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

**MARTHA HERRERA,** ***Applicant***

**vs.**

**ARMORCAST PRODUCTS COMPANY, INC.; ZURICH AMERICAN INSURANCE COMPANY,** ***Defendants***

**Adjudication Number: ADJ8215781**
**Van Nuys District Office**

# OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on March 25, 2026, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant, while employed during the period September 12, 2008 to December 7, 2010, as a housekeeper, sustained an industrial injury arising out of and in the course of employment (AOE/COE) to her neck, right shoulder, low back, sleep, both wrists, psoriasis, psoriatic arthritis, stomach, fibromyalgia and psyche, resulting in 100% permanent disability.

Defendant contends that the WCJ erred in awarding 100% permanent disability, arguing that the evidence does not support a total loss of future earning capacity. Specifically, defendant asserts that no medical reporting or vocational expert testimony establishes that applicant has sustained such a loss. Defendant further contends that the permanent disability ratings are inconsistent with the WCJ's findings because: (1) the incorrect occupational code of 240, rather than the housekeeper occupational code of 340, was applied to the sleep and skin/psoriasis impairments; (2) an incorrect impairment body code was used for the psoriasis impairment; (3) the string rating for the psychiatric impairment was omitted; and (4) incorrect apportionment was applied to both the left and right wrist impairments.

Defendant also asserts that the WCJ exceeded her authority by adding the internal and orthopedic impairments. According to defendant, the medical evidence does not contain the requisite analysis of applicant's activities of daily living (ADLs) necessary to rebut application of the

Combined Values Chart (CVC) under *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc) (*Vigil*).

We have received an Answer from applicant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the permanent disability ratings for the skin and sleep disorders be corrected to reflect the 340 occupational code, but otherwise recommending that applicant is entitled to a finding of 100% permanent disability.

We have considered the allegations in defendant's Petition, applicant's Answer, and the contents of the WCJ's Report. Based on our review of the record and the reasons discussed below, we will grant reconsideration to correct the occupational group number but otherwise affirm the WCJ's decision.

**BACKGROUND**

Applicant, while employed as a housekeeper during the period September 12, 2008 to December 7, 2010 sustained industrial injury AOE/COE to her neck, right shoulder, low back, sleep, right wrist, psoriasis, psoriatic arthritis, stomach, fibromyalgia, and psyche and claims to have sustained industrial injury to her left wrist. (Minutes of Hearing and Summary of Evidence (MOH/SOE), 12/17/2025, 2:3-8.)

On December 17, 2025, the parties proceeded to trial on, among other issues, parts of body injured, occupational group number, permanent disability, apportionment and attorney fees. With respect to occupational group number, applicant claimed dual occupations of housekeeper (340) and child monitor (240) with defendant claiming only a housekeeper (340). (MOH/SOE, 12/17/2025, 3:4-14.)

The parties jointly submitted into evidence the Agreed Medical Evaluation (AME) reports and depositions of Michael Luciano, M.D. (Joint Exs. CC-EE, OO-RR), Gerald Markovitz, M.D. (Joint Exs. BB, FF-NN), as well as the AME report of Brian Jacks, M.D. dated February 8, 2024. (Joint Ex. SS.) (MOH/SOE, 12/17/2025, 4:18-25 to 6:11.)

Applicant testified in pertinent part as follows:

She worked for Armorcast Products Company, Inc., and at the home of Mr. and Mrs. Boghossian for two and a half years. Applicant initially received compensation through personal checks from the Boghossians, although she later clarified that both the company and the Boghossians directly compensated her. (MOH/SOE, 12/17/2025, 6:21-25.) She verified that check number 1496, check number 1502, check number 1505, and check number 1504 were payments

issued by the Boghossians. (MOH/SOE, 12/17/2025, 7:1-3). Applicant performed her duties at the Boghossian residence five days per week from 7:00 a.m. to 3:00 p.m. (MOH/SOE, 12/17/2025, 7:3-5.) She identified her daily responsibilities as vacuuming and cleaning the house, as well as removing, folding, and putting away laundry after Mrs. Boghossian washed it. (MOH/SOE, 12/17/2025, 7:4-7.) Two young children, a one-year-old boy and a two-year-old boy, resided in the home. (MOH/SOE, 12/17/2025, 7:7-8.) She spent a minimum of two to three hours each day changing diapers, feeding, and monitoring the children. (MOH/SOE, 12/17/2025, 7:8-10).

