

**WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA**

GERALD KOPEC, *Applicant*

vs.

**STATE COMPENSATION INSURANCE FUND, legally uninsured;
administered by THE HARTFORD, *Defendants***

**Adjudication Number: ADJ9749095
Redding District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION**

Defendant has filed a Petition for Reconsideration (Petition) of the Findings and Award (F&A) issued on November 12, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part that applicant, while employed by defendant during the period ending February 22, 2013, sustained injury arising out of and occurring in the course of employment (AOE/COE) to the neck, spinal stenosis, right shoulder and bilateral upper extremities along with carpal tunnel syndrome, left shoulder, hearing, tinnitus and hyperacusis.

The WCJ further found that applicant's earnings at the time of injury were \$837.69 per week, and that applicant's injury caused 100% permanent disability, entitling applicant to lifetime permanent total disability payable at the rate of \$837.69 per week. Applicant's attorney was found to be entitled to the reasonable value of the services and disbursements, to be calculated by the Disability Evaluation Unit and served upon the parties. The WCJ issued an award for permanent disability of 100%, with attorney fees to be commuted from the far end of the award. Each permanent disability payment remaining to be paid to the applicant was ordered to be decreased by 15 percent payable to applicant's attorney.

Petitioner contends that the WCJ erred in awarding 100% permanent disability, as such finding is not supported by substantial evidence, and that the WCJ disregarded substantial medical evidence of apportionment. Petitioner further asserts that applicant's hyperacusis is non-industrial,

and that the WCJ's finding of total disability is based upon an incorrect application of the law as it relates to employability in the open labor market and is not supported by the medical and vocational evidence.

Applicant filed an Answer.

The WCJ's Report and Recommendation on Reconsideration (Report) recommends that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report of the WCJ with respect thereto. Based upon our preliminary review of the record, we will grant defendant's Petition for Reconsideration.

Our order granting defendant's Petition for Reconsideration is not a final order, and we will order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. Once a final decision after reconsideration is issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to Labor Code section 5950 et seq.¹

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. (Former 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.

(Lab. Code, § 5909.)

¹ Unless otherwise stated, all further statutory references are to the Labor Code.

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 22, 2025, and 60 days from the date of transmission is Friday, February 20, 2026. This decision issued by or on February 20, 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 shall be notice of transmission.

According to the proof of service, the Report was served on December 22, 2025, and the case was transmitted to the Appeals Board on December 22, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by 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 22, 2025.

II.

A.

Applicant originally claimed a specific injury occurring December 10, 2012, while employed by defendant as an insurance underwriter. The claim, however, was later amended to reflect a cumulative injury through February 22, 2013. (Pre-Trial Conference Statement (PTCS), January 15, 2023, p. 2.)

The case was originally tried on April 5, 2023, with the parties stipulating that applicant sustained a cumulative injury through February 22, 2013, to “his neck, right shoulder, bilateral upper extremities, including carpal tunnel syndrome.” (Minutes of Hearing and Summary of

Evidence (MOH/SOE), April 5, 2023, p. 2, lines 4-9.) Earnings were stipulated to be \$837.69 per week, resulting in temporary disability at \$558.46 and the maximum for permanent disability. (*Id.*, p. 2, lines 11-13.) The issues included applicant's claims of injury to hearing, hyperacusis, left shoulder, and chronic regional pain syndrome (CRPS), as well as the issue of permanent disability and apportionment. (*Id.*, p. 2, lines 22-24.) Exhibits were admitted including a Disability Evaluation Unit (DEU) consultative rating, Applicant Exhibit 23. Three proposed exhibits, Applicant's 24 and 25, and Defendant's A, were marked for identification only. (*Id.*, p. 3, line 10, to p. 5, line 25.)

On June 16, 2023, the WCJ issued an Order Vacating and Rescinding Submission to Further Develop the Medical Record (Order) which sought clarification on several points and noted "discovery is now re-opened for whatever additional medical evidence is necessary."

