

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

KEVIN BARRETO, *Applicant*

vs.

**CITY OF VALLEJO, permissibly self-insured;
administered by LWP CLAIMS SOLUTIONS, INC., *Defendants***

**Adjudication Number: ADJ13057169
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued on December 4, 2025, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed by defendant on July 12, 2019 as a police officer, sustained injury arising out of and in the course of employment (AOE/COE) to the right leg, right knee, and low back, resulting in permanent disability of 62%, thereby entitling applicant to an award of future medical as well as payment of \$106,502.50, at a rate of \$290.00 per week for 359.25 weeks, less reasonable attorney's fees.

Defendant contends that the WCJ's adoption and reliance upon Agreed Medical Evaluator (AME) Andrew Burt, M.D.'s *Almaraz-Guzman* rating is an "improper deviation from the permanent disability rating schedule [(PDRS)]" and that use of the addition versus combined values chart (CVC) method of rating is "based on a conclusory theory of 'synergistic effect' that fails to satisfy the requirements of *Vigil* [*v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688-689 (Appeals Bd. en banc)]." (Petition for Reconsideration (Petition), pp. 10, 19.) Defendant further contends that the reporting of Dr. Burt is not substantial medical evidence because his opinions on complex regional pain syndrome (CRPS) are based upon "obsolete methodology," and "speculative reasoning." (Petition, p. 1.)

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

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

FACTS

On February 18, 2020, applicant filed an Application for Adjudication of Claim (Application) alleging that, while employed by defendant on July 12, 2019 as a police officer, he sustained injury AOE/COE to the right leg, right knee, and low back.

Applicant sought treatment with primary treating physician (PTP), Jeff Jones, M.D.

Thereafter, the parties agreed to use Dr. Burt as the AME. Dr. Burt evaluated applicant on two occasions and issued reports dated September 29, 2021, December 27, 2021, January 18, 2022, March 30, 2022, December 13, 2022, February 19, 2024, June 27, 2025, and July 21, 2025.

In his September 29, 2021 report, Dr. Burt diagnosed applicant with low back pain, radiculopathy, post-surgical lesions, and right lower extremity CRPS involving the infrapatellar branch of the saphenous nerve and common femoral nerve at the fibular head. (Exhibit 101, p. 7.)

In his January 18, 2022 supplemental report, Dr. Burt stated that, in accordance with page 553 of AMA Guides, “CRPS is currently believed to occur in the central nervous system, so the evaluator should use the station and gait impairment criteria in Table 13-15 to rate lower extremity impairments due to lesions in the central nervous system.” (Exhibit 103, p. 3.) He provided a provisional rating of 19% whole person impairment (WPI) with a 3% add-on for pain and outlined limitations on activities of daily living (ADLs) including problems with positioning, sleep, depression, sexual dysfunction, and difficulty placing and removing footwear. (*Ibid.*)

In his December 13, 2022 report, Dr. Burt opined that applicant had reached P&S/MMI status. Applicant was assigned a 19% WPI for CRPS, based upon Table 13-15, and due to difficulties with ADLs, including placement and removal of lower body clothing and footwear. (Exhibit 105, p. 5.) A 3% pain add-on was included to account for applicant’s pain-related depression, sexual dysfunction, and difficulties with positioning. (*Ibid.*) For the lumbar spine, applicant was assigned a 5% WPI under DRE lumbar category II due to loss of motion, muscle spasm, and non-verifiable radiculopathy. For the right knee, applicant was assigned a 2% WPI

using Table 17-31, due to patellofemoral pain and crepitation on examination. Dr. Burt recommended adding impairments “since [the] combination [method] does not adequately encompass the synergistic effects of injury to the various body parts.” (*Id.* at p. 6.) Dr. Burt also found *Almaraz Guzman* to be applicable and provided an alternate 19% WPI for loss of lifting capacity using Table 6-9 and another 19% for alteration of station and gait using Table 13-15. (*Ibid.*) He argued that these ratings were more accurate “since the standard rating does not adequately encompass the effects of the injuries on ADLs. (*Ibid.*)

On March 29, 2024, Dr. Burt was deposed by the parties and testified, in relevant part, as follows:

Q: Was there a specific criteria that you used to assess if the applicant had CRPS?

A: Yes.

Q: And what was that criteria?

A: First of all, I’ve reviewed the history, rather typical for the development of CRPS in an extremity. Secondly, I did repeated physical examinations considering the subjective complaints compatible with CRPS such as stabling, burning, intolerance to cold, intolerance to temperature changes, especially cold, and the physical findings which were consistent and included temporal—temperature differential in the skin, cool to the touch, cyanosis and mottling of the skin in the appropriate nerve distribution on the injured side and scarring consistent with the history of the trauma dog bite and the prior problem with the right knee. There was also edema and—let’s see—some—some atrophy to the injured lower extremity musculature.