During cross-examination, defense counsel questioned applicant regarding the memo line on check number 1502, which referenced two days off from August 16 through August 19. (MOH/SOE, 12/17/2025, 7:11-13). She could not recall the precise circumstances but believed Mrs. Boghossian issued the check because of applicant's illness. (MOH/SOE, 12/17/2025, 7:13-14.) When questioned about check number 1505, which referenced a missed day, she identified it as her first actual check from the Boghossians but could not recall whether it compensated her for hours worked or for a sick day. (MOH/SOE, 12/17/2025, 7:15-18.) Applicant acknowledged she did not receive paid sick or vacation time from Armorcast Products Company, Inc., meaning an absence would reduce her pay as a housekeeper. (MOH/SOE, 12/17/2025, 7:19-20). She testified she could not recall the reason she received a payment on August 10. (MOH/SOE, 12/17/2025, 7:20-21.) Regarding check number 1496, she noted the memo line remained blank and testified she believed she received the payment for missing several days of work after a box of water fell on her toe. (MOH/SOE, 12/17/2025, 7:22-24.) When asked about additional pay stubs reflecting year-to-date earnings of $31,972.01, she denied ever seeing the stub and could not recall its source. (MOH/SOE, 12/17/2025, 7:24 to 8:1.) Finally, when presented with a pay stub for $652.49, she stated it reflected the $875.00 weekly rate the Boghossians customarily paid her. (MOH/SOE, 12/17/2025, 8:2-4.)

In his report dated April 15, 2013, AME Dr. Luciano, following his orthopedic evaluation of applicant, obtained a history that her job duties included housecleaning activities, such as vacuuming a large house daily and carrying laundry, as well as babysitting activities, including carrying boxes of baby supplies up and down stairs. After six to eight months, she developed gradual-onset pain, weakness, and intermittent tingling in her right wrist. She continued working while independently seeking medical treatment, including medication and injections, and reported her symptoms to her employer. As her right wrist pain increased, she experienced symptoms radiating up her right upper extremity to her neck and low back. She continued working until her termination in December 2010 and remained symptomatic thereafter. (Joint Ex. RR, p. 2.) She reported that her right wrist pain and

weakness impaired her ability to grasp objects and caused difficulty with personal grooming, hygiene, and household chores, requiring her to rely on her left hand for more strenuous tasks. She did not cook, relied on a neighbor for food, and drove only on a limited basis. (*Id.* at p. 3.) According to AME Dr. Luciano's report dated June 1, 2015, applicant underwent a right shoulder arthroscopy on June 4, 2014 and reported persistent difficulties with neck tightness, dropping items with her right hand, struggling to open jars, and avoiding heavy lifting due to low back pain. (Joint Ex. QQ, pp. 3-4.)

In his April 15, 2013 report, AME Dr. Luciano's physical examination demonstrated objective findings of decreased range of motion (ROM) in the cervical spine, right shoulder, right wrist, and lumbar spine. (Joint Ex. RR, p. 28-29.) Additional objective findings included a positive Finkelstein test of the right wrist, decreased motor strength in the right shoulder and right wrist, and measured grip strength loss in the right upper extremity. He also observed lumbar spine muscle guarding, a diagnosis of right de Quervain syndrome, and tenderness to palpation across the paracervical region, right shoulder, right wrist, and paralumbar region. (*Id.* at pp. 28-29.)

Applicant experienced occasional minimal to slight cervical spine pain. Her lumbar spine produced occasional slight pain at rest that increases to slight to moderate pain with heavy lifting. Her right shoulder produced occasional slight pain at rest that increases to slight to moderate pain with work performed at or above shoulder level. Her right wrist caused occasional slight pain at rest that increases to moderate pain with power grasping, forceful twisting, forceful pushing, or heavy lifting. (*Id.* at p. 28.)

AME Dr. Luciano concluded that applicant's cervical spine, lumbosacral spine, and right upper extremity injuries resulted from the cumulative effects of her employment activities. (*Ibid*.)

AME Dr. Luciano assessed 5% whole person impairment (WPI) for the cervical spine under Diagnosis-Related Estimate (DRE) Category II. (AMA Guides to the Evaluation of Permanent Impairment (AMA Guides), Table 15-5, p. 392.) (*Id.* at p. 30.) He supported this rating with objective findings of decreased ROM in all planes and paracervical tenderness to palpation. (*Id.* at p. 18.)

For the lumbar spine, he likewise assessed 5% WPI under DRE Category II. (AMA Guides, Table 15-3, p. 384.) (*Id.* at pp. 30-31.) He supported this rating with a diagnosis of lumbosacral spine strain and clinical findings of decreased ROM in all planes, paralumbar tenderness to palpation, and muscle guarding. (*Id.* at p. 22.)

For the right wrist, he calculated 4% upper extremity (UE) impairment based on ROM restrictions (50° for extension, 50° for flexion, 30° for ulnar deviation and 20° for radial deviation) (AMA Guides, Figure 16-28, p. 467; Figure 16-31, p. 469), combined with 4% UE impairment for motor strength deficits (AMA Guides, Table 16-35, p. 510) resulting in 8% UE impairment for the right wrist. (*Id.* at p. 31.) For the right shoulder, AME Dr. Luciano calculated 3% UE impairment for ROM restrictions (150° for flexion, 40° for extension, 30° for adduction, 136° for abduction, 70° for internal rotation and 80° for external rotation) (AMA Guides, Figure 16-40, p. 476; Figure 16-43, p. 477, Figure 16-46, p. 479), combined with 3% UE impairment for muscle strength loss (AMA Guides, Table 16-11, p. 484; Table 16-35, p. 510), yielding 6% UE impairment. (*Id.* at pp. 31-32.)

