

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

MICHELLE NOLAND, *Applicant*

vs.

**MOM'S HOME CARE;
COMP WEST INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ12214919, ADJ12214918
Van Nuys District Office**

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

Defendant seeks reconsideration of the “Joint Findings, Award, and Order” (F&A) issued on November 4, 2025, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that while employed by applicant as a home care aide, applicant sustained an industrial injury on May 6, 2019, to her right wrist, bladder, bowel, cervical and lumbar spine, right wrist, psyche, right hand, headaches, sleep dysfunction, right shoulder and right ankle. The WCJ further found that applicant sustained industrial injury on March 19, 2019 while employed by defendant to her low back, right ankle, head, right wrist, bladder, bowel, cervical and lumbar spine, psyche, right hand, headaches, sleep dysfunction, right shoulder and right ankle. The WCJ found that the combined effects of the industrial injuries resulted in applicant sustaining a single combined award of permanent total disability. The WCJ issued an award to applicant, less an award of attorney’s fees according to a DEU calculation.

Defendant contends that finding of industrial body parts and finding of permanent total disability is not supported by substantial medical evidence and that a single award of permanent disability should not have issued. Defendant further contends that the award of attorney’s fees should not have issued because applicant is not permanently totally disabled. Finally, defendant contends that the WCJ failed to admit an exhibit in error.

We have received an Answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration solely to amend the Findings of Fact to exclude the right shoulder, but otherwise deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record we will grant defendant's petition for reconsideration and as our Decision After Reconsideration, we will affirm the November 4, 2025 joint F&A, except that we will amend the F&A to exclude the right shoulder per the WCJ's Report, and order that Defendant's Exhibit C be admitted into evidence.

FACTS

In ADJ12214918, applicant was working as a home care aide when she sustained an industrial injury on March 19, 2019, to her low back, right ankle, head, and right wrist and claimed to have sustained injury to her bladder, bowel, cervical spine, hips, psyche, brain, right upper extremity, right hand, right shoulder, and right foot, and in the form of fecal and urinary incontinence, chronic pain, headaches, post laminectomy syndrome, and sleep dysfunction. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 25, 2025, p. 2, lines 12-17.)

In ADJ12214919, applicant was working as a home care aide when she sustained an industrial injury on May 6, 2019, to her right wrist and claimed to have sustained injury to her bladder, bowel, fecal and urinary incontinence, cervical and lumbar spine, hips, psyche, brain, chronic pain, right hand, right upper extremity, headaches, sleep dysfunction, right shoulder, right ankle, right foot, and in the form of fecal and urinary incontinence, headaches, post laminectomy syndrome, and sleep dysfunction. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 25, 2025, p. 2, lines 12-17.)

This matter proceeded to trial upon multiple issues, however the issues germane on reconsideration are the body parts injured, permanent disability, and apportionment.

1. Medical Evidence

Applicant was seen by the following qualified medical evaluators (QME):

Daniel Orlovich, M.D., (pain medicine) who authored two reports in evidence and was deposited. (Applicant's Exhibits 1 through 3.)

Fred Kyut, M.D., (urology) who authored two reports in evidence and was deposed.
(Applicant's Exhibits 4 through 6.)

Lexi Welanetz-Bursin, Psy.D., (psychology) who authored one report in evidence
(Applicant's Exhibit 7.)

Pedram Navab, D.O., (neurology & sleep medicine) authored two reports in evidence.
(Applicant's Exhibits 8 and 9.)

Christophe Lee, M.D., (orthopedic surgery) who authored nine reports in evidence.
(Applicant's Exhibits 10 through 18.)

Dr. Orlovich took a history of injuries as follows:

On March 19, 2019, she was at a client's home and was coming down the stairs with something in her hands when she fell six to seven stairs backwards and landed on her right arm, buttocks, and low back. She also reported she hit her head from the fall. The injury was not witnessed but was later reported on an unrecalled date by her client to her employer. She believes that she was not initially offered medical treatment.