(Exhibit 109, pp. 11:24-12:18.)

Q: Do you think that it would be—would you defer—that being the case, since you’re unfamiliar with the Budapest criteria, would you defer to a pain management specialist in terms of the CRPS diagnosis?

A: I wouldn’t defer in terms of diagnosis. I would defer in terms of treatment. The diagnosis is secure in my opinion as the Agreed Medical Evaluator.

(*Id.* at pp. 18:19-19:1.)

Q: Okay. So is it your testimony, just to confirm, that your diagnosis of CRPS is based upon the literature—the AMA Guides?

A: Based on the history, the physical examination, the physical findings, the complaints that applicant has relevant to that type of trauma, and the review of the medical that I had, the findings applied to the AMA Guides criteria.

Q: And it's also your opinion that there's a synergistic effect between the lumbar spine and the right lower extremity. Can you explain how you arrived at that conclusion?

A: And the knee.

Q: Okay. So how did you arrive at that conclusion?

A: Well, there was an initial injury to the knee. That would affect his ability to squat, kneel, run, jump, climb, heavy—carry heavy objects. Basically that injury and the compensable consequence from that injury which led to CRPS aggravated or further diminished his capacities along those lines. Then he developed the back pain due to alteration of his gait and use of the injured lower extremity.

Q: Okay.

A: And that's also synergistic because it affects his ability to bend, lift, squat, knee, climb, walk, and that sort of thing. In other words, he's not be able to—going to be able to work in law enforcement anymore.

Q: So your findings of synergistic effect, I'm sorry, is that based upon his subjective complaints to you?

A: Yes, along with consideration of the history, the physical findings and the medical records reviewed. It was all put together.

(*Id.* at pp. 22:23-24:8.)

Q: Okay. So—so under the Almaraz/Guzman analysis, you invoke the hernia table even though there is no hernia; correct?

A: That's right.

Q: And can you explain your reasoning for that?

A: Because there's a loss of lifting capacity due to the injuries to the spine and the lower extremities and the cervical—the cerebral cortex. Even though there's no abdominal herniation, he has loss [sic] lifting capacity due to these conditions and that loss of lifting capacity does contribute to the—let's see. The wording is “loss

of lifting capacity interfering with some activities of daily living,” even though there’s no abnormal abdominal herniation. It’s an analogous rating.

Q: Okay. So along those lines, if, hypothetically, he doesn’t have CRPS, can the same analogy apply to the station and gait table that you’re referencing in the Almaraz/Guzman section of your report on page 6?

A: If he doesn’t have CRPS?

Q: Yeah. If he doesn’t have CRPS, would it—would it be appropriate to use the station and gait table by analogy?

A: If there were no signs or symptoms of CRPS, yes that’s what I’d do.

Q: Okay. So if there were no CRPS, your Almaraz/Guzman ratings and analysis would not change; is that correct?

A: That’s correct.

(*Id.* at pp. 27:21-28:25.)

Q: Okay. With respect to your discussion of the synergistic effect between the body parts is that you mentioned in your reporting the impact on lifting. Can you—can you describe that in a little more detail, and how do the three body parts work together, well, if they do work together as far as lifting goes?

A: Well if you’re lifting anything more than few pounds, you have to use your back and your lower extremities if you’re doing it correctly...

Q: ...Yeah. So if someone—someone who has these three different body parts injured, is their ability to lift and the impact on daily—activities of daily living great than, let’s say, if someone just had CRPS or a—or a right lower extremity injury without having any lower back involvement?

A: There’s a synergistic effect in that injuries to the low back, the right knee and, in this case, the central nervous system are intertwined, and they affect his ability to bend, lift, climb, run, jump. Every one of them does. So there a synergistic effect over and above what would be there if there was only injury to one body part.

(*Id.* at pp. 32:21-34:3.)

After Dr. Burt’s deposition, Dr. Jones issued a letter dated April 9, 2024, in response to an inquiry from the defense attorney. Dr. Jones indicated that applicant did not have CRPS, but admitted that the findings were not “more definitive” because he was forced to rely upon past

reporting (applicant had not been reevaluated since 2023). (Exhibit 113.) He noted also that “there is no characteristic diagnostic test” for CRPS, and that “CRPS is primarily a clinical diagnosis with classical physical findings, which generally use[s] the Budapest criteria to evaluate the clinical diagnosis.” (*Ibid.*)

Thereafter, Charles Xeller, M.D. was retained as the Independent Medical Evaluator (IME). Dr. Xeller evaluated applicant on at least one occasion and issued reports dated March 21, 2025, April 15, 2025, and June 13, 2025.