Combining the wrist and shoulder impairments produced 14% total right UE impairment, which converts to 8% WPI. (AMA Guides, Table 16-3, p. 439.) Finally, utilizing the CVC (AMA Guides, p. 604), he combined 5% WPI for the cervical spine, 5% WPI for the lumbar spine, and 8% WPI for the right UE totaling 17% WPI. (*Id.* at p. 33.)

AME Dr. Luciano apportioned, for the cervical spine, 90% to the September 12, 2008 to December 7, 2010 injury and 10% to the natural progression of degenerative changes. For the lumbar spine, he apportioned 50% to the September 12, 2008 to December 7, 2010 injury and 50% to applicant's weight. For the right shoulder, he apportioned 90% to the September 12, 2008 to December 7, 2010 injury and 10% to ADLs. For the right wrist, he apportioned 50% to the September 12, 2008 to December 7, 2010 injury, 40% to a preexisting diagnosis of psoriatic arthritis and 10% to ADLs. (*Id.* at p. 34.)

In his subsequent report dated June 1, 2015, AME Dr. Luciano evaluated applicant's ongoing subjective complaints, including cervical spine tightness; right shoulder pain that wakes her from sleep and worsens with household chores and above-shoulder activities; right hand pain and tingling accompanied by dropping items and difficulty opening jars, pushing, and driving; and lumbar spine pain radiating into the left lower extremity that worsens with prolonged sitting and standing and requires her to bend carefully and avoid heavy lifting. (Joint Ex. QQ, p. 4.) AME Dr. Luciano's physical examination revealed objective findings of paracervical region tenderness with muscle guarding. (*Id.* at pp. 14, 23-25, 28.) Right shoulder objective findings included healed arthroscopic sites from a modified Mumford procedure, anterior aspect tenderness, decreased motor strength of the entire musculature, and restricted ROM in all planes except adduction. (*Id.* at pp. 14, 16, 24-25.) Evaluation of the right wrist demonstrated decreased extension and flexion, a positive Finkelstein's

test, tenderness over the first dorsal compartment, and grip strength loss upon Jamar testing. (*Id.* at pp. 15, 17-18, 24.) Lumbar spine objective findings consisted of decreased ROM across all planes and paralumbar tenderness with muscle guarding. (*Id.* at pp. 18, 25.)

He concluded, within reasonable medical probability, that the September 12, 2008 to December 7, 2010 injury caused the cervical spine, lumbar spine, and right upper extremity injuries, but not the left upper extremity injury. (*Id.* at pp. 23-24.) He again assessed 5% WPI for the cervical spine. (*Id.* at p. 26). However, for the lumbar spine, he increased it to 7% WPI. (*Id.* at p. 29.) He supported this based on decreased ROM across all planes of the lumbosacral spine, documented objective physical findings of paralumbar tenderness accompanied by muscle guarding, alongside permanent subjective factors of intermittent slight pain at rest that increases to slight to moderate pain with heavy lifting or repetitive bending. (*Id.* at pp. 18, 23-25.)

He calculated 4% UE impairment for right wrist ROM deficits consisting of 50° flexion and 50° extension. (AMA Guides, Figure 16-28, p. 467; Figure 16-31, p. 469.) (*Id.* at p. 26.) Applying *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc).He assessed 8% WPI for the dominant right wrist condition due to central impairment. (AMA Guides, Table 13-16, p. 338.) (*Id.* at p. 27). For the right shoulder, he found 7% UE impairment based on ROM restrictions of 128° flexion, 38° extension, 30° adduction, 132° abduction, 70° internal rotation, and 80° external rotation. (AMA Guides, Figure 16-40, p. 476; Figure 16-43, p. 477; Figure 16-46, p. 479.) (*Id.* at p. 27.) He identified an additional 11% UE impairment for right shoulder muscle strength deficits and 10% UE arthroplasty-related impairment for the modified Mumford procedure. (AMA Guides, Table 16-11, p. 484; Table 16-35, p. 510; Table 16-27, p. 506.) (*Id.* at pp. 27-28.) He combined the ROM, muscle strength, and arthroplasty impairments to yield 26% right UE impairment, which converts to 16% WPI for the right shoulder. (AMA Guides, Table 16-3, p. 439.) Combining 16% right shoulder WPI and 8% right wrist WPI produced 23% WPI for the right upper extremity. (AMA Guides, p. 604; *Id.* at p. 28). Using the CVC, he combined the 23% UE WPI, 7% lumbar spine WPI, and 5% cervical spine WPI to reach 32% WPI. (AMA Guides, p. 604.) (*Id.* at p. 29.)

AME Dr. Luciano apportioned, for the cervical spine, 90% to the September 12, 2008 to December 7, 2010 injury and 10% to the natural progression of degenerative changes. For the lumbar spine, he apportioned 50% to the September 12, 2008 to December 7, 2010 injury and 50% to body habitus. For the right shoulder, he apportioned 90% to the September 12, 2008 to December 7,

2010 injury and 10% to ADLs. For the right wrist, he apportioned 50% to the September 12, 2008 to December 7, 2010 injury, 40% to a preexisting diagnosis of psoriatic arthritis and 10% to ADLs. (*Id.* at p. 30.)

