and knees equal 126 percent when added without consideration of applicant's other permanent impairments, the other rating arguments raised in defendant's Petition are of no consequence. No vocational expert is required to support the conclusion that applicant is entitled to an award of 100 percent permanent disability. Any technical rating argument with respect to the low back or lower extremities would

have to reduce their collective permanent disability by at least 26 percent in order to negate applicant's entitlement to a finding of 100 percent permanent disability. Accordingly, reduction of low back impairment by three percent[3] for pain and reduction of low back disability by six percent to reflect 20 percent apportionment as suggested in the Petition would not change the mathematical result of addition as indicated by Dr. Garfinkel. Any arguments regarding impairments of the gastrointestinal system and heart are likewise inconsequential to the conclusion that applicant is permanently and totally disabled.

Defendant argues it was deprived of due process because the WCJ rated the permanent disability of applicant without sending the matter to the Disability Evaluation Unit (DEU) with rating instructions for a formal rating. It is well established that a WCJ has special expertise in rating and may rate an employee's permanent disability without a formal rating. (*Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 625 (Appeals Board en banc), citing *Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 172 [36 Cal.Comp.Cases 93] ("the Board may not be required in all cases to obtain a recommended rating from the rating bureau"), and, *sub nota*, *Cruz v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 953, 955 (writ den.); *West America Insurance Co. v. Workers' Comp. Appeals Bd.* (*Lopez*) (1983) 48 Cal.Comp.Cases 652, 653-654 (writ den.); *American Motorists Insurance Co. v. Workers' Comp. Appeals Bd.* (*Henderson*) (1982) 47 Cal.Comp.Cases 1209, 1210 (writ den.); *City of Los Angeles v. I.A.C.* (*Pendergraph*) (1965) 30 Cal.Comp.Cases 230, 231 (writ den.); *Cal. Casualty Indemnity Exch. v. I.A.C.* (*Peak*) (1948) 13 Cal.Comp.Cases 258 (writ den.).)

In this case, the WCJ provided rating strings that explicitly set forth the impairments, adjustments, and rating methods upon which he relied. This provided defendant with sufficient information to challenge the WCJ's reasoning by seeking reconsideration, which it did. After carefully considering each of defendant's arguments, we agree with the reasoning of the WCJ as explained in his Report.

Accordingly, we deny the Petition for Reconsideration of the April 20, 2026 F&A.

[3] Defendant's argument that the three percent add-on for low back pain should be eliminated from the rating is not only inconsequential to the outcome but also legally precluded because, as pointed out by the WCJ in his Report, the pain add-on was part of the Findings and Award of August 26, 2020, and no petition to reduce that award has been filed by defendant.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the F&A of April 20, 2026 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 27, 2026

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

CHRISTOPHER SHEEAN
GLAUBER BERENSON VEGO
STATE COMPENSATION INSURANCE FUND

CWF/kl

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant herein is a 52-year-old prison inmate with the Department of Corrections having been released from custody after a 32-year incarceration on or about 8/1/2017.

The Petitioner is the Defendant who claims that the undersigned erred by awarding 100% permanent disability based upon the two QMEs' opinions herein.

The undersigned will recommend that the petition be denied

II. STATEMENT OF FACTS

The Applicant is considered to be an employee of the State of California for purposes of work-related injuries. Cal. Lab. Code sec. 3370. He claims cumulative injury to the back, neck, knees, hips, ankles, wrists, upper GI system and hypertension and now heart disease.

Drs. Arthur Garfinkel and Robert Fisher acted as QME's in orthopedics and internal medicine originally. The case was tried on 7/23/2020 before the undersigned (EAMS#73044160). A formal rating was issued noting injuries to all the noted body parts except for the hips (EAMS#73100142).

A Findings and Award was issued on 8/26/2020 for 78% (EAMS#73100142). While injury was found to the bilateral hips, there was no impairment.

A Petition to Re-open under Cal. Lab. Code sec. 5410 was filed by Applicant on or about a 4/6/2021 (EAMS#36200794).

Dr. Paul Grodan replaced Dr. Fisher as QME in internal medicine and examined the Applicant on the Petition to Re-open. Dr. Garfinkel re-examined Applicant.

In the interim after the original award Applicant underwent two total hip replacement surgeries which were characterized by Dr. Grodan as fair results (20% wpi). The remaining wpi ratings remained the same as they were in the original rating.[1]

[1] Petitioner claims that the rating for the low back is lowered from 16% to 13%. However, no petition was filed to lower the disability. Hence there is no jurisdiction to lower the p.d. ratings from the original award.

According to Dr. Grodan the Applicant developed left ventricular hypertrophy since the award. This increased the heart/hypertension ratings to 30% wpi. He now has rating coronary artery disease not previously rated at 8% wpi. There is no change to the upper GI ratings (10% wpi).