The case again returned to the trial calendar on August 20, 2025, with the stipulations and issues remaining essentially unchanged. (MOH/SOE, August 20, 2025, p. 2, line 1, to p. 3, line 4.) Additional exhibits were admitted, including medical and vocational evaluator reports. (*Id.*, p. 3, line 5, to p. 4, line 11.)

Applicant testified at both trials.

On November 12, 2025, the WCJ issued an F&A, wherein, as relevant here, it was found that applicant sustained industrial injury AOE/COE while employed by defendant to the neck, spinal stenosis, right shoulder, bilateral upper extremities, carpal tunnel syndrome, as well as to the disputed left shoulder, hearing, tinnitus and hyperacusis. Applicant was found to be 100% permanently disabled and was awarded permanent total disability paid at \$837.69 per week. Applicant's attorney was awarded the reasonable value of services as well as disbursements, to be calculated by the Disability Evaluation Unit and served upon the parties, with each permanent disability payment remaining to be paid to the applicant from the initial permanent disability payment to be decreased by the 15 percent payable to applicant's attorney. In the Opinion on Decision (Opinion) the WCJ advises that "Exhibits 24, 25, 26 were not admitted into evidence" and "a reasonable attorney fee is 20 percent which will be calculated by the Disability Evaluation Unit."

It is from this F&A that defendant seeks reconsideration.

B.

As will be discussed in further detail below, applicant has been evaluated by a multitude of physicians who have authored several reports. Applicant was evaluated by neurology Panel Qualified Medical Evaluator (PQME) Daniel Shalom, M.D., who authored some sixteen reports and provided a deposition, which were all made part of the record. Applicant's claim of hearing issues was originally reported on by PQME David Evan, M.D., who subsequently became unavailable. Thereafter, the applicant was evaluated for his hearing by PQME Ronald Ward, M.D. The record also contains multiple treating records from various sources and a functional capacity evaluation (FCE) by Manijeh Ryan, M.D.

In addition, applicant's vocational expert Scott Simon, M.S., and defendant vocational expert Emily Tincher, M.S. Ed., CRC, provided expert opinions in the form of written reports.

III.

We observe that a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

As discussed below, further study is necessary to determine if the record is substantial. We note the WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].)

A.

Defendant asserts that the finding of total permanent disability is error. (Petition, p. 13, lines 13-16.) Permanent disability in workers' compensation cases is determined using the

Permanent Disability Ratings Schedule (PDRS), which is prima facie evidence of applicant's level of permanent disability. (Lab. Code, §§ 4660(c), 4660.1(d).)

The starting place for determining disability for physical injuries under the PDRS is Section 4660.1 which applies to injuries occurring on or after January 1, 2013, and states as relevant here:

(a) In determining the percentages of permanent partial or permanent total disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and the employee's age at the time of injury.

(b) For purposes of this section, the "nature of the physical injury or disfigurement" shall incorporate 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.

(Lab. Code, § 4660.1(a) and (b), emphasis added.) The prima facie evidence of the PDRS therefore includes the AMA Guides. As the Court stated in *Guzman*:

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].)

Although prima facie evidence, the PDRS is rebuttable. The First District Court of Appeal in *Ogilvie v. Workers' Compensation Appeals Board* (2011) 197 Cal.App.4th 1262, [76 Cal.Comp.Cases 624], has held there are three permissible methods by which a scheduled rating may be rebutted:

First, the court concluded that the Legislature left unchanged the case law allowing "the schedule to be rebutted when a party can show a factual error in the application of a formula or the preparation of the schedule." (*Ogilvie, supra*, at p. 1273.)