On March 24, 2019, she was seen in the emergency department at Tri-City medical Center with complaints of wrist and back pain. She had an x-ray of her lumbar spine, thoracic spine and right hip which came back negative for abnormal findings. She was prescribed Motrin, and a right wrist splint was given. She was then discharged in stable condition.

On May 7, 2019, she was initially seen by Dr. Philip Baily at Concentra. She had an x-ray of her right wrist which were negative for any fractures. She was then advised physical therapy for her right wrist and lumbar strain as well as forearm wrist splint and lumbar work-hard back support. A modified duty was given that consisted of no lifting up to 5 lbs. with occasionally pushing and pulling, and no squatting, kneeling, bending or twisting at the waist, no patient movement, and wear right wrist support. Subsequently, she had a CT scan of the lumbar spine which showed partial visualization of thoracolumbar fusion with pedicular screws at L1 and mild to moderate DDD and facet arthropathy at L4-5 and L5-S1 causing mild neural foraminal stenosis at L4-5 and moderate neural foraminal stenosis at L5-S1. She also had an x-ray of the lumbosacral spine which revealed posterior spinal fusion of L2-S1 with no evidence of acute injury.

On May 6, 2019, she had another fall injury and sustained injuries to her back, torso, right hand, and wrist. She was going downstairs carrying a chandelier when it started to fall, and she twisted to prevent this from happening. She said she had a flare-up of pain later that evening.

(Applicant's Exhibit 2, Report of Daniel Orlovich, M.D., August 21, 2024, p. 5.)

Dr. Orlovich diagnosed applicant as follows:

1. Lumbar spondylosis
2. Right greater trochanteric bursitis
3. Cervical spondylosis
4. Cervicogenic headaches
5. Bladder and bowel incontinence
6. Prior thoracolumbar fusion
7. Right wrist extensor carpi ulnaris subluxation
8. Nonunion fifth metatarsal fracture right foot
9. Right shoulder pain

(*Id.* at p. 93.)

Dr. Orlovich assigned the following work restrictions:

CERVICAL

I recommend the following work restrictions

1. No lifting hands and arms above the head repeatedly
2. No lifting more than 20 pounds
3. No repetitive bending, flexion, twisting and extension of the neck
4. No operating heavy machinery
5. Frequent breaks every 30-60 minutes to stretch and move around

LUMBAR

I recommend the following work restrictions

1. No lifting more than 20 pounds
2. No standing or sitting for more than 30 minutes at a time
3. No repetitive bending or twisting
4. No climbing ladders or scaffolding
5. No operating heavy machinery
6. No driving for more than 30 minutes at a time
7. Frequent breaks every 30-60 minutes to stretch and move around
8. Use proper body mechanics when lifting, such as bending at the knees rather than at the waist
9. Modify the work environment as needed, such as using a standing desk or special chair

ANKLE

I recommend the following work restrictions

1. Mostly sitting with limited walking and standing with lifting up to 10 pounds
2. No or limited squatting
3. No or limited climbing of ladders and stairs
4. No working at heights

SHOULDER

I recommend the following work restrictions

1. No lifting overhead

2. No carrying heavy objects

WRIST/HAND

I recommend the following work restrictions

1. No repetitive gripping and grasping and carrying tasks, use of pounding and vibrating tools, and data entry for wrists
2. Avoid static resting postures
3. Avoid repetitive tasks for longer than 15 minutes
4. Avoid forceful repeated use of hands/wrists
5. Avoid repetitive hand use combined with elements of force for prolonged periods of time
6. Avoid constant firm gripping of objects
7. Avoid movement or use of hand/wrist against resistance or with force
8. Avoid exposure of hand and wrist to strong regular vibrations
9. Avoid regular or intermittent pressure on the wrist

(*Id.* at pp. 104-106.)

