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

**LISA GANDY, *Applicant***

**vs.**

**FOLSOM STATE PRISON;**
**SCIF STATE EMPLOYEES ROHNERT PARK, *Defendants***

**Adjudication Numbers: ADJ8507133 (MF); ADJ8507094; ADJ4461263 (SRO 0110671); ADJ148408 (SRO 0110670)**
**Sacramento District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION

Applicant seeks reconsideration of the Findings of Fact, Award & Orders issued by the workers' compensation administrative law judge (WCJ) on June 18, 2026. Therein, and as relevant here, the WCJ found that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her lumbar spine, cervical spine, anorectal, bladder, and sexual dysfunction while employed as a supervising registered nurse on November 9, 2007 (ADJ8507094) and sustained injury AOE/COE to her lumbar spine, cervical spine, anorectal, bladder, sexual dysfunction, right knee, and psyche while employed as a supervising registered nurse during the cumulative trauma period ending February 9, 2012 (ADJ8507133). The WCJ further found that the injury in ADJ8507094 caused 25% permanent disability, and that the injury in ADJ8507133 caused 76% permanent disability. Based on these findings, the WCJ issued separate Awards, awarding $26,352.66 in permanent partial disability ADJ8507094 and $163,984.98 in permanent partial disability in ADJ8507133.

Applicant contends that the WCJ should have found her 100% permanently disabled in ADJ8507133, pursuant the holdings in *Hikida v. Workers' Comp. Appeals Bd*. (2017) 12 Cal.App.5th 1249 [82 Cal.Comp.Cases 679] and *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc) and arguing that apportionment of permanent

disability found by panel qualified medical evaluators (PQME) Abdo Fadoul, M.D., and Michael Sommer, M.D., is not valid and that the vocational expert opinion of Scott Simon is valid.

Defendant filed an Answer. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. Based upon our preliminary review of the record, we will grant the Petition for Reconsideration. Our order granting the 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[1] section 5950 et seq.

**I.**

During the period from July 1, 2026 to July 13, 2026, section 5909(a) 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(a).)

Here, the Petition for Reconsideration was filed on July 8, 2026, and 60 days from the date of filing is Sunday, September 6, 2026. Because Monday, September 7, 2026 is a holiday, the next business day that is 60 days from the date of filing is Tuesday, September 8, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Tuesday, September 8, 2026, so that we have timely acted on the petition as required by section 5909(a).

**II.**

The WCJ provided the following discussion in the Report:

**STATEMENT OF FACTS**

> Lisa Gandy (Applicant) was thirty-six (36) years old and employed as a Supervising Registered Nurse, Occupational Group Number 311, at Represa, California by the California Department of Corrections and Rehabilitation (Employer/Defendant) on November 9, 2007 when she suffered an injury arising

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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

out of and in the course of her employment to her lumbar spine, cervical spine, anorectal, bladder and sexual dysfunction. (ADJ8507094) (MOH-SOE Pg. 2).

Applicant was forty ( 40) years old and employed as a Supervising Registered Nurse, Occupational Group Number 311, at Represa, California by the California Department of Corrections and Rehabilitation (Employer/Defendant) on February 9, 2012, the last day of the cumulative trauma period, when she suffered an injury arising out of and in the course of her employment to her lumbar spine, cervical spine, anorectal, bladder, sexual dysfunction, right knee and psyche. (ADJ8507133) (MOH-SOE Pg. 3)

Applicant has a combined stipulated Award of 20% permanent partial disability for injuries to her back that occurred on November 13, 1998 and December 30, 1998 while she worked for Permanente Medical Group. (Joint Ex. 45)

Applicant also suffered non-industrial injuries to her neck and back as well as a nonindustrial hysterectomy that were documented by the medical examiners.

The medical record established that Applicant continued to receive treatment for her back injuries that occurred in the 1990s using the Award of medical care in that case up until and after she started her employment with the defendant in these cases. Applicant continued to work until February of 2012 and has not worked since she stopped working in February 2012. Applicant underwent a surgical procedure for her lumbar spine in July 2012. The surgery was authorized and paid for by the defendant for the injuries in the 1990s.