During a September 7, 2017 deposition, AME Dr. Luciano noted normal examination findings for the left hand and wrist and stated applicant's left wrist discomfort likely stemmed from psoriatic arthritis rather than overuse of the right arm. (Joint Ex. EE, p. 9:18-22.) AME Dr. Luciano stated applicant faced a 50% probability of requiring another right shoulder surgery and a 50 to 75% probability of undergoing a de Quervain's release. (*Id.* at pp. 11:17-25 to 12:1-3.)

In a subsequent deposition on April 1, 2021, AME Dr. Luciano noted applicant exhibited left UE symptoms in 2013, which he attributed to psoriatic arthritis but agreed to draft a supplemental report addressing left upper extremity WPI if the psoriatic arthritis condition was industrial. (Joint Ex. CC, pp. 6:12-25 to 7:1-13.)

He issued a supplemental report on April 2, 2021, following review of a report by AME Dr. Markovitz dated October 14, 2019 indicating applicant's psoriatic arthritis possessed an industrial component. AME Dr. Luciano assessed 0% WPI based on generalized discomfort of the left wrist with numbness and weakness by history and lack of decreased ROM or peripheral nerve impairment. Utilizing an alternative rating method for the non-dominant wrist, he assigned 4% WPI due to difficulty with dexterity. (AMA Guides, Table 13-16, Class 1, p. 338.) (Joint Ex. OO, p. 4.) He apportioned 90% to the now deemed industrially caused psoriatic arthritis and 10% to ADLs. (*Id.* at p. 5.)

On October 22, 2024, AME Dr. Luciano provided further deposition testimony regarding the overlapping disabilities of applicant's left and right wrists. AME Dr. Luciano stated that the bilateral wrist impairments create increased difficulty with ADLs, specifically citing the act of buttoning a button as an example of an impacted activity. He concluded that adding the left and right wrist impairments, rather than combining them using the CVC, more accurately reflected applicant's impairment. (Joint Ex. DD, p. 5:11-25.)

In his report dated August 19, 2019, AME Dr. Markovitz, after evaluating applicant in the field of internal medicine, determined that applicant developed fibromyalgia as a direct consequence of chronic pain stemming from her industrial psoriatic arthritis, compounded by associated sleep disturbances and mental health problems. Because he recognized the underlying psoriatic arthritis as an industrial injury, the consequential fibromyalgia was likewise an industrial injury. (Joint Ex. HH, p. 4.)

During his subsequent October 14, 2019 evaluation, AME Dr. Markovitz documented applicant's inability to use a hairdryer or a hair-straightening device due to right upper extremity limitations, which prompted her to cut her hair short for easier maintenance. She must navigate the 14 stairs to her second-floor apartment by descending backwards while holding the handrail, and she exclusively carries small bags of groceries with her left arm to avoid pain in her right arm. (Joint Ex. GG, p. 3.) Furthermore, she experiences significant discomfort that requires her to alternate between sitting and standing, and she tosses and turns at night due to low back and right shoulder pain. (*Id.* at pp. 2-3.)

Objective findings include small patches of psoriasis on the right elbow and both knees, as well as mild four-quadrant dermal hypersensitivity. Additional objective testing yielded an Epworth Sleepiness Scale Score of zero and a Symptom Intensity Score of 6.75, which differentiates fibromyalgia syndrome from other rheumatic conditions. (*Id.* at p. 6.)

He assessed 60% WPI for the fibromyalgia based on applicant's impaired ADLs (AMA Guides, Table 5-12, Class 4, p. 107) to evaluate her exercise capacity. AME Dr. Markovitz explained that the AMA Guides contain no specific chapter or table for rating fibromyalgia and determined that applicant's exercise capacity provided the most appropriate basis for evaluating applicant's impairment. Based on her reported ability to walk slowly and perform light housekeeping, AME Dr. Markovitz estimated applicant's maximal exertional capacity at 3 METs, placing her in Class 4 impairment, which encompasses a 51% to 100% WPI range for exercise capacity below 4.3 METs. (*Id.* at pp. 7-8.) AME Dr. Markovitz placed applicant toward the lower end of that range at 60% WPI. AME Dr. Markovitz apportioned 50% of the impairment from applicant's fibromyalgia, psoriasis, and psoriatic arthritis to industrial factors and 50% to nonindustrial factors. (*Id.* at p. 8.)

AME Dr. Markovitz assessed 10% WPI for the dermatological condition. (AMA Guides, Table 8-2, Class 1, p. 178.) (*Id.* at p. 8.) He explained that applicant had psoriasis involving the right elbow and both knees and required continuous treatment with topical steroid cream. (*Id.* at p. 2.) Because her condition required ongoing treatment but did not produce the greater functional consequences associated with the higher impairment classes, AME Dr. Markovitz placed applicant at the low end of the applicable range. AME Dr. Markovitz apportioned 50% of the impairment from applicant's fibromyalgia, psoriasis, and psoriatic arthritis to industrial factors and 50% to nonindustrial factors. (*Id.* at p. 8.)

