WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

ERIC HOFF, *Applicant*

vs.

CEMEX;
AIU INSURANCE COMPANY administered by GALLAGHER BASSETT, *Defendants*

Adjudication Number: ADJ19338918
Oxnard District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation on Petition for Reconsideration (Report) of the workers' compensation administrative law judge (WCJ) 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, as quoted below, and for the reasons stated below, we will deny the Petition for Reconsideration.

I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code[1] section 5909, which 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.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated 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.

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

> (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) (in effect from July 2, 2024 through June 30, 2026), 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 July 3, 2026 and 60 days from the date of transmission is September 1, 2026. This decision is issued by or on September 1, 2026, so that we have timely acted on the petition as required by section 5909(a) (in effect from July 2, 2024 through June 30, 2026).

Section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026) 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) (in effect from July 2, 2024 through June 30, 2026) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report by the WCJ, the Report was served on July 3, 2026, and the case was transmitted to the Appeals Board on July 3, 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) (in effect from July 2, 2024 through June 30, 2026), because service of the Report in compliance with section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026) provided them with actual notice as to the commencement of the 60-day period on July 3, 2026. VERIFY DATES IN EAMS

II.

The WCJ stated provided the following discussion in his Report:

PROCEDURAL HISTORY

Eric Hoff, born [], while employed on 5/14/2024, as a cement truck driver, Occupational Group No. 350, at Ontario, California, by Cemex, sustained injury arising out of and in the course of employment to his respiratory system. At the time of injury, the employer's workers' compensation carrier was AIU Insurance Company, administered by Gallagher Bassett.

On 7/11/2024, applicant filed a DOR on AOE/COE as this case was initially denied.

On 7/29/2024, defendant filed an objection to the DOR and asserting the Labor Code section 4060 PQME process with PQME Dr. Andrew Greenberg, M.D., Ph.D., should be completed. The undersigned agreed with defendant and kept the matter on calendar to monitor the completion of the Labor Code section 4060 PQME process.

The matter remained on the priority conference calendar for seven hearings before the undersigned from 7/29/2024 to 2/6/2025 to complete the Labor Code 4060 PQME process.

On 9/25/2024, PQME Dr. Greenberg issued his first report. Applicant's exhibit #1.

On 1/6/2025, defendant deposed Dr. Greenberg for the first time. Applicant's exhibit #3.

On 2/6/2025, at priority conference before the undersigned, the disputed issue of AOE/COE was resolved by agreement of the parties where applicant agreed to dismiss the claim of injury to the psyche, defendant agreed to accept the claim of injury to the respiratory system and the matter went off calendar. See minutes of hearing 2/6/2025, EAMS DOC ID# 78856897.

On 3/14/2025, defendant filed a substitution of attorneys appointing new counsel.

On 4/16/2025, PQME Dr. Greenberg issued his second report. Applicant's exhibit #2.

On 4/16/2025, applicant filed a DOR for an Expedited Hearing for treatment under Labor Code section 4600.

On 5/5/2025, defendant filed an objection to the DOR stating under penalty of perjury,

> "Defendants have maintained good-faith denial and investigation per CCR §10109 is ongoing. Applicant recently underwent a re-evaluation by PQME Greenberg on 04/16/2025, and the parties are pending receipt of the report. As a result, defendant argues that discovery of the disputed issue is not completed. WHEREFORE, based on the foregoing, Defendant respectfully requests that the matter be taken off calendar."

On 5/8/2025, at Expedited Hearing before the undersigned defendant confirmed, regardless of what representations were made to the Court on 2/6/2025, that the case remained denied. The matter was taken off calendar as AOE/COE was not an issue to be tried at an Expedited Hearing. See minutes of hearing 5/8/2025, EAMS DOC ID#79152478.
On 7/17/2025, defendant deposed Dr. Greenberg for the second time. Applicant's exhibit #4.

On 8/14/2025, at MSC, defendant advised the case was accepted, and the matter was continued for the PQME to discuss the results of an exercise test.