## DISCUSSION

The Findings of Fact and Awards in these cases were based on the expert medical opinions of the medical examiners. The medical reports established that Applicant's industrial injuries preclude her from working. The Petition argues that all of applicant's problems should be attributed to the cumulative trauma injury based on application of the decision in *Hikida.* The *Hikida* decision essentially prohibited apportionment of disability from a new medical problem, complex regional pain syndrome, caused by medical treatment of the applicant's industrial injury, carpel tunnel syndrome. In this case, Applicant's low back surgery was not successful, and it resulted in anorectal, urinary problems and sexual dysfunction. The medical reports indicate these complications are uncommon but expected side effects of the surgery performed and do not establish them as a separate and distinct new injury. Also, as discussed above, the surgery was authorized and paid for on the Award of medical care in the 1990s injuries. (OOD Pg 4 -5) Application of *Hikida* would prevent apportionment of any resulting disability to the injuries in 2007 and CT-2012. The *Hikida* case is also distinguishable from this case as it had the need for surgery caused by non-industrial and industrial factors. In this case the need for back surgery was caused by four separate industrial injuries.

Dr. Michael Sommer M.D. provided the final expert medical opinion on orthopedic issues. (OOD Pg 5 - 7) He gave his expert medical opinion that Applicant's problems and need for medical treatment were caused by the injuries in the 1990s, the specific injury in 2007, the CT-2012 and to additional non-industrial causes. Dr. Sommer divided the causation of the need for treatment and disability of Applicant's lumbar spine with 25% assigned to the prior injuries, 35% to the specific injury in 2007 and 40% to the cumulative trauma injury through February 2012. Dr. Sommer's opinion was found to be substantial medical evidence based on the extensive medical records reviewed and his examinations of Applicant. His assignment of causation and disability based on the factors causing the need for medical treatment is legally consistent with the decision issued in the *Justice* line of cases. In that case the applicant's disability was the result of total knee replacement surgeries that were required by both industrial and non-industrial factors. The need for surgery was divided evenly and the Court of Appeals held that the disability should also ·be divided evenly based on what caused the need for the surgery. Applicant's need for surgery in this case was .caused by four industrial injuries. Dr. Sommer details the ongoing treatment from the 1990s through Applicant's employment with Defendant, a loose body fragment created from Applicant's specific fall injury in 2007 and addition cumulative trauma through February 2012 when Applicant went off work to explain how and why he reached his expert medical opinion.

Dr. Sommer's expert medical opinion is also supported by the Stipulations and Award which found a combined 20% disability with a need for medical care for the injuries on November 13, 1998 and December 30, 1998. The settlement was approved on September 28, 2000. (Joint Ex. 45) It is supported by the stipulations of the parties at trial that Applicant suffered two separate injuries to her cervical spine and lumbar spine that resulted in anorectal, bladder and sexual dysfunction. (MOH SOE Pg. 2 - 3) The record also established that Applicant had a distinct and separate period of temporary disability and payment of permanent disability indemnity following the 2007 specific injury which establish it as a stand-alone injury that is separate from the cumulative trauma injury.

Applicant argues that Dr. Sommer did not explain how and why he attributed Applicant's disability to factors other than the CT-2012. (Petition Pg. 2) However, this is a case of 4 known and well documented industrial injuries and the analysis would result in Dr. Sommmer's opinion being overall invalid. To flip the argument, Dr. Sommer has not explained how and why all of the disability should be attributed to injuries other than the Stipulated and Awarded injuries in 1998 as the medical treatment resulting in anorectal, bladder and sexual dysfunction was authorized and paid for by the defendant in those cases.

The record in this case establishes by well more than a preponderance of the evidence that there were four (4) industrial injuries. Dr. Sommer has followed the legal reasoning from the *Benson v. Workers' Compensation Appeals Bd.* [170 Cal.

App. 4th 1535] case. The Court of Appeals required that permanent disability should be divided between separate industrial injuries. The court discussed Labor Code Section 4663 and stated:

> Given the plain language of the new statutory provisions, we agree with the Board that " [ a ]pplication of Wilkinson, and the concomitant merging of separate injuries into a single award of disability, is contrary to the reforms set in place by SB 899, which mandate that an employer cannot be held liable for any disability other than that directly caused by the industrial injury." *(Benson)*

The decision issued by the Courts of Appeals in the *Justice* and *Benson* cases are controlling precedents that require allocation of Applicant disability between the identified injuries based on the expert medical opinion given by Dr. Sommer as the medical expert. As a lay observer and not a medical expert it would be improper for the WCJ deciding the case to fracture Dr. Sommer's reasoning in order to reach the outcome desired by Applicant.