Regarding her gastrointestinal tract, AME Dr. Markovitz, relying on his prior February 22, 2016 report, assigned 10% WPI that was entirely industrial. (AMA Guides, Table 6-3, Class 1,

p. 121.) (Joint Ex. NN, p. 13, Joint Ex. GG, p. 8.) He explained in his February 22, 2016 report that applicant experienced heartburn associated with anti-inflammatory and pain medications, which she continued to require on an ongoing basis. Her March 2013 upper endoscopy showed antral linear streaks, although the biopsy was negative for *Helicobacter pylori* and other abnormalities. AME Dr. Markovitz determined that applicant's heartburn resulted from medications taken for her industrial conditions and required continuous treatment with antacids. (Joint Ex. NN, p. 12.) AME Dr. Markovitz placed applicant between Class 1 and Class 2 because continuous treatment was necessary, but she had no weight loss and her symptoms remained controlled with treatment. (*Id.* at p. 13.)

For applicant's sleep disorder, which included moderate obstructive sleep apnea, AME Dr. Markovitz assigned 9% WPI (AMA Guides, Table 13-4, Class 1, p. 317) that was entirely industrial. (Joint Ex. GG, p. 8.) He noted that applicant had poor sleep attributable to her musculoskeletal problems and moderate obstructive sleep apnea, while her degree of somnolence varied from visit to visit. (*Id.* at pp. 2, 8.) She also took sedating medications at bedtime to treat her psoriatic arthritis and fibromyalgia. Although she did not exhibit excessive daytime somnolence, AME Dr. Markovitz compared her condition to Example 13-17 on page 318 of the AMA Guides, which likewise provided 9% WPI rating for obstructive sleep apnea. (*Id.* at p. 8.)

AME Dr. Markovitz determined that the fatigue associated with the fibromyalgia and psoriatic arthritis overlaps with the sleep disorder. He combined those overlapping impairments using the CVC, resulting in 36% WPI, and then added the distinct impairments for psoriasis and the upper gastrointestinal tract to reach a final industrial rating of 51% WPI. (*Id.* at pp. 8-9.)

During his September 26, 2024 deposition, he explained that applicant's psoriatic arthritis and fibromyalgia contributed to her fatigue and, together with her sleep disorder, intertwined to affect her overall fatigue. (Joint Ex. BB, p. 6:24-25 to 7:1-5.)

At her final re-evaluation on January 13, 2025, AME Dr. Markovitz noted that applicant had not worked since 2019 and had recently required an overnight hospitalization for chest pain. (Joint Ex. FF, p. 3.)

In his report dated February 8, 2024, AME Dr. Jacks, after evaluating applicant in the field of psychiatry, observed that she presented with a cane, exhibited pressured speech, displayed worried facial expressions, and cried at times. (Joint Ex. SS, p. 17.) During the mental status examination, applicant appeared mildly to moderately anxious and depressed, demonstrating an overall restricted range of emotional expression but maintaining average intelligence without psychotic or delusional

thought processes. (*Id.* at p. 18.) AME Dr. Jacks recorded applicant's subjective symptoms, which included constant neck, low back, shoulder, elbow, and wrist pain, alongside numbness in her hands, locking fingers, daily headaches, and constant fatigue. (*Id.* at pp. 6, 8.) She reported feeling sad three to four times a week all day with a severity of seven out of ten, and anxious two to three times a week for all day with a severity of six or seven out of ten, accompanied by daily crying, irritability, impatience, initial and mid-phase insomnia, and a preference to be alone. (*Id.* at p. 7.)

Regarding impacted ADLs, applicant requires assistance with carrying groceries into the house, washing floors, cleaning bathrooms, and vacuuming, while her cousin assists with overall cleanup. (*Id.* at pp. 10-11.) She performs cooking, laundry, and grocery shopping, but completes these household chores more slowly and less often than she previously did. (*Id.* at p. 10.) She walks for 15 to 20 minutes twice a week, manages her finances, reads half an hour daily, and maintains personal hygiene independently, though her overall pace and energy levels remain reduced. (*Id.* at pp. 10-11, 36, 39, 42.)

Objective psychological testing results show the Beck Anxiety Inventory yielded a score of 40 for severe anxiety, and the Beck Depression Inventory-2 yielded a score of 23 for moderate depression. (*Id.* at p. 13.) The Wahler Physical Symptoms Inventory placed applicant in the 90th percentile for worries about physical problems, while the Minnesota Multiphasic Personality Inventory-2 demonstrated conscious defensiveness and a one-three code type with elevated hypochondriasis and hysteria scales, consistent with somatic symptom disorder. (*Id.* at pp. 14, 16, 23.)

AME Dr. Jacks diagnosed applicant with major depressive disorder, generalized anxiety disorder, and somatic symptom disorder, predominantly caused by employment. (*Id.* at pp. 18-19, 33.) AME Dr. Jacks evaluated four functional domains and found Class 2 (mild) to Class 3 (moderate) impairment in each: activities of daily living (ADLs), social functioning, concentration, persistence, and pace, and adaptation. (AMA Guides, Table 1-2, p. 4.) For adaptation, he specifically noted deterioration or decompensation in complex work-like settings. (*Id.* at pp. 35-40.) He assigned a Global Assessment of Functioning score of 54, which represents 24% WPI. (*Id.* at p. 43.)