Dr. Orlovich found 100% industrial causation for applicant's impairments. (*Id.* at pp. 102-104.)

Dr. Kuyt evaluated applicant and found that she suffers from urinary and fecal incontinence due to the combined effect of both work injuries. (Applicant's Exhibit 5, Report of Fred Kuyt, M.D., February 7, 2023, p. 18.)

In his report, Dr. Kuyt stated:

It should be recalled that both bladder function and anorectal function are innervated by the **same nerve supply**, derived from the S2-4 nerve roots. Therefore, underlying neurologic injury with subsequent **neurologic impairment frequently effects both structures and their function in a similar manner**. Bladder and bowel spasticity is consistent with hyperactivity of those respective organs.

* * *

Neurologic impairment to Ms. Noland's lower urinary tract has been diagnosed through substantial medical evidence. Noninvasive Urodynamic Testing, physical exam and pelvic ultrasound were all consistent with the diagnosis of neurologic impairment to the lower urinary tract **caused by the additive effects of two sequential industrial injuries sustained on 3/19/19 and 5/6/19**. In acknowledging the common nerve supply shared by the bladder and anorectal area, **it is opined, with reasonable medical probability, that neurologic anorectal impairment is present in Ms. Noland's case**.

* * *

Recent vocational rehabilitation evaluation rendered Ms. Nolan as not feasible for vocational rehabilitation services and is unable to compete for employment in the open labor market due to a combination of multiple medical impairments. Amongst

those multiple medical impairments are Ms. Noland's urinary and fecal incontinence.

(*Id.* at pp. 4-5, (emphasis in original).)

Dr. Kuyt also noted that applicant does not engage in sexual activity due to her urinary and fecal incontinence. (*Ibid.*) Dr. Kuyt could not apportion between applicant's two dates of injury because to do so would be speculating as to which injury caused impairment. (Applicant's Exhibit 4, Report of Fred Kuyt, M.D., March 14, 2023, p. 3.) Applicant's impairment was 100% industrial. (*Ibid.*)

Dr. Kuyt testified in deposition that with regards to vocational rehabilitation applicant's job would have to accommodate her having to go the restroom all the time and having to deal with intermittent fecal incontinence. (Applicant's Exhibit 6, Deposition Transcript of Fred Kyut, M.D., June 8, 2023, p. 24, lines 14-16.) Applicant would have to be close to a toilet. (*Id.* at p. 24, lines 19-21.)

Dr. Welanetz-Bursin evaluated applicant and assigned a Global Assessment of Functioning (GAF) score of 53, which was predominantly caused by applicant's industrial injuries. (Applicant's Exhibit 7, Report of Lexi Welanetz-Bursin, Psy.D., April 1, 2023, pp. 104, 107.) Dr. Welanetz-Bursin did not discuss psychiatric work restrictions in her report. (See generally, *id.*)

Dr. Navab diagnosed applicant with post-traumatic headaches, cervicogenic headaches, sleep onset and maintenance insomnia, and nightmare disorder. (Applicant's Exhibit 9, Report of Pedram Navab, D.O., April 13, 2023, p. 101.) He found applicant's disorders to be 100% industrial. (Applicant's Exhibit 8, Report of Pedram Navab, D.O., August 15, 2024, p. 128.) Dr. Navab discussed work restrictions as follows:

From a neurological stance and given her occupation as a caregiver, Ms. Noland would not be able to complete her duties effectively and safely. Thus, she should only return to work once her neurological and orthopedic complaints have been addressed and treated.

(Applicant's Exhibit 9, *supra* at p. 103.)

Dr. Lee evaluated applicant's orthopedic complaints and assigned the following work restrictions: "The patient may return to light duty with permanent restrictions of no prolonged standing, walking, sitting, less than 20 pound lifting, pushing, pulling, and carrying." (Applicant's Exhibit 10, Report of Christophe Lee, M.D., August 29, 2024, p. 14.)