On 9/5/2025, PQME Dr. Greenberg issued his third report. Applicant's exhibit #7.

On 11/20/2025, PQME Dr. Greenberg issued his fourth report. Applicant's exhibit #6.

On 3/9/2026, defendant deposed PQME Dr. Greenberg for the third time. Applicant's exhibit #5.

On 5/6/2026, defendant filed a Trial Brief.

On 5/7/2026, the matter proceeded to trial before the undersigned. Parties were given time to file briefs, and the matter was submitted 5/21/2026. At trial, defendant advised the undersigned that he was withdrawing the Trial Brief filed the day before on 5/6/2026.

On 5/21/2026, defendant filed a second Trial Brief.

On 5/22/2026, applicant filed a Post-Trial Brief.

On 6/8/2026, the undersigned issued the Findings and Award.

On 6/26/2026, defendant filed the Petition for Reconsideration.

….

ISSUE

DEFENDANT ASSERTS THE REPORTNG OF PQME DR. GREENBERG IS NOT SUBSTANTIAL EVIDENCE.

ANALYSIS

Applicant suffered an accepted injury to his respiratory system on 5/14/2024 as follows:

"The applicant was working at a job on the date of injury and was sent to a job in Camarillo. He had residual cement left over from his previous job and was sent to a Cemex plant in Hollywood. Mr. Hoff dumped the residual cement but did not have time to clean the chute, as he was told he needed to hurry and receive a new load of cement. He pulled the truck into the loading area, and the hopper came down to fit into the drum. Usually, a curtain covering the hopper collects the dust and vacuums it. When the curtain dropped, he was cleaning the chute outside the truck. He states a lot of dust was generated, and he inhaled dust for 5 to 10 minutes. Mr. Hoff did not notice any difference in his breathing.

After he slumped this load, Mr. Hoff drove to the next job site. He states that he had to wait a long time; when this occurs, more water needs to be added to keep the cement at the correct level of slump (usually, there is a 90-minute window). He started to pump his cement into a hopper; the person operating the pump sprayed diesel fuel into the hopper. The operator then pumped another chemical into the hopper, which was three feet away from the applicant. Mr. Hoff states that the chemical odor was strong, and he was present in this area for 30 minutes.

The applicant returned to his home plant (Santa Paula); while driving, he noticed burning in his eyes, pain in his throat, and a cough. The applicant developed shortness of breath one hour later. Mr. Hoff told his supervisor that he felt unwell and would take the next day off from work. He did not feel well the next day and tried working that night but could not finish his shift. The examinee went to Las Robles Hospital on 5/16 and was taken off work."

See report of Dr. Greenberg dated 9/25/2024, pages 3-4. Applicant's exhibit #1.

Applicant claims he is 100% permanently totally disabled based upon the reporting and deposition testimony of PQME Dr. Greenberg. Applicant asserts the reporting of PQME Dr. Greenberg, M.D. is substantial evidence.

….

"APPLICANT IS 100% PERMANENTLY TOTALLY DISABLED BASED ON A STRICT APPLICATION OF THE PERMANENT DISABILITY RATING SCHEDULE.

The touchstone of the workers' compensation system is industrial injury which results in occupational disability or death. *Livitsanos v. Superior Court*, 2 Cal.4th 744, 752. The American Medical Association's Guides to the Evaluation of Permanent Impairment (5th Edition, 2001) ("AMA Guides") provides impairment ratings meant to reflect an injured worker's functional limitations and the decrease in the individual's ability to perform common activities of daily living. § 1.2(a). Permanent disability, on the other hand, "causes impairment of earning capacity, impairment of the normal use of a member or a competitive handicap in the open labor market." *Brodie v. Workers' Comp. Appeals Bd.*, 40 Cal.4th 1313, 1320. The California Permanent Disability Rating Schedule ("PDRS") is "prima facie evidence of the percentage of permanent disability to be attributed to each injury covered by the schedule." Lab. Code § 4660(c); *Milpitas Unified Sch. Dist. v. Workers' Comp. Appeals Bd.*, 75 Cal. Comp. Cases 837, *17. For a reporting physician's conclusions regarding impairment to be considered substantial medical evidence, they must provide a report that is "clear, accurate, and complete". AMA Guides § 2.6.