He apportioned 80% of the permanent disability to the September 12, 2008 to December 7, 2010 injury and 20% to preexisting personal nonindustrial stress, specifically identifying applicant's divorce, a plethora of family deaths including the murder of her father, and the emotional trauma associated with the war in El Salvador. (*Id.* at p. 45.)

The permanent rating strings utilizing both occupational group numbers are as follows:

CERVICAL SPINE – DRE
90% (15.01.01.00 - 5 - [5]6 - 340G - 7 - 8%) 7%
90% (15.01.01.00 - 5 - [5]6 - 240E - 5 - 6%) 5%

LUMBAR SPINE – DRE
50% (15.01.01.00 - 7 - [5]9 - 340G - 11 - 13%) 7%
50% (15.01.01.00 - 7 - [5]9 - 240E - 8 - 9%) 5%

RIGHT SHOULDER – RANGE OF MOTION
90% (16.02.01.00 - 16 - [7]22 - 340F - 22 - 25%) 23%
90% (16.02.01.00 - 16 - [7]22 - 240D - 18 - 20%) 18%

RIGHT WRIST - UPPER EXTREMITY
90% (13.09.00.00 - 8 - [5]10 - 340F - 10 - 11%) 10%
90% (13.09.00.00 - 8 - [5]10 - 240E - 9 - 10%) 9%

LEFT WRIST - UPPER EXTREMITY
90% (13.09.00.00 - 4 - [5]5 - 340F - 5 - 6%) 5%
90% (13.09.00.00 - 4 - [5]5 - 240E - 4 - 5%) 5%

FIBROMYALGIA – RESPIRATORY DISORDERS
50% (05.02.00.00 - 60 - [7]81 - 340G - 83 - 85%) 43%
50% (05.02.00.00 - 60 - [7]81 - 240E - 78 - 81%) 41%

SKIN – CONTACT DERMATITIS
50% (08.03.00.00 - 10 - [2]11 - 340G - 13 - 15%) 8%
50% (08.03.00.00 - 10 - [2]11 - 240F - 11 - 13%) 7%

UPPER DIGESTIVE TRACT
100% (06.01.00.00 - 10 - [6]13 - 340F - 13 - 15%) 15%
100% (06.01.00.00 - 10 - [6]13 - 240F - 13 - 15%) 15%

SLEEP – AROUSAL DISORDERS
100% (13.03.00.00 - 9 - [6]12 - 340D - 10 - 11%) 11%
100% (13.03.00.00 - 9 - [6]12 - 240G - 14 - 16%) 16%

PSYCHIATRIC – MENTAL AND BEHAVIORAL
80% (14.01.00.00 - 24 - [8]34 - 340D - 29 - 32%) 26%
80% (14.01.00.00 - 24 - [8]34 - 240G - 37 - 41%) 33%

On March 25, 2026, the WCJ issued her F&A, awarding applicant 100% permanent disability.

In her Report, the WCJ stated the following:

> The error pointed out by Defendants is that the rating of the skin/psoriasis and sleep which the WCJ inadvertently prepared using the 240 group for the babysitting position, should have been 340 for housekeeping.
>
> The Judge acknowledges this clerical error and finds that the rating should have been calculated as follows:
>
> Skin Disorder Class 2: 10WP 50% (08.01.00.00-10-[2]11-340G-15) 8%
> Sleep Disorder Class 1: 9WP 13.03.00.00-9-[6]12-340D-10-11%
>
> After application of the correct occupational code, 340, the skin disorder goes from 10% to 8%, after apportionment. For the sleep disorder the rating goes from 17% to 11%. These are the only two ratings where the occupational variant is listed as 240, rather than 340. All other ratings shall remain as listed.
>
> (Report, p. 2.)

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

## DISCUSSION

### I.

Up through July 1, 2024, petitions for reconsideration were subject to former Labor Code section 5909[1], which provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.)

During the period from July 2, 2024 through June 30, 2026, petitions for reconsideration were subject to former section 5909, which stated in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (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

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

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 June 26, 2026, and 60 days from the date of transmission is August 25, 2026. This decision is issued by or on August 25, 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 and Recommendation by the workers' compensation administrative law judge, the Report was served on May 5, 2026, and the case was transmitted to the Appeals Board on June 26, 2026. Service of the Report and transmission of the case to the Appeals Board did not occur on the same day. Thus, we conclude that service of the Report did not provide accurate notice of transmission under Labor Code section 5909(b)(2) (in effect from July 2, 2024 through June 30, 2026), because service of the Report did not provide actual notice to the parties as to the commencement of the 60-day period on June 26, 2026.

No other notice to the parties of the transmission of the case to the Appeals Board was provided by the district office. Thus, we conclude that the parties were not provided with accurate notice of transmission as required by Labor Code section 5909(b)(1) (in effect from July 2, 2024 through June 30, 2026). While this failure to provide notice does not alter the time for the Appeals Board to act on the petition, we note that as a result the parties did not have notice of the commencement of the 60-day period on June 26, 2026.