2. Vocational Evidence

Both parties retained vocational experts. Applicant entered two reports from Enrique Vega into evidence. (Applicant's Exhibits 19 and 20.) Defendant entered one report from Kelly Winn into evidence. (Defendant's Exhibit D.) Defendant offered a second report from Kelly Winn, which was marked as Exhibit C; however, the WCJ only marked this report for identification, noting that a ruling would issue as to its admissibility at the time a decision issued. Applicant objected to admission of Exhibit C as the report was acquired after the court had ordered that discovery was closed. The WCJ did not rule on the admissibility of Exhibit C in issuing the F&A.

Procedurally, this matter was set for trial on the April 29, 2025 Minutes of Hearing, which contained no order closing discovery. The parties did not complete a pre-trial conference statement (PTCS) that day. Instead, the minutes reflect the following: "PTCS to be uploaded by end of day, today. Exhibits to be filed no later than 20 days before trial." (Minutes of Hearing, April 29, 2025.) The parties did not upload a PTCS until June 9, 2025, and it was only reviewed by the WCJ on or around June 25, 2025. For the reasons discussed below, we will issue an order admitting Exhibit C into evidence and review it on the merits.

Applicant's expert evaluated applicant in 2022, while she was still temporarily disabled. He concluded that: "Ms. Noland has poor vocational aptitudes and significant work disabilities such that she has no access to the labor market. Her performance in a work-like environment during vocational testing supports that she would be unable to maintain competitive employment and that she has no access to the labor market." (Applicant's Exhibit 20, Report of Enrique Vega, November 21, 2022, p. 17.)

Applicant's expert reviewed updated medical reporting, including the permanent work restrictions assigned to applicant and found that his prior conclusions were unchanged. (Applicant's Exhibit 19, Report of Enrique Vega, April 28, 2025, pp. 10-11.)

Defendant's vocational expert did not opine on whether applicant is capable of rehabilitation or whether applicant may compete on the open labor market, but simply critiqued the findings of applicant's expert as insubstantial. (See generally, Defendant's Exhibits C and D.)

DISCUSSION

I.

Former Labor Code section 5909¹ 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.

(§ 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on December 22, 2025, and 60 days from the date of transmission is Friday, February 20, 2026. This decision is issued by or on February 20, 2026, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

¹ All further references are to the Labor Code, unless otherwise stated.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on December 22, 2025, and the case was transmitted to the Appeals Board on December 22, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on December 22, 2025.

II.

1. **Standard for finding permanent total disability in accordance with the fact.**

As our Supreme Court has explained:

Permanent disability is understood as the irreversible residual of an injury. (Citation.) A permanent disability is one which causes impairment of earning capacity, impairment of the normal use of a member, or a competitive handicap in the open labor market. (Citation.) Thus, permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity.

(*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal. 4th 1313, 1320, 57 Cal. Rptr. 3d 644, 156 P.3d 1100 (Brodie).)

The court in *Ogilvie* further explained that the PDRS is rebuttable.

Thus, we conclude that an employee may challenge the presumptive scheduled percentage of permanent disability prescribed to an injury by showing a factual error in the calculation of a factor in the rating formula or application of the formula, the omission of medical complications aggravating the employee's disability in preparation of the rating schedule, or by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating.

(*Ogilvie v. Workers' Comp. Appeals Bd.*, 197 Cal. App. 4th 1262, 1277, 129 Cal. Rptr. 3d 704.)

The standard for finding permanent total disability via *Ogilvie* rebuttal follows:

The proper legal standard for determining whether applicant is permanently and totally disabled is whether applicant's industrial injury has resulted in applicant sustaining a complete loss of future

earning capacity. (§§ 4660.1, 4662(b); see also 2005 PDRS, pp. 1–2, 1–3.) ...

