WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

JOSE ASCENCIO, *Applicant*

vs.

PARTNERS PERSONNEL and LIBERTY MUTUAL INSURANCE CORPORATION, administered by CORVEL CORPORATION, *Defendants*

Adjudication Number: ADJ18016076
San Francisco District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the 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 except as noted below, we will grant reconsideration, amend the WCJ's decision as recommended in the report, and otherwise affirm the Findings of Fact and Award and Orders issued on June 3, 2026.

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.

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

(b)

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

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

Under section 5909(a) (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.

II.

It is well established that 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*.)

Based on the record in this case and for the reasons stated in the WCJ's Report, we agree with the WCJ's determination that the opinion of Asha Fields Brewer, D.C., is substantial medical evidence that supports the findings in this case.

III.

We do not adopt and incorporate the WCJ's recommendation that we deny reconsideration. However, consistent with the WCJ's additional recommendation, we will grant reconsideration and amend the award of future medical treatment to include the body parts of "lumbar spine, thoracic spine, cervical spine, and left shoulder" rather than "right shoulder and scar." In addition, we amend the Award to remove the employer, as an award of compensation is properly made only against the insurer.

For the foregoing reasons,

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

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award and Orders issued on June 3, 2026 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

* * *

AWARD

AWARD IS MADE in favor of **JOSE ASCENCIO** against **LIBERTY MUTUAL INSURANCE COMPANY** of:

a) Future medical treatment reasonably required to cure or relieve from the effects of the injury to the lumbar spine, thoracic spine, cervical spine, and left shoulder, in accordance with Finding of Fact No. 10.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ PAUL F. KELLY, COMMISSIONER

/s/ CRAIG L. SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 31, 2026

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

JOSE ASCENCIO
LAW OFFICE OF NADEEM H. MAKADA
MICHAEL SULLIVAN & ASSOCIATES

PAG/cm

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

Report and Recommendation on
Petition for Reconsideration and Notice of Transmission to WCAB

INTRODUCTION

Defendant seeks reconsideration of my June 3, 2026, Findings and Order and Award. The substantive decision set forth therein was a finding of 53 percent permanent disability. In its petition, defendant contends my award was issued without or in excess of the appeals board powers, the evidence does not justify the Findings of Fact, and the Findings of Fact to not support the Order, Decision or Award. The petition is timely and verified. Applicant filed an answer.

FACTS

1. Procedural background.

There were three days of trial in this matter. The primary issues[1], [2]were parts of body injured, occupational group code, permanent disability, and need for further medical treatment. Applicant has an admitted industrial claim: a specific June 21, 2023, injury to his lumbar spine and thoracic spine. Defendant does not dispute applicant's entitlement to further medical care for the lumbar spine. Applicant also claimed injury to the cervical spine and left shoulder, which are denied.

As discussed in detail below, the parties offered a number of exhibits. The applicant and adjuster testified at trial.

2. Evidence at trial and decision.

Applicant testified in relevant part:

> He got injured on June 21, 2023. He basically loaded and unloaded tires onto and off of trucks all day. They weighed about 70 to 100 or more pounds.
>
> When he got hurt, he was stacking the tires on a truck because they were going to make a delivery. There was the person throwing the tires. He was stacking and arranging them inside the truck. There were some really heavy tires . When he went to stack the next to last tire, he felt pain in his back and he told his coworker that his back hurt. The coworker told him to tell the supervisor. He did, but the supervisor did not really do anything so he

[1] Defendant objected to the issue of earnings being submitted.
[2] The parties ultimately stipulated to defer the issue of penalties. A stipulation & order issued on June 1, 2026 resolving applicant's November 4, 2024, and March 12, 2025, petitions for penalties.

kept working with the pain. The next day he had to go to the agency to tell them that he got injured and that he kept working.

What hurts him is his neck, his mid-back, his low back, and his left shoulder.

Over the last 30 days, he feels pain in his neck. Sometimes the pain is every day. Sometimes it is constant. Sometimes it calms down a bit. The pain starts where the back of his head starts. What makes the pain better is sleeping on his back. If the pain does not go away trying to relax a bit, he takes a pain pill. What makes pain worse is if he does exercise or walks or if he is sitting for a long time. The doctors recommended exercises for his condition. He tries to do them. They do not help him. The pain level in his neck is at a seven when it is strong; at a lower level it is a six to a five.