In the current case, Dr. McClintock-Greenberg utilized Table 5-12 of the AMA Guides to capture Applicant's impairment, placing Applicant in Class 4 (51% - 100% WPI). (*see* Ex. 6, QME November 20, 2025 Report, pg. 2). Individuals with a Vo2max of less than 15 mL/(kgmin) or a METS score of less than 4.3 meet the criteria to be placed in Class 4. Applicant's Vo2max reading from the CPET was 10.5 ml/min/kg and his METS score was 2.3 which qualifies him for Class 4. (*see* Ex. 6, QME November 20, 2025 Report, pg. 2.; Ex. 5, QME Vol. III Deposition pg. 25, line 7). Dr. McClintock-Greenberg explained that the CPET results showed significant loss of lung function, suggesting that Applicant "has rapidly progressive lung disease, and not merely end-stage lung disease." (*see* Ex. 6, QME November 20, 2025 Report, pg. 2). He provided 100% WPI, based on Applicant's "end-stage lung disease due to pulmonary fibrosis with rapid deterioration of [Applicant's] lung function." (*see* Ex. 6, QME November 20, 2025 Report, pg. 3). Dr. McClintock-Greenberg warned that with Applicant's "rapid decline in lung function, [Applicant] will not be alive in one year if he does not receive a bilateral lung transplant." (*see* Ex. 6, QME November 20, 2025 Report, pg. 3).

Dr. McClintock-Greenberg alternatively applied Table 1-2 "[a] 90% to 100% WP impairment indicates a very severe organ or body system impairment requiring the individual to be fully dependent on others for self-care, approaching death". Dr. Greenberg confirmed that Applicant's end stage lung disease constitutes a "very severe organ or body system impairment" based on Applicant's "rapid decline in … lung function and … need for a bilateral lung transplant within the next year". (*see* Ex. 6, QME November 20, 2025 Report, pg. 3). He qualified his comment on Applicant's rapid decline in lung function, concluding that Applicant "will not be alive in one year" if the lung transplant is not completed. (*see* Ex. 6, QME November 20, 2025 Report, pg. 3). Utilizing

Table 1-2, Dr. McClintock-Greenberg assigned 100% WPI based on the impact the shortness of breath has on Applicant's ability to engage in activities of daily living, as well as, Applicant's need for constant supplemental oxygen and a bilateral lung transplant. (*see* Ex. 6, QME November 20, 2025 Report, pg. 3).

Defendant may argue that Dr. McClintock-Greenberg improperly applied Almaraz/Guzman rendering the permanent disability analysis not substantial. Dr. McClintock- Greenberg did provide an analogous application of Table 3-10 in his April 16, 2025 report, however, after Applicant underwent the CPET, the doctor applied Table 5-12 which is table used for impairment classification of respiratory disorders. Given Dr. McClintock-Greenberg's return to Table 5-12 after reviewing the raw data in the CPET, any argument that the doctor improperly applicant Almaraz/Guzman is moot.

3. THE QME'S APPORTIONMENT ANALYSIS CONSTITUTES SUBSTANTIAL MEDICAL EVIDENCE

In *Escobedo v. Marshalls, CNA Ins. Co*, the WCAB provided clear protocol for establishing the existence of apportionment of permanent disability. 70 Cal. Comp. Cases 604, 607. The Appeals Board held that:

1. *Lab. Code § 4663(a)*'s reference to apportionment based on "causation" refers to causation of the permanent disability, not causation of the injury itself, and the causal analysis for apportionment purposes may differ from that of the underlying injury;