A finding of permanent total disability in accordance with the fact (that is complete loss of future earnings) can be based upon medical evidence, vocational evidence, or both. Medical evidence of permanent total disability could consist of a doctor opining on complete medical preclusion from returning to work. For example, in cases of severe stroke, the Appeals Board has found that applicant was precluded from work based solely upon medical evidence. (See i.e., *Reyes v. CVS Pharmacy*, (2016) 81 Cal. Comp. Cases 388 (writ den.); see also, *Hudson v. County of San Diego*, 2010 Cal. Wrk. Comp. P.D. LEXIS 479.)

A finding of permanent total disability can also be based upon vocational evidence. In such cases, applicant is not precluded from working on a medical basis, per se, but is instead given permanent work restrictions. Depending on the facts of each case, the effects of such work restrictions can cause applicant to lose the ability to compete for jobs on the open labor market, which results in total loss of earning capacity. Whether work restrictions preclude applicant from further employment requires vocational expert testimony.

* * *

... [P]er *Ogilvie* and as described further in *Dahl*, the non-amenability to vocational rehabilitation must be due to industrial factors. (*Contra Costa County v. Workers' Comp. Appeals Bd.*, (*Dahl*) 240 Cal. App. 4th 746, 193 Cal. Rptr. 3d 7.)

(*Soormi v. Foster Farms*, 2023 Cal. Wrk. Comp. P.D. LEXIS 170, *11-12, citing *Wilson v. Kohls Dep't Store*, 2021 Cal. Wrk. Comp. P.D. LEXIS 322, *20–23.)

As explained above, the purpose of the AMA Guides is to assign impairment based upon a person's loss of Activities of Daily Living (ADLs). Most workers' compensation cases do not involve total disability. Most cases involve assignment of partial disability via the AMA Guides. Thus, doctors generally assign causation based on the causation of the rated impairment in the AMA Guides.

What appears to be a point of confusion in many cases is that the focus of causation and apportionment changes when using *Ogilvie* rebuttal because the defined impairment changes.

When applicant is seeking to rebut the PDRS using *Ogilvie*, disability is no longer rated as an impairment under the AMA Guides. Instead, the impairment is now the *work restrictions* assigned to applicant from the industrial injury. The disability is the effect of those work

restrictions on applicant's ability to rehabilitate and compete in the open labor market. Accordingly, causation and apportionment, when analyzed under an *Ogilvie* rebuttal, must focus on the **cause of the work restrictions**. As applicant is seeking an award of 100% disability, the cause of the work restrictions contributing to applicant's inability to work must be 100% industrial, without apportionment.

The law of apportionment was explained in the en banc decision *Nunes I*:

The California worker's compensation system requires that, "[e]mployers must compensate injured workers only for that portion of their permanent disability attributable to a current industrial injury, not for that portion attributable to previous injuries or to nonindustrial factors. 'Apportionment is the process employed by the Board to segregate the residuals of an industrial injury from those attributable to other industrial injuries, or to nonindustrial factors, in order to fairly allocate the legal responsibility.'" (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [57 Cal. Rptr. 3d 644, 156 P.3d 1100, 72 Cal.Comp.Cases 565], quoting *Ashley v. Workers' Comp. Appeals Bd.* (1995) 37 Cal.App.4th 320, 326 [43 Cal.Rptr. 2d 589, 60 Cal.Comp.Cases 683].)

Section 4663(c) provides, in relevant part:

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.

(Lab. Code, § 4663(c).)

In *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc) (*Escobedo*), we explained:

Section 4663(c) not only prescribes what determinations a reporting physician must make with respect to apportionment, it also prescribes what standards the WCAB must use in deciding apportionment; that is, both a reporting physician and the WCAB must make determinations of what

percentage of the permanent disability was directly caused by the industrial injury and what percentage was caused by other factors.

(*Id.* at p. 607.)