In his left shoulder, his pain over the last 30 days is that it always hurts, but it is a little less. The pain level for his left shoulder is five when it is low; when it is a little stronger it is six. He feels the pain in the back where the joint is, in the back of the shoulder. This pain comes and goes. It is a sharp pain and there is sometimes burning. What makes the pain better is when he sleeps on his back. If that does not work, he takes a pain pill. What makes the pain worse is if he raises his arm or if he tries to lift heavy things overhead.

Over the last 30 days in his mid-back, it hurts a lot. He feels a lot of pain in that spot. It is strong pain. The pain is about an eight more or less. This pain bothers him. He cannot do what he did before – he cannot bend, he cannot sit for a long time, he cannot walk for a long time. In everything that he does, he cannot do what he used to do. It affects him at every level. What makes the pain worse is in basically all of his activities of daily living such as tying a shoelace and walking. It does bother him all the time, but is not exaggeratedly horrible. He takes a pill, ibuprofen, for the pain or laying down helps the pain, laying down face up or face down. He tries to relax and get into a comfortable spot.

The pain in his low back over the last 30 days is a little moderate – he would say a level seven, but it does bother him. The pain comes and goes. It affects him in all ways: in sex, bathing, putting on socks, sitting for too long. What makes the pain worse is when he bends, or sits for more than an hour or stands for a long time. What makes the pain better is taking a pill if it is strong, otherwise trying to relax a bit.

Regarding activities of daily living for his neck, for bathing or showering, it hurts him when he turns his head or bends. For things like scrubbing his back, he cannot do it fast, he has to do it slowly. When he drives, he can do it, but turning his head from side to side, he cannot do it fast enough and is afraid if he cannot see a car coming fast enough or danger. He can do home chores like cooking and laundry, but not like he did before, he has to do it slowly. It bothers him if he lifts a heavy bag, or if he cooks or exercises.

Regarding activities of daily living for his left shoulder: bathing, brushing teeth, personal hygiene, he can do then but it bothers him. He cannot do it exactly like he did before. For getting dressed, it hurts him putting on pants or twisting to put on a jacket or a shirt. If he has to reach for something overhead and he raises his arm, it really bothers him. If he is

getting something from the cupboard it bothers him. It hurts him to do chores like laundry and cooking. It is not horrible pain but it is bothersome.

Regarding activities of daily living for his mid-back: he does feel a lot more pain when he moves. With bending and standing required for cooking, sleeping, he has to change positions to change the pain. Everything he does is affected by the back. He can't move or lift furniture in the house, he always has to ask for help in the home to move things.

Bathing: bending over to scrub his feet, going to the bathroom, even getting up from the toilet bothers him, and sitting too long bothers him but he can do it with pain. Getting dressed: when he puts on his socks, bending over, or putting on his pants it takes him longer and affects him in changing in these areas of his body. Being bent over to trim his nails, he cannot do it; he has to sit up or stand up. He cannot do any of those for too long. If he is cooking for a long time, maybe standing up, he cannot do it for too long. Sometimes his sister cooks for him. Driving also bothers him, he cannot drive more than two hours and cannot drive constantly. He has to stop and rest and relax his body a bit.

The combination of these injuries has made certain activities very difficult. Examples of activities he could do before the injury that he cannot do now: driving for a long time, standing, lifting heavy things, moving furniture, raising his arm, going up ladder to reach something, moving his bed, and all of his daily chores. He even played soccer. He has not been able to play soccer since this injury. Before the injury he was able to drive longer distances. He was able to drive eight or seven hours without stopping. He would go to Los Angeles. He has family and friends there. Since this injury he did drive to LA, but only drove one or two hours at a time; he would have to go with his nephew and his nephew's wife and they would take turns driving.

Before the injury he could lift anything heavy such as furniture and anything up to his strength levels. Regarding going up and down stairs, he does it, but he has to hang on to the railing. Examples of daily chores that he does not do now that he was able to do before the injury but cannot do now due to the combination of his injuries are: lifting something heavier than 15 pounds like lifting furniture or a sofa on his own, playing soccer, sitting or standing for too long, driving for more than a short distance on his own.