**II.**

In determining the proper occupational classification, the Appeals Board looks at the actual duties an employee performed in his or her job and not the formal description of job duties, or the

nature of the badge worn. (*Martinez v. County of Orange* [2017 Cal. Wrk. Comp. P.D. LEXIS 39, *7].)[2]

Where an employee has dual occupations, they are "entitled to be rated for the occupation which carries the highest factor in the computation of disability . . . It has been determined that where the duties of the employee embrace the duties of two forms of occupation, the rating should be for the occupation which carries the higher percentage." (*Dalen v. Workmen's Comp. Appeals. Bd.* (1972) 26 Cal.App.3d 497, 505-506 [37 Cal.Comp.Cases 393].) No minimum amount of time is required for performing the job duties. As long as those duties constitute an "integral" part of applicant's position, rather than being merely "incidental" to it, an employee may qualify for that occupational group. (*National Kinney v. Workers' Comp. Appeals Bd.* (1980) 113 Cal.App.3d 203, 215 [45 Cal. Comp. Cases 1266].) The determination turns on the employee's occupation at the time of injury. (*Darbinyan v. California Deluxe Windows Industries, Inc.* [2011 Cal. Wrk. Comp. P.D. LEXIS 15, *9].)

In applying the above rules, the Appeals Board has held that ratings should use different occupational group numbers for different body parts when necessary to maximize the employee's permanent disability. (*Hartford Accident & Indemnity Company v. Workers' Comp. Appeals Bd.* (1990) 55 Cal.Comp.Cases 127, 128 (writ denied); see *Aten v. County Sanitation District of Los Angeles* [2015 Cal. Wrk. Comp. P.D. LEXIS 678, *5-8]; see also *Adams v. City of Moreno Valley* [2009 Cal. Wrk. Comp. P.D. LEXIS 476, *17-19].)

The rationale for this determination is that it fairly considers the physical and mental demands of the employee's occupational duties. (*Id.* at pp. 20-21.)

Here, applicant provided uncontradicted testimony that her daily responsibilities at the Boghossian residence extended far beyond routine housecleaning tasks such as vacuuming and laundry. She testified that she spent two to three hours every day feeding, changing diapers, and monitoring two young infants. Dedicating such a substantial and consistent portion of each workday to childcare constitutes an integral component of her employment, unequivocally establishing dual occupations of housekeeper (340) and child monitor (240).

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[2] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to these panel decisions because they considered a similar issue.

Consequently, applicant is legally entitled to the occupational variant that yields the highest permanent disability rating for each respective body part. A comparison of the rating strings confirms that occupational group 340 yields higher ratings for the cervical spine, lumbar spine, right shoulder, right wrist, left wrist, fibromyalgia, and skin impairments, whereas occupational group 240 yields higher ratings for the sleep disorder (16% vs. 11%) and psychiatric disability (33% vs. 26%). Applying the higher variant for each body part properly reflects applicant's diminished earning capacity across her dual scope of employment.

**III.**

Permanent disability refers to the lasting, irreversible effects of an injury. It includes conditions that impair earning capacity, limit the normal use of a body part, or create a competitive disadvantage in the labor market. Permanent disability payments compensate workers for both physical loss and the reduction, partial or total, of their future earning potential. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565].)

In *Department of Corrections and Rehabilitation v. Workers' Comp. Appeals Bd*. (*Fitzpatrick*) (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680], the Court concluded that impairments "are generally combined" using the CVC, but the "scheduled rating [under the CVC] is not absolute" and other methodologies may be used to calculate permanent disability. (*Id.* at pp. 613-614.)

For example, in *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ denied) (*Kite*), the Appeals Board concluded that impairments resulting from a cumulative injury to the bilateral hips can be added together where substantial medical evidence supports a physician's opinion that adding impairments will result in a more accurate rating of the level of disability than the rating that results from using the CVC. (See *De La Cerda v. Martin Selko & Co*. (2017) 83 Cal.Comp.Cases 567 (writ den.) [requires following a physician's opinion as to the most accurate rating method if they provide a reasonably articulated medical basis for doing so and does not require use of the term "synergistic"].)

In *Vigil*, the Appeals Board held that an employee could rebut the CVC under the PDRS and combine impairments upon establishing the impact of each impairment on ADLs. To do so, they must demonstrate either that the rated body parts affect separate and distinct ADLs with no overlap, or that any overlap in the affected ADLs results in an increased or amplified overall functional impact. The Appeals Board explained that medical expertise is required:

> In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the *medical evidence* demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.

(*Vigil, supra*, 89 Cal.Comp.Cases at p. 692, italics added.)

The law requires the Appeals Board to base its decisions on 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 v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence, a medical opinion must state its conclusions in terms of reasonable probability, avoid speculation, rely on pertinent facts and an adequate examination and history, and explain the reasoning supporting its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Medical reports do not constitute substantial evidence when they contain known errors or rely on facts that are no longer germane, inadequate medical histories or examinations, or incorrect legal theories. Likewise, a medical opinion cannot support the Board's findings if it rests on surmise, speculation, conjecture, or guesswork. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].)

Here, defendant contends that the medical reporting lacks the required ADL analysis to rebut the CVC under *Vigil*. This assertion is unpersuasive and mischaracterizes the comprehensive clinical evaluations provided by the AMEs.