Accordingly, section 4663(c) authorizes and requires the reporting physician to make an apportionment determination, and further prescribes the standards the physician must use. (Lab. Code, § 4663(c); *Escobedo, supra*, at pp. 607, 611–612.) Apportionment must account for “other factors both before and subsequent to the industrial injury,” and may include disability that formerly could not have been apportioned, including apportionment to pathology, asymptomatic prior conditions, and retroactive prophylactic work restrictions. (*Ibid.*)

(*Nunes v. State of California, Dept. of Motor Vehicles (Nunes I)*, (2023) 88 Cal.Comp.Cases 741, 748-749 (Appeals Board en banc).)

Accordingly, and where applicant seeks to rebut the PDRS and prove permanent total disability, applicant must prove the following:

- 1) Applicant has been assigned a work restriction(s), which requires substantial **medical** evidence.
- 2) The work restriction(s) precludes applicant from rehabilitation into another career field, which requires **vocational** expert evidence.
- 3) The work restriction(s) precludes applicant from competing on the open labor market, which requires **vocational** expert evidence.
- 4) The cause of the work restriction(s) is 100% industrial, which requires substantial **medical** evidence.

To be clear, we are focused only on those restrictions that contribute to the vocational expert’s findings. An applicant may have multiple work restrictions, some of which are non-industrial or prior industrial. If the industrial work restrictions, standing alone, preclude applicant from rehabilitation and preclude applicant from competing on the open labor market, applicant has met their burden on causation of disability. If applicant’s preclusion from rehabilitation and work is caused or contributed by either non-industrial work restrictions or partially industrial work restrictions, applicant fails their burden on causation of disability.

To the extent that defendant seeks to apportion permanent total disability, defendant must prove apportionment of the work restrictions that establish permanent total disability.

Nunes I further held that Labor Code section 4663 requires a **reporting physician** to make medical determinations in a case, including determinations on the issue of apportionment. The Board further held that vocational evidence may be used to address issues relevant to the determination of permanent disability, and that vocational evidence must address apportionment, but that a vocational evaluator may not opine on issues that require expert medical evidence. (See, *id.*) The Board affirmed these holdings in *Nunes v. State of California, Dept. of Motor Vehicles* (August 29, 2023) 23 Cal. Wrk. Comp. LEXIS 46 [88 Cal.Comp.Cases 894] (“*Nunes IP*”).

Here, applicant’s vocational expert conducted vocational testing, examined applicant, reviewed the industrial work restrictions assigned by the medical doctors, and found that applicant was not feasible for vocational rehabilitation and could not compete on the open labor market. The opinion of applicant’s expert appears well-reasoned.

Furthermore, as explained below, the opinions of defendant’s vocational expert are of little value as defendant’s expert provided no opinion at all on whether applicant was capable of vocational rehabilitation or capable of competing on the open labor market. Defendant’s expert limited her opinion to criticizing the basis for applicant’s expert opinion. We do not find these criticism’s convincing.

Finally, the only medical expert to review the vocational reporting in this case, Dr. Kuyt, concurred in the conclusion that applicant is permanently totally disabled.

2. Apportionment under *Benson*

In our en banc opinion in *Benson*, we explained that limited situations may exist where a joint and several award of permanent disability may issue across multiple dates of injury. (*Benson v. Permanente Med. Group*, (2007), 72 Cal. Comp. Cases 1620, 1634 (Appeals Board en banc), (emphasis added); *aff’d Benson v. Workers’ Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535.) Where some aspects of the industrially caused permanent disability form two or more separate industrial injuries that cannot reasonably be parceled out, then a combined **joint and several** award of permanent disability must issue even though other aspects of the industrially caused permanent disability from those injuries can be parceled out with reasonable medical probability. (See, e.g. *Alea North American Insurance Co. v. Workers’ Comp. Appeals Bd. (Herrera)* (2018) 84 Cal. Comp. Cases 17 [2018 Cal. Wrk. Comp. LEXIS 123] (writ den.); *Flowsolve Corp. v. Workers’*