(March 24, 2026, MOH/SOE.)

The parties offered several exhibits at the trials:

❖ *Medical Reports*

i. *Reports of QME Asha Fields Brewer, D.C.*

1) *Joint Exhibit 7*

Joint Exhibit 7 is a QME report of Dr. Fields Brewer dated October 31, 2023. In her report, Dr. Fields Brewer reviewed medical records, took current complaints from the applicant, noted occupational history, prior injuries, and other histories. Applicant was injured when he was lifting

and stacking heavy tires. When he lifted a tire to stack on top of another tire, he felt a pop and pain in his back. She conducted a physical examination of the applicant. She diagnosed him with:

- Lumbar radiculitis
- Lumbosacral dorsopathy
- Strain of muscle and tendon of back wall of thorax, initial encounter
- Sprain of ligaments of thoracic spine, initial encounter
- Strain of muscle, fascia and tendon at neck level, initial encounter

Dr. Fields Brewer found the "cervical, thoracic and lumbosacral complaints to be related to the claimed industrial injury." She stated applicant's condition had not yet reached MMI status, and he was in need of further treatment and diagnostic testing.

2) Joint Exhibit 6

Joint Exhibit 6 is a QME reevaluation report of Dr. Fields Brewer dated June 4, 2024.

3) Joint Exhibit 5

Joint Exhibit 5 is a QME supplemental report of Dr. Fields Brewer dated June 25, 2024. In her report, Dr. Fields Brewer reviewed and summarized additional medical records. She stated: "A review of the additional records today does cause me to alter any previous[ly] authored findings…" After reviewing a February 19, 2024, MRI of the lumbar spine, "the diagnoses have been updated to reflect the lumbar pathology and remove the thoracic pathology." She diagnosed applicant with:

- Lumbar radiculitis
- Spondylolisthesis, lumbar region

4) Deposition transcript of QME Dr. Fields Brewer

Defendant's Exhibit A is a deposition transcript of QME Dr. Fields Brewer dated October 14, 2024. Dr. Fields Brewer testified:

- She does believe that the symptomatology is based off of the injury to the lumbar spine
- There could be a neurological base for his symptoms without a positive MRI if testing and mechanism of injury align
- She would reassess her finding of injury to the thoracic spine upon receipt of more current PTP reports
- In her October 31, 2023 report, there were positive findings to the cervical spine, loss of range of motion
- There are positive findings on the cervical spine MRI

- She was willing to reevaluate the applicant and review a pain diagram

5) Joint Exhibit 4

Joint Exhibit 4 is a QME reevaluation report of Dr. Fields Brewer dated March 16, 2025. In her report, she made the following updated diagnoses:

- Lumbar radiculitis
- Spondylolisthesis, lumbar region
- Cervical radiculopathy
- Strain of muscle and tendon of back wall of thorax, subsequent encounter
- Sprain of ligaments of thoracic spine, subsequent encounter
- Other instability, left shoulder

She assigned the following WPIs:

- - Cervical spine, DRE III: 17%
- - Thoracic spine, DRE II: 6%

Dr. Fields Brewer noted applicant "says that he has numbness and tingling from the neck to the left shoulder, arm, elbow, wrist, and digits three through five."

She stated:

> The applicant reports that he had neck symptoms at the most recent re-evaluation. He reports that the radiating symptoms to the left upper extremity have developed as a result of the neck pain. After stating all current areas of complaint, the examiner asks the applicant to confirm all body parts that are currently symptomatic by pointing to them. This examiner verifies that the location of all currently symptomatic body parts are as reported by the applicant.
> …
> Applicant was lifting and stacking tires, approximately 75-100 pounds each, and felt a pop and pain in his back. The mechanism of injury does support industrial causation."
>
> (pp. 23-24)

She deferred assigning impairment to the lumbar spine and left shoulder. Regarding apportionment, she found 10% "of the applicant's condition is attributable to pre-existing degenerative changes in the cervical spine." She found no non-industrial apportionment for the thoracic spine. She found applicant was in need of future medical care. She provided work restrictions. She recommended a left shoulder MRI.