With respect to the bilateral upper extremities, AME Dr. Luciano explicitly analyzed the combined impact of applicant's bilateral wrist impairments on her daily functions. He testified that impairments in both her dominant and non-dominant wrists amplify and synergistically restrict her ADLs, particularly fine-motor tasks such as buttoning clothing. This detailed clinical reasoning satisfies *Vigil*, providing solid evidentiary support for adding, rather than combining, the left wrist (5%) and right wrist (10%) permanent disabilities.

With respect to internal medicine and dermatological impairments, AME Dr. Markovitz meticulously evaluated functional overlap across body systems. AME Dr. Markovitz recognized that the severe fatigue resulting from fibromyalgia and psoriatic arthritis overlaps directly with the sleep disorder, and he appropriately combined those conditions using the CVC (yielding 36% WPI).

Conversely, he identified the psoriasis and upper gastrointestinal tract impairment as functionally distinct conditions that do not overlap with her musculoskeletal fatigue or sleep disruptions. The clinical record demonstrates that applicant's skin impairment consists of localized psoriatic plaques requiring daily topical steroid application, while her gastrointestinal condition consists of medication-induced heartburn requiring antacids. Managing dermatological lesions and controlling chemical acid reflux represent independent, non-overlapping impacts on ADLs when compared to systemic fatigue and sleep deprivation.

AME Dr. Jacks corroborated applicant's profound functional impairment, documenting moderate to severe deficits in social functioning, adaptation, and ADL pace.

The parties presumably chose these AMEs because of their expertise and neutrality. Their opinions therefore merit acceptance unless good cause exists to find them unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) Here, the WCJ relied on the opinions of the AMEs finding them substantial medical evidence, and we find no basis upon which to disagree.

To synthesize the ratable impairments, we combine the overlapping systemic and musculoskeletal impairments, cervical spine (7%), lumbar spine (7%), right shoulder (23%), fibromyalgia (43%), sleep (16%), and psyche (33%), using the CVC, which produces an 80% permanent disability rating. We then add the synergistic bilateral wrist impairments (10% + 5%) and the functionally non-overlapping skin (8%) and upper digestive tract (15%) impairments:

CERVICAL SPINE – DRE
90% (15.01.01.00 - 5 - [5]6 - 340G - 7 - 8%) 7%

LUMBAR SPINE – DRE
50% (15.01.01.00 - 7 - [5]9 - 340G - 11 - 13%) 7%

RIGHT SHOULDER – RANGE OF MOTION
90% (16.02.01.00 - 16 - [7]22 - 340F - 22 - 25%) 23%

RIGHT WRIST - UPPER EXTREMITY
90% (13.09.00.00 - 8 - [5]10 - 340F - 10 - 11%) 10%

LEFT WRIST - UPPER EXTREMITY
90% (13.09.00.00 - 4 - [5]5 - 340F - 5 - 6%) 5%

FIBROMYALGIA – RESPIRATORY DISORDERS
50% (05.02.00.00 - 60 - [7]81 - 340G - 83 - 85%) 43%

SKIN – CONTACT DERMATITIS
50% (08.03.00.00 - 10 - [2]11 - 340G - 13 - 15%) 8%

UPPER DIGESTIVE TRACT
100% (06.01.00.00 - 10 - [6]13 - 340F - 13 - 15%) 15%

SLEEP – AROUSAL DISORDERS
100% (13.03.00.00 - 9 - [6]12 - 240G - 14 - 16%) 16%

PSYCHIATRIC – MENTAL AND BEHAVIORAL
80% (14.01.00.00 - 24 - [8]34 - 240G - 37 - 41%) 33%

7 C 7 C 23 C 43 C 16 C 33 = 80% PD
80 + 10 + 5 + 8 + 15 = 118% PD

Ultimately, this ratable framework harmonizes applicant's dual-occupational duties with the clinical realities of her distinct and synergistic impairments pursuant to *Vigil*. Because the precise calculation of these combined and added functional losses yields an aggregate permanent disability rating of 118%, a figure that exceeds the statutory threshold for total industrial incapacity, applicant is legally entitled to an award of 100% permanent disability.

Accordingly, we grant reconsideration to correct the occupational group number but otherwise affirm the WCJ's decision.

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the Findings of Fact and Award of March 25, 2026 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the March 25, 2026 Findings and Award is **AFFIRMED,** except that Finding number 1 is **AMENDED** as follows:

## FINDINGS OF FACT

1. Martha Herrera, at age 48, while employed during the period September 12, 2008 to December 7, 2010, as a housekeeper (occupational group numbers: 240/340), by Armorcast Products Company, Inc., sustained injury arising out of and in the course of employment to her neck, right shoulder, low back, sleep, both wrists, psoriasis, psoriatic arthritis, stomach, fibromyalgia, and psyche.

* * *

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ CRAIG L. SNELLINGS, COMMISSIONER**

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

**AUGUST 25, 2026**

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

**MARTHA HERRERA**
**LAW OFFICE OF PHILIP J. MCGUIRE**
**MAVREDAKIS PAIK**

**DLP/md**

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