Petitioner also argued Applicant should be found permanently totally disabled based on the opinion ofVRE Scott Simon. (Petition Pg. 4) As discussed above and in the Opinion on Decision the medical record establishes that Applicant has been excluded from the labor market. VRE Simon stated he did not apply vocational rehabilitation apportionment which is an invalid legal theory. He then ignored the medical apportionment given by Dr. Sommer as the medical legal expert and used his lay witness opinion to disregard it finding Applicant's present exclusion from the labor force was caused solely by the cumulative injury. That is actually application of vocational rehabilitation apportionment. Application of vocational rehabilitation apportionment is legally invalid and makes his reporting insubstantial.

## CONCLUSION

The Findings of Fact regarding Applicant's disability are based on Dr. Sommer's expert medical opinion regarding causation of Applicant's injuries, disabilities and need for medical treatment. Dr. Abdo Faddoul reporting on the anorectal, urinary and sexual dysfunction issue deferred his apportionment analysis to Dr. Sommer as the orthopedic expert. Dr. Sommer explained how and why he reached his expert medical opinion regarding causation of Applicant's cervical, lumbar and right knee injury, disability and need for medical treatment. These findings are found to be substantial and legally valid so the evidence does support the Findings of Fact, and the Petition should be denied.

Applicant's back surgery was provided and paid for in cases SRO110670 and SRO110671. Application of the *Hikida* decision would result in Applicant's anorectal, urinary and sexual dysfunction problems being attributed to these injuries without apportionment to the 2007 specific injury or the CT-2/2012 injury.

The reasoning found in the controlling precedents of the *Justice* and *Benson* cases should be followed.

The reporting of VRE Simon should not be followed because he applied vocational rehabilitation apportionment to determine the CT-2/2012 caused Applicant's permanent total disability. The medical record establishes Applicant's four industrial injuries; her non-industrial auto accident and non-industrial hysterectomy have resulted in disability that would exceed 100%. Applicant has 20% permanent partial disability due to the 1998 injuries to her back, 25% permanent partial disability from the 2007 specific injury and 76% permanent partial disability from the CT-2/2012.

(Report, at pp. 2-5.)

**III.**

We highlight the following legal principles that may be relevant to our review of this matter:

Apportionment is the process utilized to segregate permanent disability or the residuals caused by an industrial injury from those attributable to other industrial injuries or to nonindustrial factors, to allocate legal responsibility fairly. (*Brodie v. Workers' Comp. Appeals Bd*. (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565]; *Marsh v. Workers' Comp. Appeals Bd*. (2005) 130 Cal.App.4th 906, 911 [70 Cal.Comp.Cases 787.].)

The mere fact that a medical report assigns approximate percentages of industrial and nonindustrial causation does not make the report reliable medical evidence by itself. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 927–928 [71 Cal.Comp.Cases 1687].) Instead, apportionment of permanent disability is "based on causation" and the "employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment." (Lab. Code, §§ 4663(a) and 4664(a).) "The plain reading of 'causation' in this context is causation of the permanent disability." (*Escobedo v. Marshalls* (*Escobedo*) (2005) 70 Cal.Comp.Cases 604, 611 (Appeals Board en banc).) Apportionment now includes pathology, asymptomatic prior conditions, and retroactive prophylactic work preclusions, provided there is substantial evidence establishing that these other factors have caused permanent disability. Pursuant to *Escobedo*, a physician's opinion must rely on reasonable medical probability, cannot be speculative, must rely on pertinent facts and/or an adequate examination and history, and must set forth the reasoning in support of its

conclusions. (*Id*. at p. 621.) That is, a physician must explain the "how and why" of their apportionment opinion (*Ibid*.) and consider all potential causes of disability, whether from a current, prior or subsequent industrial or nonindustrial injury or condition. (*Benson, supra*, 72 Cal.Comp.Cases at p. 1622.)

The burden of proof to establish apportionment falls on defendant. (*Pullman Kellogg v. Workers' Comp. Appeals Bd. (Normand)* (1980) 26 Cal.3d 450, 456 [45 Cal.Comp.Cases 170]; *Kopping v. Workers' Comp. Appeals Bd*. (2006) 142 Cal.App.4th 1099, 1115 [71 Cal.Comp.Cases 1229].) In other words, an employee does not have the burden of disproving apportionment while defendant remains passive. (*Alcantar v. Martinez* [2025 Cal. Wrk. Comp. P.D. LEXIS 231, *9]; *Moraido v. County of San Diego* [2024 Cal. Wrk. Comp. P.D. LEXIS 375, *13, fn. 3]; *Arias v. William Roofing Co*. [2024 Cal. Wrk. Comp. P.D. LEXIS 29. *5]; *Matias v. Naturipe Berry Growers* [2024 Cal. Wrk. Comp. P.D. LEXIS 52, *4]; *Herrera v. Maple Leaf Foods* [2018 Cal. Wrk. Comp. P.D. LEXIS 430, *15].)