2. *Lab. Code § 4663(c)* prescribes the standards both reporting physicians and the WCAB must apply, requiring each to determine what percentage of permanent disability was directly caused by the industrial injury and what percentage was caused by other factors;

3. Under *Lab. Code § 4663*, the applicant bears the burden of establishing the percentage of permanent disability directly caused by the industrial injury, while the defendant bears the burden of establishing the percentage caused by other factors;

4. Apportionment may extend beyond disability that could have been apportioned prior to SB 899 to include formerly non-apportionable disability, provided substantial medical evidence establishes that those other factors caused permanent disability; and

5. Even where a medical report addresses causation and makes an apportionment determination with approximate relative percentages under *Lab. Code § 4663(a),* the report may not be relied upon unless it also constitutes substantial evidence. "Substantial evidence" refers to evidence that carries genuine probative weight on the issues at hand. It must be the kind of relevant, credible,

and reliable evidence that a reasonable mind would accept as sufficient to support a conclusion. *Insurance Co. of North America v. Workers' Comp. Appeals Bd*., 122 Cal.App.3d 905, 910.

i. Dr. McClintock-Greenberg provided an apportionment analysis apportionment based on causation of the permanent disability, not causation of the injury itself.

Dr. Greenberg confirmed his understanding that *Lab. Code § 4663* requires addressing apportionment to all factors contributing to permanent disability, including both industrial and nonindustrial causes (*see* Ex. 4, QME Vol. II Deposition, p. 6, lines 2-6). The doctor concluded that 100 percent of Applicant's inability to exercise was attributable to his industrially caused pulmonary condition, after ruling out cardiac contribution based on the CPET results. (*see* Ex. 5, QME Vol. III Deposition, p. 6, lines 12-15).

ii. Dr. McClintock-Greenberg provided a comprehensive analysis of factors that contributed to Applicant's permanent disability.

Dr. McClintock-Greenberg acknowledged Applicant's history of tobacco use when assessing apportionment of Applicant's permanent disability to non-industrial factors. (*see* Ex. 2, QME April 16, 2025 Report, pg. 24). The doctor explained that CT scans are sensitive to picking up emphysematous changes, yet reviewed CT scans of Applicant's chest found "no evidence of any chronic obstructive pulmonary disease (COPD) … or emphysematous changes." (*see* Ex. 2, QME April 16, 2025 Report, pg. 24). Based on Applicant's CT scan results, Dr. McClintock-Greenberg found Applicant's prior tobacco use did not contribute at all to Applicant's permanent disability and provided 0% apportionment to prior tobacco use. (*see* Ex. 2, QME April 16, 2025 Report, pg. 24).

Dr. McClintock-Greenberg also acknowledged Applicant's history of coronary artery disease and requested that Applicant undergo a Cardiopulmonary Exercise Test ("CPET") to determine whether Applicant's shortness of breath was due in part to cardiac issues. (*see* Ex. 4, QME Vol. II Deposition, pg. 24, lines 15 – 24). Applicant underwent the CPET and the raw data from the CPET was provided to Dr. McClintock-Greenberg for review. (*see* Ex. 6, QME November 20, 2025 Report, pg. 2). Defendant may argue that Dr. McClintock-Greenberg failed to consider all the data in the CPET report, specifically, the ST elevations on the summary page, as a basis for finding the doctor's report to constitute unsubstantial medical evidence. Defendant would be correct, Dr. McClintock-Greenberg acknowledged that he did not include the ST elevations on the summary page, in his report. (*see* Ex. 5, QME Vol. III Deposition, pg. 14, line 12). **The doctor, however, explained that he did not include the ST elevation reading because it was interpreted and generated by a computer, and the computer generated reading was inaccurate. (*see* Ex. 5, QME Vol.**

III Deposition, pg. 18, line 25; pg. 19, line 1-9). The doctor personally reviewed the raw data from the CPET and found "no evidence of any ischemic changes during exercise that indicates that coronary artery disease is limiting the applicant's ability to perform physical activity". (*see* Ex. 6, QME November 20, 2025 Report, pg. 2). Dr. McClintock-Greenberg concluded that based on the results of the CPET, there is no indication that coronary artery disease contributed to Applicant's permanent disability. (*see* Ex. 6, QME November 20, 2025 Report, pg. 2).