Second, the Legislature also left intact the cases, including *LeBoeuf*, recognizing "that a scheduled rating has been effectively rebutted ... when the injury to the employee impairs his or her rehabilitation, and for that reason, the employee's diminished future earning capacity is greater than reflected in the employee's scheduled rating." The court interpreted *LeBoeuf* and its progeny as limited in application "to cases where the employee's diminished future earnings are directly

attributable to the employee's work-related injury, and not due to nonindustrial factors.” (*Ogilvie, supra*, at pp. 1274–1275.)

Third, and finally, the court held “[a] scheduled rating may be rebutted when a claimant can demonstrate that the nature or severity of the claimant's injury is not captured within the sampling of disabled workers that was used to compute the adjustment factor.”

(*Ogilvie, supra* at p. 1276; see also *Contra Costa County v. Workers’ Compensation Appeals Board* (2015) (*Dahl*) 240 Cal.App.4th 746, 751, [80 Cal.Comp.Cases 1119]; and see *Department of Corrections & Rehabilitation v. Workers’ Compensation Appeals Board* (2018) (*Fitzpatrick*) 27 Cal.App.5th 607, 622, [83 Cal.Comp.Cases 1680] [the Third District Court of Appeals confirmed there are only three methods to rebut a scheduled rating and the language in section 4662(b) that permanent total disability may be found “in accordance with the fact” does not provide “a second independent path to permanent total disability findings separate from section 4660.”].)

Implicit in the ability to provide rebuttal is the requirement that physical injuries must first be evaluated under the AMA Guides to establish a scheduled rating, otherwise there is nothing to rebut. After a scheduled rating is provided, a party may then seek to rebut the scheduled rating.

Although the WCJ finds applicant 100% disabled, nowhere in the F&A, Opinion on Decision, or Report does the WCJ provide a scheduled rating. A scheduled rating is the necessary predicate before any analysis of rebuttal evidence may be entertained.

The record contains a DEU consultative rating entered as Applicant’s Exhibit 23, however “Consultative Rating Determinations *will not be admissible in judicial proceedings.*” (Cal. Code Reg., title 8, § 10166(b), emphasis added). We therefore do not consider nor further address this exhibit.

Here, upon preliminary review of the record, we are unable to determine what applicant’s scheduled rating is. As such, we will grant reconsideration to further study the record and to determine if it is possible to identify applicant’s scheduled rating or if further proceedings may be necessary on this point.

B.

“Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board’s

findings if it is based on surmise, speculation, conjecture or guess.” (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]).

Here, without the benefit of further review, we are unclear if PQME Dr. Shalom’s opinions are substantial evidence.

For example, as part of the June 16, 2023, Order to develop the record, the WCJ stated it would “be helpful, and necessary, if Dr. Shalom could explain his rationale in determining the industrial/nonindustrial conclusions.” (Order, p. 2.)

In response, PQME Dr. Shalom stated in part, “[n]ot being a vascular specialist, I can only remark that these results have been reviewed by these specialists, and no specific comment made, although it would seem that they have some importance in relation to his symptoms.” Dr. Shalom concluded “**the vascular changes are at least in part related to his industrial condition** (cervical and upper extremity overuse), and **there is industrial causation for them.**” Further, “**cervical radicular, upper extremity overuse entrapment, and neurovascular changes to all be industrial,**” and then, “[t]he one item that was and is not industrial is that of a **peripheral neuropathy**”. (Joint Exhibit A22, PQME Dr. Shalom, February 27, 2004, pp. 4-5, emphasis in original.)

On initial review, although entering into lengthy discourse, it does not appear that Dr. Shalom has provided the reasoning behind his opinion that vascular changes are partially industrial while peripheral neuropathy is not industrial.²

Further, in response to detailed written questions from defense counsel including questions about activities of daily living (ADL), overlap, and synergistic effect, Dr. Shalom replied “I feel that the combination of the responses from my 10/21/24 QME supplemental report, along with those in my deposition testimony (which would be commensurate with them having being in “my report”, as the questions of [defense counsel] are posed) are responsive to the following questions: **1a, 1b, 1c, 2a, 2b, 3a, 4a, 5b, 5c, 6c, 7a, 7b, and 8c.**” “Questions **3b, 4c, 6b, and 7c** repetitively ask for objective/medical evidence supporting the conclusions made. The multiplicity of substantial medical findings in the upper extremities is well-detailed in multiple reports.” (Defendant Exhibit F, PQME Dr. Shalom, February 18, 2025, p. 10, bold emphasis in original.)