In *Benson*, we explained that limited situations may justify a joint and several award of permanent disability across multiple dates of injury. (*Benson, supra*, 72 Cal.Comp.Cases at p. 1634.) Where the reporting physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the overall permanent disability, the employee may be entitled to a combined award. (*Id*. at pp. 1622–1623.)

With respect to vocational expert evidence, pursuant to *Nunes v. State of California, Dept. of Motor Vehicles* (*Nunes I*) (2023) 88 Cal.Comp.Cases 741 (Appeals Board en banc), the Appeals Board held as follows:

> 1. Section 4663 requires a reporting physician to make an apportionment determination and prescribes the standard for apportionment. The Labor Code makes no statutory provision for "vocational apportionment."
>
> 2. Vocational evidence may address issues relevant to the determination of permanent disability.
>
> 3. Vocational evidence must address apportionment, and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment.

(*Id*. at pp. 743–744.)

In addition, "The same considerations used to evaluate whether a medical expert's opinion constitutes substantial evidence are equally applicable to vocational reporting. In order to constitute substantial evidence, a vocational expert's opinion must detail the history and evidence in support of its conclusions, as well as "how and why" any specific condition or factor is causing permanent disability. (*Escobedo, supra*, at p. 611; see also *E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal. App. 4th 922 [71 Cal. Comp. Cases 1687].)"

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).)

Here, it appears from our preliminary review that the record may not be complete regarding the issues of permanent disability and apportionment. Taking into account 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.

**IV.**

In addition, under our broad grant of authority, our jurisdiction over this matter is continuing.

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. (See Lab. Code, §§ 5907, 5908, 5908.5; see also *Gonzales v. Industrial Acci. Com*. (1958) 50 Cal.2d 360, 364.) ["[t]here is no provision in chapter 7, dealing with proceedings for reconsideration and judicial review, limiting the time within which the commission may make its decision on reconsideration, and in the absence of a statutory authority limitation none will be implied."]; see generally Lab. Code, § 5803 ["The WCAB has continuing jurisdiction over its orders, decisions, and awards. . . . At any time, upon notice and after an opportunity to be heard is given to the parties in interest, the appeals board may rescind, alter, or amend any order, decision, or award, good cause appearing therefor.].)

"The WCAB . . . is a constitutional court; hence, its final decisions are given res judicata effect." (*Azadigian v. Workers' Comp. Appeals Bd*. (1992) 7 Cal.App.4th 372, 374 [57 Cal.Comp.Cases 391; see *Dow Chemical Co. v. Workmen's Comp. App. Bd*. (1967) 67 Cal.2d 483, 491 [32 Cal.Comp.Cases 431]; *Dakins v. Board of Pension Commissioners* (1982) 134 Cal.App.3d 374, 381 [184 Cal.Rptr. 576]; *Solari v. Atlas-Universal Service, Inc.* (1963) 215 Cal.App.2d 587, 593 [30 Cal.Rptr. 407].) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd.* (*Pointer*) (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd*. (*Kramer*) (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661]), or determines a "threshold" issue that is fundamental to the claim for benefits. Interlocutory procedural or evidentiary decisions, entered in the midst of the workers' compensation proceedings, are not considered "final" orders. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650].) ["interim orders, which do not decide a threshold issue, such as intermediate procedural or evidentiary decisions, are not 'final' "]; *Rymer, supra,* at p. 1180 ["[t]he

term ['final'] does not include intermediate procedural orders or discovery orders"]; *Kramer, supra*, at p. 45 ["[t]he term ['final'] does not include intermediate procedural orders"].)

Section 5901 states in relevant part that:

> No cause of action arising out of any final order, decision or award made and filed by the appeals board or a workers' compensation judge shall accrue in any court to any person until and unless the appeals board on its own motion sets aside the final order, decision, or award and removes the proceeding to itself or if the person files a petition for reconsideration, and the reconsideration is granted or denied. …

Thus, 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 Labor Code sections 5950 et seq.

**V.**

Accordingly, we grant applicant'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**.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration 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/ LISA A. SUSSMAN, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**September 8, 2026**

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

**LISA GANDY**
**EASON TAMBORNINI**
**SCIF STATE EMPLOYEES SACRAMENTO**

**PAG/cm**

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