In his March 21, 2025 report, Dr. Xeller indicated that applicant had reached P&S/MMI status, and that in accordance with *Almaraz-Guzman*, applicant sustained a 19% WPI under Table 13-15 for station and gait disorder and due to ADL restrictions. (Exhibit B, p. 32.) These findings did not include analysis of the lumbar spine.

In response to two additional letters from the defense attorney, Dr. Burt issued a further July 21, 2025 supplemental report underscoring that he would not change his findings or defer to Dr. Jones. In referencing a quote from Dr. Zwerin, he argued that “clinical judgement must be applied” because the persons who “authored these criteria failed to consider” and “probably did not even know” that “causalgia/reflex sympathetic dystrophy/chronic regional pain syndrome is a process” and “symptoms...will vary in intensity and character from time to time until the entire condition has fully developed.” (Exhibit 108, p. 4.)

On August 4, 2025, applicant filed a Declaration of Readiness to Proceed for a mandatory settlement conference on the issues of permanent disability and future medical treatment.

The matter proceeded to hearing on September 8, 2025, and was set for trial on October 21, 2025.

At trial, the issues set for determination included permanent disability and attorney’s fees. The parties stipulated, in relevant part, to injury AOE/COE to the right leg, right knee, and low back as well as a need for continued future medical. The parties submitted as joint exhibits, the reports of Dr. Burt and Dr. Jones, with the exception of Dr. Jones’s March 13, 2023 report, which applicant submitted as evidence. Defendant submitted as evidence, the reports of Dr. Xeller, as well as a letter from DRI – Elk Grove dated March 15, 2023.

On December 3, 2025, the WCJ issued an F&A wherein the WCJ found, in relevant part, that applicant, while employed by defendant on July 12, 2019 as a police officer, sustained injury AOE/COE to the right leg, right knee, and low back resulting in 62% permanent disability,

entitling applicant to an award of future medical as well as payment in the amount of \$106,502.50, at a rate of \$290.00 per week for 359.25 weeks, less reasonable attorney's fees.

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

DISCUSSION

I.

Preliminarily, former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab 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 January 12, 2026, and 60 days from the date of transmission is March 13, 2026. This decision was issued by or on March 13, 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

¹ All further statutory references will be to the Labor Code unless otherwise indicated.

act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on January 12, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that service of the Report provided accurate notice of transmission under section 5909(b)(2) because service of the Report provided actual notice to the parties as to the commencement of the 60-day period on January 12, 2026.

II.

Defendant contends that the WCJ's adoption of Dr. Burt's *Almaraz-Guzman* rating was an "improper deviation from the permanent disability rating schedule." (Petition, p. 10.)

It is well established that while the PDRS is prima facie evidence of an employee's permanent disability, it is rebuttable. (Lab. Code, § 4660.1; *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084, 1106 (Appeals Bd. en banc); see *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Bd. en banc); *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360.) In *Almaraz-Guzman II*, we held that a "scheduled permanent disability rating may be rebutted by successfully challenging the component element of that rating relating to the employee's WPI under the AMA Guides...by establishing that another chapter, table, or method within the four corners of the Guides most accurately reflects the injured employee's impairment." (*Almaraz II, supra*, at pp. 1095-1096.) In *Milpitas Unified School District v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837], the Court of Appeal affirmed our decision in *Almaraz II* and noted that the end goal in rating impairments is ultimately accuracy.

In rebutting the AMA Guides, the doctor is expected to 1) provide a strict rating per the AMA Guides, 2) explain why the strict rating does not accurately reflect the applicant's disability, 3) provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that alternative rating most accurately reflects applicant's level of disability. (*Id.* at 828-829.)

Here, in his December 13, 2022 report, Dr. Burt provided strict AMA Guides ratings for applicant's right knee, right lower extremity CRPS, and lumbar spine. Dr. Burt also invoked *Almaraz Guzman II*, and provided the following explanation with respect to his alternate ratings:

The applicant has lost a significant amount of lifting capacity due to injuries to his back and right lower extremity. He estimates about 70%-80%. Table 6-9 on Page 136 of the AMA Guides (Class 2) applies by analogy. This classification allows a 10% - 19% range of impairment of the whole person for loss of lifting capacity due to abdominal herniation. There is no herniation in this case, but there is frequent discomfort, precluding heavy lifting, but not hampering some activities of daily living. Clinical judgment places the level of impairment at the upper end of the range or 19% by analogy since the central nervous system and a major weight-bearing joint are involved.

In addition, Table 13-15 on Page 338 (Class 2) applies by analogy. This classification allows a 10%-19% range of impairment of the whole person. The individual rises to a standing position, walks some distance with difficulty and without assistance, but is limited to level surfaces. Clinical judgment places the level of impairment at the upper end of the range or 19% because of the central and spinal involvement.

The impairments for loss of lifting capacity and alteration of station and gait are additive for 19% whole person impairment by analogy. The analogous rating provides a more accurate description since the standard rating does not adequately encompass the effects of his injuries on activities of daily living. The whole person impairment with the analogous rating is 38%.

(Exhibit 105, p. 6.)

In accordance with *Almaraz-Guzman II*, Dr. Burt provided a thorough explanation based upon reasonable medical probability. Accordingly, we conclude that Dr. Burt's assignment of impairment under *Almaraz II* constitutes substantial medical evidence.

III.

Defendant further contends that the WCJ's adoption of Dr. Burt's additive method of rating is "based on a conclusory theory of 'synergistic effect' that fails to satisfy the requirements of *Vigil*." (Petition, p. 19.)

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater than that reflected through use of the CVC, the impairments should be added for purposes of accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic QME opined that due to a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," "the best way to combine the impairments to the

right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment.” (*Id.* at p. 5.) Accordingly, the WCJ in *Kite* found that the impairment for the applicant’s hips would be calculated based upon the addition method rather than through the combined values formula.

Subsequent to *Kite*, the Appeals Board issued the en banc case of *Vigil* wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish 1) The ADLs impacted by each impairment, and 2) That the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs. (*Vigil, supra*, at pp. 688-689.)

Here, in addition to the explanation provided in his December 13, 2022 report, Dr. Burt testified as follows with respect to use of the addition versus CVC method for rating impairments:

A: Well, there was an initial injury to the knee. That would affect his ability to squat, kneel, run, jump, climb, heavy—carry heavy objects. Basically that injury and the compensable consequence from that injury which led to CRPS aggravated or further diminished his capacities along those lines. Then he developed the back pain due to alteration of his gait and use of the injured lower extremity.

Q: Okay.

A: And that’s also synergistic because it affects his ability to bend, lift, squat, knee, climb, walk, and that sort of thing. In other words, he’s not be able to—going to be able to work in law enforcement anymore.

Q: So your findings of synergistic effect, I’m sorry, is that based upon his subjective complaints to you?

A: Yes, along with consideration of the history, the physical findings and the medical records reviewed. It was all put together.

Dr. Burt later explained that:

There’s a synergistic effect in that injuries to the low back, the right knee and, in this case, the central nervous system are intertwined, and they affect his ability to bend, lift, climb, run, jump. Every one of them does. So there is a synergistic effect over and above what would be there if there was only injury to one body part.

(Exhibit 109, pp. 22:23-24:8, 33:22-34:3.)

Based upon the above explanations from Dr. Burt, we believe that applicant fulfilled the requirements outlined under *Vigil* to successfully rebut the CVC.

IV.

Lastly, defendant contends that the reporting of Dr. Burt lacks substantial medical evidence because his findings on CRPS are based upon “obsolete methodology” and “speculative reasoning.” (Petition, p. 1.)

We remind the parties that during his March 29, 2024 deposition, Dr. Burt specifically testified that even if applicant had no CRPS and “no signs or symptoms of CRPS,” his *Almaraz-Guzman* analysis would remain unchanged due to applicant’s loss of lifting capacity and alteration of station and gait. (Exhibit 109, pp. 26:21-28:25.)

Notwithstanding the above, we note also that the existence of the “Budapest Criteria” does not close the door on other avenues for diagnoses. In his April 19, 2024 report, Dr. Jones states that the criteria are “generally” used for diagnosis, but he does not allege that they supersede the AMA Guides. (Exhibit 113.) Further, his own opinion is lacking in that he readily admits to reliance on past reporting given applicant’s reluctance to a reevaluation. (*Ibid.*) Dr. Xeller’s reporting is similarly lacking in that there contains no analysis or evaluation of the lumbar spine. As noted by Dr. Burt above, it is overlap in limitations to both the right lower extremity *and* the lumbar spine, which have contributed to applicant’s increased impairment.

Further, the parties presumably chose Dr. Burt as an AME because of his expertise and neutrality; his opinion should therefore be followed unless there is good cause to find it unpersuasive. (*Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) Here, the WCJ held that the opinions of Dr. Burt constitute substantial medical evidence, and we find no basis upon which to disagree.

Accordingly, we deny defendant’s Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the December 3, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 12, 2026

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

**KEVIN BARRETO
BROWN & DELZELL, LLP
MICHAEL SULLIVAN & ASSOCIATES LLP**

RL/cs

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