Instead of providing reasoned answers to the questions asked, Dr. Shalom redirects the reader to prior reporting and deposition testimony. On the surface, such evasive and unsupported

² We note that although applicant claims CRPS the F&A makes no finding as to that claim.

answers could make Dr. Shalom's opinions erroneous, inadequate, and based on surmise, speculation, conjecture or guess. (*Hegglin, supra*, 169.) Here, we find further study is necessary to fully consider the substantiality of Dr. Shalom's opinions.

C.

Stipulations further the public policies of settling disputes and expediting trials. A stipulation of the parties may not be set aside by the Board absent a finding of good cause. (Lab. Code §5702; *County of Sacramento v. Workers' Comp. Appeals Bd., (Weatherall)* (2000) 77 Cal. App. 4th 1114, 1119, [65 Cal.Comp.Cases 1].) This is because stipulations are helpful in limiting issues for trial and removing the burden of providing evidence from the parties.

Here the parties stipulated that applicant sustained a cumulative injury through February 22, 2013, to "his neck, right shoulder, bilateral upper extremities, including carpal tunnel syndrome." (MOH/SOE, April 5, 2023, p., lines 4-9.) Through this stipulation applicant has established injury. It also appears from our preliminary review of the record that applicant has met the burden of establishing permanent disability.

The burden of proving apportionment of permanent disability, however, falls on the employer because it is the employer that benefits from apportionment. (*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, 612 (Appeals Bd. en banc).)

In his original report PQME Dr. Shalom states that for the cervical spine disability "40% accrues to other factors (in this case, likely pre-existing, non-industrial and naturally occurring cervical degenerative disease) and history of prior injury." (Joint Exhibit A1, PQME Dr. Shalom, January 22, 2016, p. 22.) It does not appear this apportionment determination was meaningfully revisited by PQME Dr. Shalom, nor was it specifically addressed by the WCJ.

Further review of the record on apportionment is important in a case where permanent total disability is found to be based, at least in part, on vocational expert opinion. This is because expert vocational opinion must follow medical apportionment. (*Nunes v. State of California Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 741 (Appeals Bd. en banc).)

After a preliminary review, further consideration of the record regarding apportionment is necessary.

D.

Until further review of the expert medical opinions is completed and the relevant medical reporting is found substantial, consideration of expert vocational opinions based on such medical opinion is of necessity premature.

E.

The parties stipulated that earnings were \$837.69 per week and the WCJ found permanent total disability was to be paid at \$837.69 per week. (F&A, p. 2, Finding 4.) Permanent disability is not paid at the full earnings rate, and it appears this finding is the result of clerical error and will require correction in any further proceedings. (Lab. Code §§ 4453 and 4659.)

F.

The WCJ found the “reasonable value of the services and disbursements of Applicant's Attorney is to be calculated by the Disability Evaluation Unit and served upon the parties.” (F&A, p. 2, Finding 7.) The Award included that “[e]ach permanent disability payment remaining to be paid to the applicant from the initial permanent disability payment shall be decreased by the 15 percent payable to” applicant’s attorney. (F&A, p. 3, Award, subsection b.) However, in the Opinion the WCJ states “a reasonable attorney fee is 20% which will be calculated by the Disability Evaluation Unit.” (F&A, Opinion, p. 5.)

The amount and appropriateness of attorney fees is unclear. To determine if an attorney fee is owed and if so at what amount, further review of the record is required.