Comp. Appeals Bd. (Espinoza) (2016) 81 Cal. Comp. Cases 812 [2016 Cal. Wrk. Comp. LEXIS 92] (writ den.); *Northrop Grumman Systems v. Workers' Comp. Appeals Bd. (Dileva)* 80 Cal. Comp. Cases 749 [2015 Cal. Wrk. Comp. LEXIS 78] (writ den.); *Christiansen v. Facey Med. Found.*, 2024 Cal. Wrk. Comp. P.D. LEXIS 2, *12.) Accordingly, applicant is entitled to a combined award on all injuries and their respective body parts, even where other body parts are apportioned as between the injuries.

“It is the responsibility of each medical evaluator to determine apportionment for the body parts or body systems within his or her area of expertise.” (*Mayorga v. Dexter Axle Chassis Group*, 2015 Cal. Wrk. Comp. P.D. LEXIS 359, *16.)

It has long been the law that separate disabilities arising out of a single injury are rated together, even if those disabilities do not become permanent and stationary at the same time. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93] [chef suffered specific back injury but, as a result of blood transfusions given during later back surgery, contracted hepatitis; employee's spinal disability and liver disability were rated together in one combined award, with consideration being given to duplicate or overlapping work limitations]; *Morgan v. Workers' Comp. Appeals Bd.* (1978) 85 Cal.App.3d 710 [43 Cal.Comp.Cases 1116] [police officer suffered a cumulative injury causing hypertension, peptic ulcer, hepatitis, gastrointestinal bleeding, and hernia; employee's separate disabilities were rated together in one combined award, with consideration being given to duplicate or overlapping work limitations]; *Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 1 Cal.App.3d 720 [41 Cal.Comp.Cases 81] [employee's chest and left knee injuries rated together].)

While it may be true that other doctors apportioned applicant's disability, we find the reporting of Dr. Kuyt constitutes substantial medical evidence on the issue of apportionment. Dr. Kuyt adequately explained that the additive effects of both injuries contributed to the nerve damage affecting the bladder. Dr. Kuyt clearly explained that suggesting what percentage each injury contributed to nerve damage would be speculative. Thus, applicant is entitled to a joint and several award of permanent disability across both dates of injury.

We would further note, as explained above, when examining apportionment of disability in cases where the disability is based on work restrictions, it is incumbent upon defendant to prove apportionment of those restrictions. No doctor has apportioned any of the work restrictions to non-industrial causes. To that extent, defendant has failed its burden of proof on apportionment.

3. Defendant's Exhibit C

Defendant next argues that the WCJ erred in not addressing its Exhibit C. Applicant objected to admission of this exhibit as it was obtained after the mandatory settlement conference (MSC).

Pursuant to Labor Code, section 5502(d):

(2) The settlement conference shall be conducted by a workers' compensation administrative law judge or by a referee who is eligible to be a workers' compensation administrative law judge or eligible to be an arbitrator under Section 5270.5. At the mandatory settlement conference, the referee or workers' compensation administrative law judge shall have the authority to resolve the dispute, including the authority to approve a compromise and release or issue a stipulated finding and award, and **if the dispute cannot be resolved, to frame the issues and stipulations for trial.** The appeals board shall adopt any regulations needed to implement this subdivision. The presiding workers' compensation administrative law judge shall supervise settlement conference referees in the performance of their judicial functions under this subdivision.

(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. **Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference.**

(Emphasis added.) (§ 5502(d)(2), (3).)

The Labor Code requires the WCJ to frame the issues and stipulations for trial at the MSC. The parties are required to disclose all their evidence at the MSC on the PTCS and submit the PTCS to the WCJ for a substantive review *on the day of the hearing, with the parties present*. The purpose of the statute is to avoid trial by surprise. Failure to follow section 5502 at the trial level not only violates the statute, but invites a host of errors that are easily avoidable. Furthermore, where the WCJ violates section 5502, it is incumbent upon the parties to preserve an objection on the record. A party waives objection to a violation of section 5502 when they consent to alter the statutory process.