Based upon the impairments by Drs. Grodan and Garfinkel the overall impairment ratings are as follows: These ratings "assume" that all apportionments are legal though a determination of that issue is not attempted since it is irrelevant:

(1) 75%(17.03.10.01 20 [1.4] 28 460 H 34 39) 29% (right hip)
(2) 75%(17.03.10.01 20 [1.4] 28 460 H 34 39) 29% (left hip)
(3) 50%(04.01.00.00 30 [1.4] 42 460 H 48 54) 27% (hypertensive heart)
(4) 50%(03.02.00.00 8 [1.4] 11 460 H 14 17) 9% (CAD)
(5) 50%(06.01.00.00 10 [1.4] 14 460 F 14 17) 9% (GI)
(6) 15.03.01.00 16 [1.4] 22 460 H 27 32% (low back)
(7) 15,01.01.00 8 [1.4} 11 460 H 14 17% (neck)
(8) 75%(17.05.10.08 15 [1.4] 21 460 H 26 31) 23% (right knee)
(9) 75%(17.05.03.00 8 [1.4} 11 460 H 14 17) 13% (left knee)
(10) 75%(16.04.01.00 6 [1.4] 8 460 G 9 11) 8% (carpal)
(11) 75%(16.04.01.00 6 [1.4] 8 460 G 9 11) 8% (carpal)
(12) 25%(16.03.01.00 2 [1.4] 3 460 G 4 5) 1% (elbow)

The total of unapportion impairments is 290%. After apportionment as given by the doctors, the total is 205%.

Combining all the after-apportioned ratings, the final p.d. is 95%.

Dr. Garfinkel in deposition (Ex. Y-9) states that the low back, knees and bilateral hips should be added rather than combined. Added together those impairments come to 126% [see items (1)(2)(6)(8) and (9) above].

If the remaining impairments are combined, those remaining impairments rate 57%.

Dr. Garfinkel states in deposition that the added body parts above amplify the negative effect on the activities of daily living. (p.8)

When asked if he considered the impact on ADL's he indicated that he did so (p.10).

Dr. Garfinkel also indicates that Mr. Sheean is not capable of competing in the open labor market (pp. 11 – 14).

Based upon Dr. Garfinkel's opinion (1) that Applicant cannot compete in the open labor market, and (2) that the combined impairments exceed 100%, the undersigned issued an award for 100%

permanent disability at the statutory rate under Cal. Lab. Code sec. 3370(a)(5) of only $182.29 per week.

III. Discussion

Use of the CVC

Dr. Garfinkel opined that certain of the impairments should be added rather than using the CVC. Those are the hips, knees, and left ankle. (Ex. Y-9. p.9). As stated in his report of 5/26/2025 (Ex. Y-8):

> "The applicant's ability to perform activities of daily living including standing, walking, squatting, kneeling, balancing and climbing has been compromised because of the applicant's ability to compensate with other injured body parts."

…

Q. …If we add, if those are in fact necessary to consider with regards to the additive, so and you took into consideration the activities of daily living with regards to those specific parts of the body, did you not?

A. Yes, I did.

Hence the added ratings of the back, hips, and knees [(1)(2)(6)(8) and (9)] is:

29 c 29 c 32 c 23 c 13 = 126%

The remaining body parts that Dr. Garfinkel opined were not added but only subject to the CVC is an additional 57%

Hence an award for 100% is warranted under Cal. Lab. Code sec. 4660.

Cal. Lab. Code sec. 4662(b)

Under Cal. Lab. Code sec. 4662(b) total disability is determined "in accordance with the fact." In essence the medical evidence can rebut the ratings under sec. 4660.

On that point, Dr. Garfinkel has indicated that he does not believe the Applicant would be able to compete in the open labor market. (Ex. Y-9, pp. 10 – 14).

The doctor indicates that his condition is severe. He will get re-injured again and again. He will need more surgeries including another knee replacement.

A doctor's opinion on total disability, if based upon substantive medical evidence, will suffice to support a total disability award. *Qualcomm Inc. v. WCAB (Brown)* (2019) 84 CCC 531, *writ denied; Anaya v. Bay Area Carbide* (2016) 81 CCC 1061

Substantial Medical Evidence

Dr. Garfinkel's several reports comply completely with Cal. Code of Regs. sec. 10682 in that they contain all the data and information that is required for admissibility of medical evidence.

"Substantial medical evidence" has been often defined as:

> "The term substantial evidence means evidence which 'if true has probative force on the issues. It is more than a mere scintilla and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion... it must be reasonable in nature, credible, and solid of value" *Braewood Convalescent Hospital v. WCAB (Bolton)* (1983) 34 Cal. App. 3d 159, 48 CCC 566.

Dr. Garfinkel saw the patient before and after the award. He reviewed all of the pathology. In light of the very significant symptoms, the number of replacement surgeries, and most of all the medical likelihood of further surgeries, it would seem to justify the findings of total disability especially when coupled with the fatigue factors noted by Dr. Grodan.

Use of the DEU

First of all, there are twelve impairment ratings that justify the Findings and Award herein. But when the award was first issued on 8/26/2020 a formal rating was issued which was based upon nine lines of rating (EAMS#73100142). Applicant did not object to those formal ratings formulas issued at that time. All nine of those rating strings are simply repeated now with no changes. So clearly Applicant has no issue with the nine original rating strings.

The only 3 new strings involve the right elbow which only amounts to 1% and the two hip surgeries. The two new strings which in fact give rise to the "new and further" disability are the ratings for the two total hip replacements. Each one is 20% wpi per QME. So, the rating strings are simple and clear.

The use of the DEU in ratings is discretionary and subject to the trier-of-fact's decision to consult. It is by no means mandatory. As stated, the new ratings not previously issued at the time of the original award are beyond any rational question. And in fact, Petitioner did not question the ratings on the hips in the petition. Hence the objection is to ratings that were already issued when the original award came out.

Petitioner also claims that the low back rating is now lower. But Petitioner would have to file a petition to reduce ratings if they wanted such an issue to be addressed.

IV. RECOMMENDATION

Based on the above, it is respectfully recommended that the Petition for Reconsideration be **DENIED.**

DATE: 5/26/2026

Dean Stringfellow
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE