WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ELLEN MARTIN, *Applicant*

vs.

EAST BAY REGIONAL PARK DISTRICT, permissibly self-insured, administered by SEDGWICK CMS, *Defendants*

Adjudication Number: ADJ15833920
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the November 13, 2025 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a park ranger on June 3, 2020 sustained industrial injury to her head, psyche, vision and neuropsyche. The WCJ found that applicant's injury resulted in permanent and total disability.

Defendant contends that the WCJ's interpretation of the medical evidence and finding that applicant's neurological impairment should be added rather than combined is in error. Additionally, defendant challenges the WCJ's determination that applicant's psychiatric impairment was ratable because the underlying injury was catastrophic.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny reconsideration.

FACTS

Applicant claimed injury to her head, vision, psyche, brain, and neuro-psyche while employed as a park ranger by defendant East Bay Regional Park District on June 3, 2020.

Defendant admits injury to the head, vision, and psyche, but disputes injury to the brain and neuro-psyche.

The parties have selected Barbara McQuinn, M.D., as the Qualified Medical Evaluator (QME) in neurology; Philip Edington, M.D., as the QME in ophthalmology; and Jed Sussman, Ph.D., as the Agreed Medical Evaluator (AME) in neuropsychology.

On October 29, 2025 the parties proceeded to trial and framed for decision, in relevant part, the issues of contested body parts and permanent disability. The WCJ heard testimony from applicant and ordered the matter submitted the same day.

On November 13, 2025, the WCJ issued the instant F&A, determining in relevant part that applicant's industrial injury resulted in permanent and total disability. (Finding of Fact No. 4.) The accompanying Opinion on Decision explains that neurology QME Dr. McQuinn rated applicant's industrial vertigo at 29 percent whole person impairment (WPI), and applicant's headaches at 22 percent WPI. (Opinion on Decision, at pp. 6-7.) Dr. McQuinn further opined that the impairment for applicant's vertigo and headache impairments should be added, rather than combined, because there was no significant overlap in the affected Activities of Daily Living (ADLs). (*Id.* at p. 7.) The WCJ observed that after adjustment for age, occupation, and future earnings modifier, applicant's vertigo resulted in 60 percent permanent disability, while the headaches resulted in 50 percent permanent disability. Added together, and without consideration of applicant's ophthalmological and neuropsychology impairments, applicant's permanent disability exceeded 100 percent, rendering applicant permanently and totally disabled. (*Id.* at p. 12.) The WCJ observed that applicant suffered cognitive impairment as a result of her injuries, and that applicant's psychiatric disability was ratable under the "catastrophic injury" exception found in Labor Code[1] section 4660.1(c)(2)(B). (*Id.* at p. 12.) In addition, the reporting of QME Dr. Edington supported an additional 7 percent WPI for ophthalmic injury. (*Id.* at p. 12-14.)

Defendant's Petition contends that notwithstanding Dr. McQuinn's stated opinions that there is no overlap between the headache and vertigo-related impairments, "there is overlap between the Applicant's headaches and vertigo/disequilibrium and the doctor's conclusion ignoring the existence of overlap, without more, is not substantial evidence to rebut the CVC table." (Petition, at p. 7:13.) Defendant further contends that the QME does not adequately explain why applicant's headaches and vertigo have a "synergistic" effect. (*Id.* at p. 8:4.) Defendant

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

observes that the QME's assessment of applicant's headache and vertigo conditions is based on applicant's subjective and self-reported symptoms and is not supported by objective evidence. (*Id.* at p. 10:18.) Defendant also contends that applicant's psychiatric injury is not ratable pursuant to section 4660.1 because applicant's injury does not meet the "catastrophic" injury exception found in section 4660.1(c)(2)(B). (*Id.* at p. 11.)

Applicant's Answer asserts that the neurology QME's medical opinion as set forth in the reporting and deposition testimony demonstrate "that there is effectively an absence of overlap, meaning that the [combined values chart] table is rebutted, and the disabilities should be added rather than combined." (Answer, at p. 6:1.)

The WCJ's Report observes that the QME's deposition testimony reflects a "well-reasoned explanation in support of her analysis explaining that the disequilibrium affected different activities of daily living than the headaches, but that applicant's conditions could trigger one another." (Report, at p. 8.) The WCJ further observes that the nature of the injuries sustained by applicant and her resulting limitations in daily activities reflect a catastrophic injury as a result of a severe head injury. (*Id.* at p. 9.) The WCJ recommends we deny reconsideration, accordingly.

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in

the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on December 17, 2025, and 60 days from the date of transmission is Sunday, February 15, 2026. The next business day that is 60 days from the date of transmission is Tuesday, February 17, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Tuesday, February 17, 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 December 17, 2025, and the case was transmitted to the Appeals Board on December 17, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 17, 2025.

II.

We first address the sufficiency of the medical evidence. Neurology QME Dr. McQuinn has rated applicant's impairment arising out of the diagnosed post-traumatic headache condition by analogy to Table 13-2 of the American Medical Association Guides to the Evaluation of Permanent Impairment (the AMA Guides), corresponding to "Impairment of Consciousness or Awareness." (Ex. 103, Report of Barbara McQuinn, M.D., dated July 9, 2024, at p. 6.)

[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.

Dr. McQuinn further assessed applicant's post-traumatic vertigo/disequilibrium condition under Table 13-13, by analogy to impairment of the Cranial Nerve. (*Ibid*.)

Defendant asserts that the described impairment is not substantial medical evidence because it does not rely on "objective evidence, reported loss of awareness or any significant neurological/clinical findings to support a cerebral impairment." (Petition, at p. 8:23.) Defendant observes that the AMA Guides themselves discourage reliance on subjective complaints, and that where the symptoms are open to misinterpretation, evaluating physicians should "obtain objective data about the severity of the findings and the limitations and integrate those findings with the subjective date to estimate the degree of impairment." (AMA Guides, 5th Edition, p. 306; Petition, at p. 9:8.)

Dr. McQuinn addressed the issue of applicant's permanent disability in her deposition testimony of October 31, 2024. Therein, the QME was asked to elaborate on why she had revised her impairment ratings upwards from earlier reporting. Dr. McQuinn testified in relevant part:

> Q. And so you said you did a revised rating. Was that based on applicant's subjective symptoms that she told you about during the reevaluation or were there any objective findings that were the basis of that revised opinion?
> A. She didn't have an abnormal neurological exam, so -- as many people with concussion-related symptoms do not. So -- of course, yes. This depends on applicant's reporting of her symptoms as being credible because, you know, with headache that is always the case because that's a subjective condition or let's say it's -- it's a nonobjectively verifiable condition.
> Q. So are you saying that your -- your revised opinion was based on what -- her subjective symptoms she told you during the reevaluation rather than any change in her objective findings?
> A. Yes. I am saying that my revised rating was based on the history related to me by the applicant. I have no independent way of verifying that. She has her -- her diagnosis is something typically cannot be independently -- that typically cannot be objectively verified.

(Ex. 104, Transcript of Deposition of Barbara McQuinn, M.D., dated October 31, 2024, at p. 16:13.)

Notwithstanding the difficulty in objectively verifying the nature of applicant's headache and vertigo-related complaints, however, Dr. McQuinn has nonetheless accomplished a competent evaluation of applicant in support of both the August 24, 2022 and July 9, 2024 reports. In both instances, the QME first conducted her own clinical evaluation, and superimposed those findings on her review of applicant's treatment records, which included records from applicant's treating

neurologists, speech and vestibular therapy regimens, and medication usage. The QME took particular note of AME Dr. Sussman's determination that upon neurocognitive testing, applicant demonstrated "very slow processing," and demonstrating the need for additional vision, vestibular, and cognitive therapy. (Ex. 103, Report of Barbara McQuinn, M.D., dated July 9, 2024, at p. 16.) The QME further inventoried applicant's activities of daily living (ADLs) at each evaluation, and after synthesizing the clinical evaluation with the medical records, assigned corresponding impairment percentages. We are thus persuaded that the QME has appropriately evaluated the entire breadth of available medical evidence, and utilizing her "experience, training, skill, [and] thoroughness in clinical evaluation," reached an "appropriate and reproducible assessment to be made of clinical impairment." (AMA Guides, 5th Edition, p. 11.)

We also observe that the subjective nature of applicant's complaints, in and of itself, does not negate the impairment determined by the QME through an otherwise comprehensive medical-legal evaluation process. Indeed, "while the AMA Guides often sets forth an analytical framework and methods for a physician in assessing WPI, the Guides does not relegate a physician to the role of taking a few objective measurements and then mechanically and uncritically assigning a WPI that is based on a rigid and standardized protocol and that is devoid of any clinical judgment." (*City of Sacramento v. Workers' Comp. Appeals Bd.* (*Cannon*) (2013) 222 Cal.App.4th 1360, 1368-1369 [79 Cal.Comp.Cases 1, 6] (*Cannon*).) "Section 4660, subdivision (b)(1), recognizes the variety and unpredictability of medical situations by requiring incorporation of the descriptions, measurements, and corresponding percentages in the Guides for each impairment, not their mechanical application without regard to how accurately and completely they reflect the actual impairment sustained by the patient." (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837] (*Guzman)*.) Accordingly, the Court in both *Cannon*, *supra*, and *Guzman*, *supra*, concluded that there is nothing in section 4660 "that precludes a finding of impairment based on subjective complaints of pain where no objective abnormalities are found." (*Cannon*, *supra*, at p. 1371; *Guzman*, *supra*, at p. 823.)

Having reviewed the reporting and deposition testimony of Dr. McQuinn, as contextualized in the entire medical record, we are persuaded that the QME has appropriately reached a diagnosis and quantified applicant's corresponding impairment rating, based on her expertise, applicant's clinical presentation, and the available medical record. We therefore find the reporting of

Dr. McQuinn to constitute substantial medical evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 274, 280-281 [39 Cal.Comp.Cases 310].)

III.

Defendant further contends the reporting of neurology QME Dr. McQuinn does not support the addition of applicant's neurologically-mediated disability percentages. Defendant asserts the QME reporting is internally inconsistent and fails to adequately explicate the basis for the physician's conclusions regarding overlapping ADLs. Accordingly, defendant concludes the percentages of permanent disability arising out of applicant's headaches and vertigo/disequilibrium conditions should be combined, rather than added. (Petition, at pp. 6-7.)

The Permanent Disability Rating Schedule (PDRS) is prima facie evidence of an injured employee's permanent disability. (Lab. Code, §§ 4660, 4660.1; *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1274–1277 [76 Cal.Comp.Cases 624] (*Ogilvie*).) The PDRS provides that the ratings for multiple body parts arising out of the same injury are "generally" combined using the Combined Values Chart (CVC), which is appended to the PDRS. (2005 PDRS, at p. 1-10.) Yet, because it is part of the PDRS, the CVC is rebuttable and a reporting physician is not precluded from utilizing a method other than the CVC to determine an employee's whole person impairment so long as the physician's opinion remains within the four comers of the AMA Guides. (Lab. Code, § 4660; *Guzman*, *supra*, 187 Cal.App.4th at pp. 818–829.)

Accordingly, the use of the multiple disabilities table is discretionary depending upon whether it produces a rating that fully compensates an applicant for the effects of his or her injury. (*Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 Cal.App.3d 720, 728 [41 Cal.Comp.Cases 81, 87] (*Mihesuah*).)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc), we discussed the two primary analyses used in combining permanent disability percentages:

> In the first approach, the CVC has been rebutted where there was evidence showing no actual overlap between the effects on ADLs as between the body parts rated. In the second approach, the CVC has also been rebutted where there is overlap, but the overlap creates a synergistic effect upon the ADLs.
>
> **a. No overlap of ADLs.**

The first method for rebuttal of the CVC is to show that the multiple impairments, in fact, have no overlap upon the effects of the ADLs. (See e.g., *Devereux v. State Comp. Ins. Fund*, 2018 Cal.Wrk.Comp. P.D. LEXIS 592; *Guandique v. State of California*, 2019 Cal.Wrk.Comp. P.D. LEXIS 53.) We believe that one significant point of confusion on the issue of overlap is that the analysis should focus on overlapping ADLs, not body parts. Although the formula for the CVC is from the AMA Guides, the chart used to calculate the CVC is from the PDRS.

In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the medical evidence demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

…

b. Overlapping ADLs with a Synergistic Effect

The next method for rebutting the CVC was first discussed in *Kite*, where applicant was awarded permanent disability by adding the impairment to each hip and not by combining the impairments as ordinarily required by the PDRS under the CVC. (*Kite, supra*, 78 Cal.Comp.Cases 213.) In *Kite*, the CVC was rebutted by substantial medical evidence showing the synergistic effect of the two impairments on applicant.

'Synergy' is "(1) the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects; or (2) Cooperative interaction among groups. . . that creates an enhanced combined effect." (American Heritage Dict. (Fifth Edition, 2022).) In some cases, two impairments overlap with one another in their effect on ADLs to the extent that they amplify one another to cause further impairment than what is anticipated in the AMA Guides. Thus, it is permissible to add impairments where a synergistic amplification of ADLs is shown. For example, if applicant had an impairment in the dominant hand, an evaluator might find that the impairment impacts the ADL of non-specialized hand activities, such as being able to button a shirt. If applicant's impairment was to both hands, one might expect the ability to button a shirt to be even more difficult. The purpose of the CVC, avoiding duplication, does not apply in such cases as the impairments are not duplicative, because the two impairments together are worse than having a single impairment.

> We cannot emphasize enough that to constitute substantial evidence "…a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, **and it must set forth reasoning in support of its conclusions**." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc), (emphasis added).) The term 'synergy' is not a "magic word" that immediately rebuts the use of the CVC. Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in *Escobedo* to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of ADLs and how those ADLs interact.
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> (*Vigil, supra*, at pp. 691-693, emphasis original.)

We thus held in *Vigil* that where an applicant seeks to rebut the CVC, they must establish the following:

1. The ADLs impacted by each impairment to be added, and
2. Either:
    a. The ADLs do not overlap, or
    b. The ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs.

(*Id.* at pp. 688-689.)

Our en banc decision in *Vigil* issued on June 10, 2024, and is mandatory authority on all WCJs and WCAB panels. (Cal. Code Regs., tit. 8, § 10325(a); *City of Long Beach v. Workers' Comp. Appeals Bd.* (*Garcia*) (2005) 126 Cal.App.4th 298, 313, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers' Comp. Appeals Board* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236]; see also Govt. Code, § 11425.60(b).)

Here, neurology QME Dr. McQuinn initially evaluated applicant on August 24, 2022, at which time the physician undertook a comprehensive clinical evaluation and review of applicant's medical history. Dr. McQuinn diagnosed post-traumatic headaches and post-traumatic vertigo/ disequilibrium resulting from applicant's industrial injury of June 3, 2020. (Ex. 101, Report of Barbara McQuinn, M.D., dated August 24, 2022, at p. 4.) The QME assessed 14 percent impairment for applicant's post-traumatic headaches condition, and an additional 9 percent

impairment for applicant's post-traumatic vertigo condition without apportionment to nonindustrial factors. (*Id.* at p. 5.)

However, upon reevaluation of July 9, 2024, Dr. McQuinn noted that applicant was experiencing "several types of headaches," including a low-grade, holocephalic nagging headache present "85% of the time," and "intermittent retroorbital headaches that are yet more intense." (Ex. 103, Report of Barbara McQuinn, M.D., dated July 9, 2024, at p. 3.) Following a reevaluation of applicant's clinical presentation and a discussion of intervening medical treatment, Dr. McQuinn opined:

> Since applicant's last in-person evaluation here, she (until quite recently) has continued to work, albeit with restrictions. However, both the medical records and applicant's verbal history suggest that her tolerance for even accommodated duty work continued to be marginal, despite thorough and fairly aggressive [traumatic brain injury] treatment. This state of affairs strongly suggests that my original P&S assessment of applicant's neurological permanent disability (on 08/24/2022) significantly underestimated her actual headache and vertigo whole person impairment at the time.
>
> However, in light of both the physical and cognitive demands of applicant's park ranger position (we went over together the Essential Functions Position Analysis document provided by her employer), it is unrealistic to assume that this lady will ever be physically able to return to performing the majority of the required essential functions of a regional park ranger. She would presently be unable to perform any job (commute time included) in excess of four hours per day, three days per week. She is precluded from reading/screen time in excess of 30 minutes per hour, from using heavy machinery, power saws, or other potentially hazardous power equipment, and from working under conditions of excessive noise or visual glare, or exposure to flashing lights.

(*Id.* at p. 5.)

Dr. McQuinn reevaluated her impairment ratings, noting that with respect to applicant's vertigo condition:

> It is now apparent that applicant's vertigo condition is more accurately described according to Table 13-13 of the Guides as an upper-end Class 2 impairment, rather than the upper-end Class 1 impairment used in my original rating. Class 2 is described as "moderate equilibrium impairment; limitation required of all daily activities except simple ones for self-care," while Class 1 describes a "minimal" impairment affecting only "activities in hazardous surroundings." It is apparent from applicant's history that her vertigo impacts many ADLs apart from those simply performed "in hazardous surroundings," including such things as use of binoculars, reading, head movement, and use of a computer

> screen. Therefore, applicant's vertigo would be more accurately rated as upper Class 2, at 29% WPI.

(*Id.* at p. 6.)

With respect to applicant's post-traumatic headaches, Dr. McQuinn similarly revised her assessment of impairment as follows:

> Given applicant's consistent descriptions of her headaches as fairly unremitting, present most days of the month (85% of the time), with additional, more severe, migrainous headaches of several types occurring at least weekly to monthly, it would be more accurate to rate her headache disorder using Table 13-2 of the Guides as mid-range Class 2, rather than Class 1. (The latter Class is described in the table as causing only "minimal" limitation in ADLs, yet applicant's medical records and subsequent history support that her headaches result in moderate, not minimal, ADL limitations.) Thus her headache impairment per Table 13-2 rates at 22%WPI, midway through Class 2.

(*Ibid.*)

In response to the issue of how applicant's post-traumatic headaches and post-traumatic vertigo conditions should be combined, the QME opined:

> In my previous report, I recommended that applicant's vertigo and headache impairments should be combined and not added, since each disorder was apt to trigger the other. We reexamined this today.
>
> Applicant clarified that her disequilibrium symptoms affected activities of daily living having to do with balance and the performance of visuomotor skills, such as operating a chainsaw, driving a tractor, or working at heights. The headaches, on the other hand, affected her ability to concentrate, read, use a screen for prolonged periods, or tolerate loud noise or physical jarring (hammer impacts, etc.). Therefore, there is no significant overlap in terms of the ADLs affected by each of these conditions (in fact, there may be synergism, since the conditions can trigger each other), and the WPI's for vertigo and headache should be added, not combined.

(*Id.* at p. 7.)

In addition, Dr. McQuinn testified in deposition that her revised ratings regarding applicant's post-traumatic vertigo was based on applicant's reporting of her symptoms "as they affected her work and the ADLs." (*Id.* at p. 17:25.) Dr. McQuinn noted that applicant's symptoms "did not appear to be minimal… She was having trouble with daily activities that had nothing to

do with her work, that had -- in a simple – fairly simple ADLs, like taking showers, using binoculars … going on ladders, attending movies, those kind of things." (*Id.* at p. 18:20.)

With respect to the method by which applicant's disability percentages were to be combined, Dr. McQuinn reiterated the analysis described in her July 9, 2024 report, at p. 7, as follows:

> A. [I]t's because the applicant clarified what ADLs are affected by the disequilibrium and which ones are affected by the headaches and those don't overlap. The -- as I mentioned earlier, the disequilibrium more affects her outdoor or physical exercise related ADLs and job duties. Whereas the headache affects more her ability to do administrative tasks and read and do office work and do more concentration and mental stuff, so those things don't overlap.
> Q. And so that's why you felt they should be added rather than combined because those are physical for the disequilibrium as opposed to mental for the headaches?
> A. Basically, yes.

(*Id.* at p. 29:15.)

The QME thus concludes that there is "no significant overlap" between the ADLs arising out of applicant's post-traumatic headaches and post-traumatic vertigo/disequilibrium conditions.

Defendant asserts that the QME's description of the various ADLs reflects overlapping impact among applicant's headaches and vertigo conditions. In support of this contention, defendant notes that per Dr. McQuinn's description of the ADLs, the onset of one condition such as dizziness or vertigo, for example while watching a movie screen, may give rise to a subsequent headache episode. (Petition, at p. 6:20.) Defendant's Petition observes that in her July 9, 2024 report, applicant reported that "dizziness *and* headaches make it dangerous for her to operate tractors or mowers, and that doing so exacerbates her symptoms." (*Id.* at p. 7:1, citing Ex. 103, Report of Barbara McQuinn, M.D., dated July 9, 2024, at p. 2, italics added.) Thus, defendant contends that the QME's own reporting on the ADLs supports overlap.

In *Vigil*, *supra*, 89 Cal.Comp.Cases 686, we observed that the Permanent Disability Rating Schedule (PDRS) generally combines ratings where "two or more body parts are … expected to have an overlapping effect on activities of daily living." (*Vigil*, at p. 691.) Here, we are satisfied that the QME's final formulation regarding overlap distinguishes between "activities of daily living having to do with balance and the performance of visuomotor skills, such as operating a chainsaw, driving a tractor, or working at heights," on the one hand, and applicant's "ability to

concentrate, read, use a screen for prolonged periods, or tolerate loud noise or physical jarring (hammer impacts, etc.)." (*Id.* at p. 7.) And in this respect, the QME's deposition testimony confirms that she conducted a comprehensive discussion with applicant regarding her activities of daily living, resulting in the QME reevaluating her assessment of impairment generally. (Ex. 104, Transcript of Deposition of Barbara McQuinn, M.D., dated October 31, 2024, at p. 18:9.) The QME subsequently restated her analysis in deposition testimony, noting that "the disequilibrium more affects her outdoor or physical exercise related ADLs and job duties" while applicant's post-traumatic headache condition "affects more her ability to do administrative tasks" such as reading, office work, and other activities requiring focus and concentration. (*Id.* at p. 29:18.) The QME has thus evaluated applicant's ADLs and has explained why she felt applicant's disequilibrium condition would impact a separate subset of ADLs from applicant's post-traumatic headaches. Accordingly, we conclude that the QME has adequately addressed the issue of overlap such that the most accurate reflection of applicant's impairment is reflected in the addition, rather than the combination through the CVC, of applicant's neurologically-mediated impairment ratings.

Neither party challenges the WCJ's ratings of applicant's post-traumatic headache condition 100% (13.01.00 – 22 – [1.4] – 31 – 490I – 40 – 50) 50%, with the post-traumatic vertigo/disequilibrium condition rating 100% (13:07.06.01 – 29 – [1.4] – 41 – 490I – 50 – 60) 60%. When added, applicant's percentages of neurological permanent disability exceed 100 percent. Accordingly, we agree with the WCJ's determination that applicant has sustained permanent and total disability. (Finding of Fact No. 4.)

IV.

Notwithstanding our analysis of the reporting of neurology QME Dr. McQuinn, we also observe that applicant's permanent and total disability is established after consideration of her neuropsychological disability.

The parties' neuropsychology AME, Dr. Sussman, has similarly addressed the issue of the most accurate method of combining applicant's permanent disability percentages. In his report of August 30, 2023, Dr. Sussman indicated that "with reasonable medical probability that Ms. Martin sustained a concussion and subsequent post-concussion syndrome on June 3, 2020 while working for the East Bay Regional Park District." (Ex. 110, Report of Jed Sussman, Ph.D., dated August 30, 2023, at p. 15.) In order to quantify applicant's neurocognitive impairment,

Dr. Sussman rated by analogy to AMA Guides Table 13-6, assigning 7 percent impairment. (*Id.* at p. 16.) After adjustment for age, occupation and DFEC, applicant's impairment rates as follows: 100% (13.04.00.00 – 7 – 10 – 490I – 15 – 20%) 20%.

In his November 14, 2023 report, Dr. Sussman observed that "[t]here is overlap between Ms. Martin's neurocognitive and neurologically based headaches with her Axis I diagnosis leading to a synergistic effect in that her cognitive symptoms and headaches advances to her anxiety and depression and her depression and anxiety makes her cognitive symptoms enlargened. As such the additive versus the eve method is appropriate." (Ex. 111, Report of Jed Sussman, Ph.D., dated November 14, 2023, at p. 21.) Neither party has challenged the AME's opinion in deposition or in request for supplemental reporting.

We will ordinarily follow the opinion of an AME because it is presumed the AME was chosen by the parties because of his or her expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) Here, even were we to combine applicant's neurology-related permanent disability percentages (50C60=80% PD), the addition of 20 percent neuropsychological permanent disability as described by AME Dr. Sussman renders applicant permanently and totally disabled (80%+20%=100%), even before consideration of applicant's ophthalmologic permanent disability as addressed by Dr. Edington (see Exs. 105-107), or consideration of the disputed psychiatric impairment.

We thus observe that the AME's opinions regarding the most accurate method by which to combine applicant's percentages of permanent disability lend further support to the WCJ's determination that applicant has sustained permanent and total disability.

Because we affirm the WCJ's determination that applicant's neurologic, neuropsychological, and ophthalmologic injuries resulted in permanent and total disability without consideration of applicant's claimed psychiatric injury, we need not address defendant's contentions regarding whether applicant meets the exceptions to section 4660.1(c)(1) regarding rating psychiatric injuries that are compensable consequences of physical injuries.

In summary, we agree with the WCJ that the reporting of neurology QME Dr. McQuinn constitutes substantial medical evidence and further establishes that the percentages of disability arising out of applicant's post-traumatic headache and post-traumatic vertigo/disequilibrium conditions should be added to most accurately reflect applicant's residual disability levels. Because the combination of the percentages of permanent disability for these two conditions, standing

alone, exceeds the 100 percent permanent partial disability threshold, we affirm the WCJ's determination that applicant is permanently and totally disabled. We further note that even were we to combine the disability percentages identified by Dr. McQuinn, the addition of applicant's neuropsychological disability percentages would yield a finding of permanent and total disability.

We will deny reconsideration, accordingly.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I DISSENT (See Dissenting Opinion),

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 13, 2026

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

ELLEN MARTIN
RAYMOND E. FROST & ASSOCIATES
FINNEGAN, MARKS, DESMOND & JONES

SAR/abs

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

DISSENTING OPINION OF COMMISSIONER RAZO

The award of permanent and total disability in this matter is based on subjective complaints superimposed on clinical testing that is largely within normal limits. In addition, the QME's explication of the basis for the addition of applicant's posttraumatic headaches and vertigo conditions is inconsistent and conclusory. Because applicant's impairment is not sufficiently established in the medical record and because the QME's explanation marshaled to rebut the presumptively correct Permanent Disability Rating Schedule (PDRS) is lacking, I dissent from the majority's affirmation of permanent and total disability.

Pursuant to section 4660.1, subd. (a), the determination of permanent disability must take into account "the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee's age at the time of injury." Subd. (b) defines the "nature of the physical injury or disfigurement" as incorporating "the descriptions and measurements of physical impairments and the corresponding percentages of impairments published in the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment (5th Edition) with the employee's whole person impairment, as provided in the Guides, multiplied by an adjustment factor of 1.4." Pursuant to subd. (d), the PDRS is "prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule." (Lab. Code, § 4660.1, subd. (a), (b) & (d).)

The AMA Guides emphasize the importance of objective clinical correlation of subjective neurological complaints used to verify the nature and accuracy of the resulting impairment. In Chapter 13, the discussion of Central and Peripheral Nervous System begins with the "Principles of Assessment," which observes:

> Some impairment classes refer directly to limitations in the ability to perform activities of daily living because of symptoms. When this information is subjective and open to misinterpretation, *it should not serve as the sole criterion upon which decisions about impairment are made*. Rather, obtain objective data about the severity of the findings and the limitations and integrate those findings with the subjective data to estimate the degree of permanent impairment.

(AMA Guides, 5th Ed., p. 306, italics added.)

Here, however, the neurology QME under cross-examination concedes that her rating of applicant's neurologic impairment is based solely on "the history related to me by the applicant," and that the QME has "no independent way of verifying that." (Ex. 104, Transcript of Deposition

of Barbara McQuinn, M.D., dated October 31, 2024, at p. 17:5.) It is worth noting, however, that the AMA Guides offers a broad array of clinical studies that are available to assist in "a detailed neurologic examination [which] enables the physician to identify the location of nervous system Impairment." (AMA Guides, 5th Ed., p. 307.) Examples include multiple types of diagnostic imaging such as MRI, MRA and CT scans, as well as EEG scans, SPECT scans, nerve conduction studies, and myelograms. Notably missing from the QME's July 4, 2024 evaluation were standard clinical tests, including a sensory test, a positional or rotational test, or a Romberg test utilized to assess balance. It is unclear from the record why none of these clinical evaluation tools were administered despite the QME's continued diagnosis of a disequilibrium disorder.

Insofar as the QME finds applicant's headaches to rise to the level of ratable impairment, the record reflects no brain scans demonstrating pathology. On the other hand, applicant's 2021 transcranial Doppler and EEG tests were both interpreted as normal by her treating neurologist. (Ex. 103, Report of Barbara McQuinn, dated July 9, 2024, at p. 13.) In addition, the QME's clinical evaluation of applicant revealed normal balance, gait, strength and reflexes in the extremities. (*Id.* at pp. 4-5.) In the absence of objective evidence, the QME has assessed impairment by analogy to Cranial Nerve VIII Class I impairment.

Accordingly, it appears that Dr. McQuinn's assessment of neurological impairment devolves almost exclusively from purely subjective complaints, without the support of corresponding objective evidence, all superimposed on largely normal clinical evaluation.

In addition, Dr. McQuinn's assertion that there is no overlap in the ADLs affected by applicant's headaches and vertigo is not adequately explained. As we observed in *Vigil*, supra, "it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in *Escobedo* to support a conclusion based on the facts of the case … [s]uch an analysis *must include a detailed description of the impact of ADLs and how those ADLs interact*." (*Vigil*, *supra*, at pp. 691-693.) Here, instead of a substantive inquiry into potentially overlapping ADLs that would reasonably contemplate vertigo, headaches, vision changes, and cognitive impairment, the QME offers only an over-simplified dichotomy of ADLs requiring positional balance versus ADLs requiring focus and concentration. The QME does not acknowledge or discuss the myriad of ADLs that would reasonably require both balance and focus, or in the alternative, offer a reasonable explanation why the two neurological skills would be otherwise mutually exclusive.

In *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc), we observed that "[t]he physician's role is to assess the injured employee's whole person impairment percentage(s) by a report that sets forth facts and reasoning to support its conclusions and that comports with the AMA Guides and case law." (*Id.* at p. 615.) Here, I am not persuaded that the QME's evaluation reasonably sets forth the physician's reasoning or adequately discusses the issue of overlap in applicant's ADLs.

For the foregoing reasons, I cannot conclude that applicant's permanent and total disability is appropriately supported by applicant's purely subjective reporting superimposed on a lack of objective factors, or that the QME has appropriately addressed the issue of how to combine applicant's resulting neurological disability. In the absence of substantial medical evidence discussing the nature and extent of applicant's disability, I respectfully dissent from the majority's affirmation of the award of permanent and total disability.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

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