iii. Defendant failed to meet its burden of establishing the percentage of permanent disability caused by other factors

Defendant failed to establish that Applicant's permanent disability was caused by any non-industrial factors… Dr. McClintock-Greenberg maintained that 100% of Applicant's permanent disability was caused by the industrial respiratory injury and 0% was apportioned to other factors. Defendant did not meet its burden, therefore, 0% apportionment to non-industrial factors is correct.

iv. Dr. McClintock-Greenberg's report constitutes substantial medical evidence

Dr. McClintock-Greenberg's findings are grounded in objective, reliable sources: the results of the CPET, a thorough review of Applicant's medical records, and 22 years of experience as a board-certified pulmonologist. His opinion is not speculative or conclusory but rather is supported by measurable test data and a comprehensive clinical foundation. Accordingly, his findings constitute substantial medical evidence and carry genuine probative weight. [].

….

The 9/5/2025 report of PQME Dr. Greenberg confirms Dr. Greenberg needed to review the entire CPET report with supporting data to confirm the CPET interpretation is correct.

> "Callen Johnson, Esq., kindly asked for a supplemental report. I received the results of the cardiopulmonary exercise test (CPET) and asked the following interrogatories:
>
> 1) Whether the applicant's end-stage lung disease constitutes a "very severe organ or body system impairment: under Table 1-2?
>
> 2) If I apply Table 1-2, would I still assign a 100% whole person impairment? If so, please explain the basis for my opinion in detail, including which ADLs are affected, the severity of those limitations, and

how they support the assigned WPI. IF not, please state the alternative WPI and my reasoning.

3) Whether I believe the applicant's shortness of breath can be attributed to a cardiac cause, such as coronary artery disease, or whether I believe the shortness of breath is attributed entirely to his pulmonary condition. The CPET results I received are a summary page from the respiratory therapist who performed the test on 9/4/25. There is no documentation of the applicant's VO2 max, EKGs, or other graphs typically included in a CPET interpretation report. The results documented by the respiratory therapist do not assist me in determining whether the applicant has a pulmonary or cardiac limitation causing his shortness of breath. I would ask Kaiser to send a copy of the entire CPET report (that contains the data) with the physician's interpretation. The "raw" data is required for me to confirm the CPET interpretation is correct. I will issue a supplemental report after receiving this additional information." Applicant's exhibit #7.

Defense exhibit E contains 137 pages of records from Kaiser reviewed by the PQME Dr. Greenberg.

Reviewing the raw data behind the CPET and reporting that the findings are consistent with the review of the raw data supports finding the reporting of the PQME to be substantial evidence.

Dr. Greenberg stated,

"It is this examiner's opinion that Mr. Hoff has 100% WPI based on the results of Table 5-12. He has end-stage lung disease due to pulmonary fibrosis with rapid deterioration of his lung function. With his rapid decline in lung function, Mr. Hoff will not be alive in one year if he does not receive a bilateral lung transplant….

1) The applicant's end-stage lung disease constitutes a "very severe organ or body system impairment" under Table 1-2. He continues to have a rapid decline in his lung function and will need a bilateral lung transplant within the next year.

2) If I applied Table 1-2 (separate from the objective data from his CPET and rating using Table 5-12 of the AMA Guides), I would still assign him a 100% WPI. Shortness of breath affected most of the applicant's ADLs (self-care & personal hygiene, communication, physical activity, nonspecialized hand activities, travel, sexual function, and sleep).

3) There is no objective evidence on the CPET that cardiac disease or coronary artery disease is contributing to his shortness of breath and inability to exercise. The cardiac response to exercise was normal. 100%

> of the applicant's inability to exercise was due to his pulmonary condition."