6) Joint Exhibit 3

Joint Exhibit 3 is a QME supplemental report of Dr. Fields Brewer dated May 29, 2025. In her report, she reviewed additional medical records. She assigned the additional WPI:

- Lumbar spine, DRE III: 12%

7) *Joint Exhibit 2*

Joint Exhibit 2 is a QME supplemental report of Dr. Fields Brewer dated July 22, 2025. In her report, she assigned the additional WPI:

- Left shoulder: 4%

Regarding apportionment, she assigned the following:

- Cervical spine: 80% industrial
- Thoracic spine: 80% industrial
- Lumbar spine: 70% industrial
- Left shoulder: 90% industrial

8) Joint Exhibit 1

Joint Exhibit 1 is a QME supplemental report of Dr. Fields Brewer dated October 2, 2025. In her report, Dr. Fields Brewer reviewed additional medical records regarding two motor vehicle incidents dated May 27, 2009 and August 29, 2009. She gave the following updated opinions regarding apportionment:

- Cervical spine: 85% industrial
- Thoracic spine: 85% industrial
- Lumbar spine: 75% industrial
- Left shoulder: 95% industrial

ii. Reports of William Fishkin, D.C.

Joint Exhibit 8 consists of two reports of PTP Dr. Fishkin. Defendant's Exhibit I consists of six additional reports of Dr. Fishkin. He diagnosed applicant with:

- Thoracic sprain
- Pain in thoracic spine
- Muscle spasm of back
- Sprain of unspecified parts of lumbar spine and pelvis
- Low back pain

iii. Report of George Rakkar, M.D.

Joint Exhibit 9 is a Report of Dr. Rakkar dated April 29, 2025. In his report, he diagnosed applicant with: Spondylosis, cervicothoracic, thoracolumbar, lumbosacral regions.

❖ *Decision*

I found applicant sustained injury arising out of and in the course of employment to his lumbar spine, thoracic spine, cervical spine, and left shoulder. I further found: applicant's occupational group number is 460, defendant met its burden of proof as to apportionment, applicant's injury resulted in 53 percent permanent disability, and applicant is entitled to further medical treatment[3]. I deferred the issue of earnings and set the matter for status conference regarding the earnings issue; therefore, I did not rule on the issue of earnings. As such, the rate of permanent disability indemnity and attorney's fees were not yet calculated or awarded.

3. Contentions on reconsideration.

In its petition for reconsideration, defendant contends this WCJ erred in relying on the reporting of QME Dr. Fields Brewer regarding compensability of the cervical spine and left shoulder, and WPI opinions. Defendant contends that the WPIs assigned by the QME are not substantial evidence and should not be utilized in determining applicant's permanent disability.

DISCUSSION

1. *Compensability of cervical spine and left shoulder*

Applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302; Lab. Code, §§ 3600(a); 3202.5.) It is sufficient to show that work was a contributing cause of the injury. (See *Clark*, *supra*, 61 Cal.4th at p. 298; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413.) Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (*Clark*, *supra*, 61 Cal.4th at p. 303.) The burden of proof "manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) It has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the

[3] There is a typographical error in my Award of medical treatment. The Award should be for future medical treatment reasonably required to cure or relieve from the effects of the injury to lumbar spine, thoracic spine, cervical spine, and left shoulder.

employee." (*Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemmons v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 8; see also *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 at p. 317; Lab. Code, § 3202.)

To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc). In her reports, Dr. Fields Brewer diagnosed applicant with industrial injury to his left shoulder. She reviewed medical records, issued numerous reports, and took histories from the applicant. After her deposition, she issued three subsequent reports. She reevaluated applicant. She reviewed additional records. While she did change some of her opinions from her initial report, she explained why. Each report built upon additional information that she obtained. In her March 16, 2025, report, Dr. Fields Brewer noted that applicant's left shoulder was symptomatic, and she ordered an MRI. She stated, "The applicant reports that he had neck symptoms at the most recent re-evaluation. He reports that the radiating symptoms to the left upper extremity have developed as a result of the neck pain." "Applicant was lifting and stacking tires, approximately 75-100 pounds each, and felt a pop and pain in his back. The mechanism of injury does support industrial causation." (Joint Exhibit 4, pp. 23-24.) Her conclusion regarding the industrial nature of the injuries is unrebutted. I find her reporting regarding industrial causation to the left shoulder and cervical spine to be substantial medical evidence. Applicant's testimony regarding his neck and left shoulder symptoms corroborates the QME's opinions.