Here, applicant consented to filing a PTCS after the hearing was concluded. While ordinarily discovery closes at the MSC, no order issued to that effect. Accordingly, Defendant's Exhibit C is admissible. In the future, we admonish the parties to follow section 5502 in all proceedings.

However, and notwithstanding the fact that Exhibit C is admissible, we find that defendant's vocational opinion is of little probative value. Defendant's expert provides no opinion as to whether applicant is capable of rehabilitation or competing on the open labor market. Applicant claims permanent total disability.

Here, defendant's expert concludes that applicant's expert's reporting contains errors. Defendant offered no substantive opinion on the issue of permanent total disability.

4. Other issues raised

Defendant argues that the WCJ failed to examine application of section 4628 and failed in relying on a DEU calculation to award attorney's fees. (Petition for Reconsideration, p. 11, lines 11-12, p. 12, lines 21-26.) However, defendant makes no argument for how section 4628 is applicable to this case or why the DEU calculation is not correct. Defendant does not provide any citation for review. We consider defendant's argument on these points skeletal and thus waived. (See *Flores v. Cal. Dept. of Corrections and Rehab.* (2014) 224 Cal.App.4th 199, 204 ("an appellant must do more than assert error and leave it to the appellate court to search the record ... to test his claim"); *City of Santa Maria v. Adam* (2012) 211 Cal. App.4th 266, 287 ("[r]ather than scour the record unguided, we may decide that the appellant has waived a point urged on appeal when it is not supported by accurate citations to the record"); *Salas v. Cal. Dept. of Transp.* (2011) 198 Cal.App.4th 1058, 1074 ("[w]e are not required to search the record to ascertain whether it contains support for [plaintiffs'] contentions"); *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246 ("[t]he appellate court is not required to search the record on its own seeking error" and "[i]f a party fails to support an argument with the necessary citations to the record, ... the argument [will be] deemed to have been waived".))

Accordingly, we grant defendant's petition for reconsideration and as our Decision After Reconsideration, we affirm the November 4, 2025 joint F&A, except that we amend the F&A to exclude the right shoulder as a body part, and order that Defendant's Exhibit C be admitted into evidence.

For the foregoing reasons,

IT IS ORDERED that defendant’s petition for reconsideration of the Joint Findings, Award, and Order issued on November 4, 2025, by the WCJ is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Joint Findings, Award, and Order issued on November 4, 2025, by the WCJ is **AFFIRMED, EXCEPT THAT** and Findings of Fact #1 and #2 are **AMENDED** to read as follows:

FINDINGS OF FACT

1. Applicant, Michelle Noland, born [], while employed on May 6, 2019, as a home care aide, Occupational Group No. 340, at Los Angeles, California, by Mom's Home Care, sustained injury arising out of and in the course of employment to her right wrist, bladder, bowel, cervical and lumbar spine, psyche, right hand, headaches, sleep dysfunction, and right ankle.

2. Applicant, Michelle Noland, born [], while employed on March 19, 2019, as a home care aide, Occupational Group No. 340, at Los Angeles, California, by Mom's Home Care, sustained injury arising out of and in the course of employment to her low back, right ankle, head, and right wrist, bladder, bowel, cervical and lumbar spine, right wrist, psyche, right hand, headaches, sleep dysfunction, and right ankle.

...

IT IS FURTHER ORDERED that Defendant’s Exhibit C is **ADMITTED** into evidence.

IT IS FURTHER ORDERED that this matter is RETURNED to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 20, 2026

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

**MICHELLE NOLAND
ROWEN, GURVEY & WIN
LAW OFFICES OF STUART NAGEL**

EDL/mt

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