See applicant's exhibit #6, supplemental report of Dr. Greenberg dated 1/20/2025, page 3.

Defendant asserts there should be apportionment to applicant's history of tobacco use.

The undesigned notes PQME Dr. Greenberg ruled out cardiac contribution based upon the CPET results.

The undersigned concluded the record did not support the finding of apportionment to non-industrial factors.

Defendant requests,

> "Defendant respectfully requests that the Court find the PQME's three-report series does not constitute substantial medical evidence on (a) the diagnostic classification, (b) the impairment rating, and (c) the apportionment of permanent disability under Labor Code § 4663. Defendant requests an order for further medical development through an Agreed Medical Examiner in Internal Medicine — Pulmonary Disease, with a specific directive to obtain formal consultation from an independent cardiologist prior to issuing any opinion on apportionment, and with demonstrated experience in cardiopulmonary exercise testing interpretation." See defendant's Trial Brief dated 5/21/2026, page 15, lines 2-10.

The record reflects four reports and three deposition transcripts of PQME Dr. Greenberg. The undersigned findings were based upon a review of the entire record. The findings were not based upon, "the PQME's three-report series."

The undersigned does not find the record supports an order for further medical development through an Agreed Medical Examiner in Internal Medicine — Pulmonary Disease, with a specific directive to obtain formal consultation from an independent cardiologist prior to issuing any opinion on apportionment, and with demonstrated experience in cardiopulmonary exercise testing interpretation.

RECOMMENDATION

The reporting and deposition testimony of PQME Dr. Greenberg complies with the requirements of Escobedo v Marshalls (2005) Cal. Comp.Cases 604; 2005 Cal. Wrk.Comp. LEXIS 71 [Appeals Board en banc].

> Based upon the forgoing reasons the undersigned recommends the petition for reconsideration be denied.
>
> (Report, at pp. 1-12, emphasis added.)

III.

The decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

For the reasons stated by the WCJ, as quoted above, we are persuaded that the opinion of PQME Dr. Greenberg is substantial medical evidence upon which the WCJ appropriately relied on the issues of permanent disability and apportionment. Moreover, conclusions of medical probability do not require an absolute certainty. (*McAllister v. Workers' Comp. Appeals Bd*. (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660].)

> [W]e are required to indulge all reasonable inferences which may be drawn legitimately from the facts in order to support the findings of the commission, and in doing so ***all that is required is reasonable probability; not absolute certainty***. (citations) It is the duty of a reviewing court to search the record to discover whether the evidence is reasonably susceptible of the inferences drawn by the commission in support of its conclusion, and upon favorable discovery to affirm the award. (citation) Neither may the award be annulled because there are two conclusions which fairly may be drawn from the evidence, both of which are reasonable, the one sustaining and the other opposing the right to compensation.

(*State Employees' Retirement System v. Industrial Acci. Com*. (1950) 97 Cal.App.2d 380, 382–383 [15 Cal.Comp.Cases 141], emphasis added.)

Section 4663 provides that "[a]pportionment of permanent disability shall be based on causation." (Lab. Code, § 4663(a).) A doctor who prepares a report addressing the issue of permanent disability due to a claimed industrial injury must address the issue of causation of the permanent disability. (Lab. Code, § 4663(b).) Section 4663 requires that the doctor "make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries." (Lab. Code, § 4663(c).) Pursuant to section 4663(c) and section 5705, it is defendant that has the burden of establishing the approximate percentage of permanent disability caused by factors other than the industrial injury. (*Benson v. Workers' Comp. Appeals Bd*. (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 (Appeals Board en banc).)

Based on the record in this case and for the reasons stated above, we agree with the WCJ's determination that Dr. Greenberg's opinion supports a finding of no apportionment. Defendant did not meet its burden to prove otherwise.

Accordingly, we will deny the Petition for Reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG L. SNELLINGS, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 1, 2026

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

ERIC HOFF
JOHNSON SANDHU, LLP
PARK GUENTHART

PAG/cm

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