G.

At the first trial hearing, it was stipulated that the employer was *legally uninsured*, administered by The Hartford, and adjusted by The Hartford. (MOH/SOE, August 5, 2023, p. 2, lines 9-11.) When the parties returned to trial on August 20, 2025, it was stipulated that the *employer's workers' compensation carrier was The Hartford as adjusted by AIMS and that employer was legally uninsured*. (MOH/SOE, August 20, 2025p. 2, lines 7-9.) In the caption of the F&A the employer is listed as *permissibly self-insured as administered by The Hartford and as adjusted by AIMS*, while in the Petition defendant lists the employer as *legally uninsured, administered and adjusted by The Hartford*. (Petition, p. 1, lines 17-19.)

From review of the pleadings and stipulations we are unable to confirm the employer’s insurance and adjusting status.

In any further proceedings the proper defendants and periods of coverage should be identified. Under WCAB Rule 10390 (Cal. Code Regs., tit. 8, §10390), all parties must provide their full legal name on all pleadings and at any appearance, including the names of the employer, insurance company and any third-party administrator. (See, *DiFusco v. Hands On Spa* (2025) 90 Cal.Comp.Cases 1007, 1017 (Appeals Bd. en banc); *Coldiron v. Compuware Corp.* (2002) 67 Cal.Comp.Cases 289 (Appeals Bd. en banc).).

H.

At the August 5, 2023, trial, applicant's exhibits 24 and 25, and defendant's exhibit A, were marked for identification only. (MOH/SOE, August 5, 2023, p. 4, lines 19-21, p. 5, lines 16-17.) Applicant's exhibit 26 was admitted for reimbursement purposes only. (*Id.*, MOH/SOE, page 5, lines 15-16).

As the WCJ rescinded submission of the case initially submitted on April 28, 2023, at the subsequent trial no rulings regarding admissibility of the evidence was made, and although the WCJ states in the Opinion on Decision that "exhibits 24, 25, 26 were not admitted into evidence and not relied upon during the decision making process," there does not appear to be any order addressing the admissibility of these exhibits. (F&A, Opinion, p. 5.) Applicant exhibit 26, however, was noted to be admitted "for reimbursement purposes only" at the first trial. (F&A, Opinion, p. 5.)

Further study is required to determine the admissibility of applicant's exhibits 24, 25, 26, and defendant's exhibit A.

IV.

It is unclear from our preliminary review that there is substantial evidence to support the WCJ's decision. Considering the statutory time constraints for acting on the petition, and based upon our initial review of the record, we believe reconsideration must be granted to allow sufficient opportunity to further study the factual and legal issues in this case. We believe that this action is necessary to give us a complete understanding of the record and to enable us to issue a just and reasoned decision. Reconsideration is therefore granted for this purpose and for such further proceedings as we may hereafter determine to be appropriate.

This is not a final decision on the merits of the Petition for Reconsideration, and we will order that issuance of the final decision after reconsideration is deferred. Once a final decision is

issued by the Appeals Board, any aggrieved person may timely seek a writ of review pursuant to sections 5950 et seq.

Accordingly, we grant the defendant's Petition for Reconsideration, and order that a final decision after reconsideration is deferred pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law. While this matter is pending before the Appeals Board, we encourage the parties to participate in the Appeals Board's voluntary mediation program. Inquiries as to the use of our mediation program can be addressed to WCABmediation@dir.ca.gov.

We express no opinion on the ultimate resolution of these matters.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the workers compensation administrative law judge on November 12, 2025, is **GRANTED**.

IT IS FURTHER ORDERED that a final decision after reconsideration is **DEFERRED** pending further review of the merits of the Petition for Reconsideration and further consideration of the entire record in light of the applicable statutory and decisional law.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 20, 2026

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

**GERALD KOPEC
EASON TAMBORNINI
GOLDMAN MAGDALIN STRAATSMA**

00

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