Therefore, I found applicant's injury to his left shoulder and cervical spine is industrially compensable.

2. Permanent Disability

With respect to permanent disability, the applicant holds the burden of proof by a preponderance of the evidence. (Labor Code section 3202.5.) The defendant has the burden of establishing the percentage of permanent disability caused by nonindustrial factors. (*Escobedo, supra,* at 614; *Nunes v. State of California, Dept. of Motor Vehicles* (2023) 88 Cal.Comp.Cases 894, 898 (*en banc*).) In order to be considered substantial medical evidence on apportionment, the medical opinion "must set forth reasoning in support of its conclusions." (*Id.* at 621.) It is well established that the relevant and considered opinion of one physician, though inconsistent with

other medical opinions, may constitute substantial evidence and the Appeals Board may rely on the medical opinion of a single physician unless it is "based on surmise, speculation, conjecture, or guess." (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378.

In its petition, defendant contends, "Dr. Brewer's cervical spine impairment rating does not satisfy the AMA Guides 5th Edition requirements for DRE Category III." DRE Cervical Category III criteria includes: "significant signs of radiculopathy…" (Table 15-5.) Here, QME Dr. Fields Brewer opined applicant's cervical spine WPI should be placed in DRE III because:

- Applicant expresses neck pain **radiating** to the let upper extremity and numbness/tingling
- MRI, multiple-level disc bulging
- **Diagnosis: cervical radiculopathy**

  (Joint Exhibit 1, p. 12.)

That analysis is unrebutted. I adopted the QME's assigned cervical spine WPI of 17%.

Defendant further contends, "Dr. Brewer's left shoulder impairment rating is methodologically unsupported and speculative" because a left shoulder MRI had not been performed; Dr. Fields Brewer had conducted range of motion studies, however. Utilizing the ROM results, medical records review, examinations of the applicant, and utilization of AMA Guides, Dr. Fields Brewer determined that applicant's WPI was 4%. This satisfies the *Escobedo* standard that the medical opinion 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. That analysis is unrebutted. I adopted the QME's assigned left shoulder WPI of 4%.

Defendant also contends, "Dr. Brewer's thoracic spine impairment rating does not satisfy the AME Guides 5th Edition requirements for DRE Category II." DRE Thoracic Category II criteria includes: "significant muscle guarding or spasm, asymmetric loss of motion…" (Table 15-4.) Here, QME Dr. Fields Brewer opined applicant's thoracic spine WPI should be placed in DRE II because:

- Applicant expresses pain in the thoracic region when bending and sitting upright
- Antalgic posture with **muscle guarding** and decreased ROM

  (Joint Exhibit 1, p. 11.)

That analysis is unrebutted. I adopted the QME's assigned thoracic spine WPI of 6%.

After apportionment, I found the following ratings:

- Left shoulder: 4% (95%) (16.02.01.00 - 4 - [1.4] 6 - 460G - 7 - 9%) 9%

- Lumbar spine, DRE III: 12% (75%) (15.03.01.00 - 12 - [1.4] 17 - 460H - 21 - 25%) 19%
- Cervical spine, DRE III: 17% (85%) (15.01.01.00 - 17 - [1.4] 24 - 460H - 29 - 34%) 29%
- Thoracic spine, DRE II: 6% (85%) (15.02.01.00 - 6 - [1.4] 8 - 460H - 11 - 13%) 11%

Therefore, applicant's permanent disability is rated at 53%:

29 C 19 = 42

42 C 11 = 48

48 C 9 = 53

53% Permanent Disability

RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on June 23, 2026, be denied4. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.

Hillary R. Allyn

Workers' Compensation Judge
Workers' Compensation Appeals Board