WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

STEPHEN SMITH, ***Applicant***

vs.

STATE OF CALIFORNIA, DEPARTMENT OF GENERAL SERVICES; legally uninsured; adjusted by STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ7483164
Sacramento District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the December 12, 2025 Findings, Award and Order issued by the workers' compensation administrative law judge (WCJ). Therein, and as relevant here, the WCJ found that applicant sustained admitted injury arising out of and occurring in the course of employment (AOE/COE) to his bilateral upper extremities, hands and wrists, while employed as an Administrative Law Judge during the period through September 23, 2010. The WCJ further found that applicant's injury caused permanent total disability of 100%.

Defendant contends that the WCJ erred in finding 100% permanent disability arguing that the opinion of Nicole Chitnis, M.D., is not substantial evidence to rebut the strict scheduled rating and arguing that applicant's impairment should have been combined using the combined values chart (CVC) rather than added pursuant to the holds of *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.) and *Vigil v. County of Kern (Vigil)* (2024) 89 Cal.Comp.Cases 686 (Appeals Board en banc).

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Opinion on Decision (Opinion) and Report and Recommendation on Petition for Reconsideration (Report) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Opinion and Report, both of which we adopt and incorporate as quoted below, and for the reasons stated below, we will deny reconsideration.

I.

Preliminarily, we note that former Labor Code[1] section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

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

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected 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 January 14, 2026 and 60 days from the date of transmission is Sunday, March 15, 2026. The next business day that is 60 days from the date of transmission is Monday, March 16, 2026. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, March 16, 2026, so that we have timely acted on the petition as required by section 5909(a).

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

---

[1] All further statutory references 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.

act on a petition. Section 5909(b)(2) 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 January 14, 2026, and the case was transmitted to the Appeals Board on January 14, 2026. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) 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 January 14, 2026.

II.

The WCJ stated the following in the Opinion:

> PERMANENT DISABILITY
>
> Applicant has suffered an admitted injury to his bilateral upper extremities, wrists and hands.
>
> Applicant was evaluated by Nicole Chitnis, M.D. as a "regular physician" per Labor Code §5701 in the specialty of Physical Medicine & Rehabilitation. Dr. Chitnis examined Applicant on July 8, 2019 (report dated August 7, 2019), August 8, 2022 (report dated August 31, 2022), April 11, 2023 (report dated April 15, 2023), November 7, 2023 (report dated November 11, 2023), and February 12, 2025 (report dated February 16, 2025) (Joint Exhibits 11, 8, 7, 5, and 4). Dr. Chitnis issued three supplemental reports dated April 2, 2020, February 20, 2021, July 4, 2023 (Joint Exhibit 10, 9 and 6). Dr. Chitnis was deposed on three separate occasions: October 19, 2019, May 22, 2024, and August 20, 2025 (Joint Exhibit 14, 13 and 12).
>
> Dr. Chitnis assigned ratings using the strict application of the AMA Guides. For the right upper extremity, she opined 22% UE for loss of range of motion, 5% UE for carpal tunnel syndrome and 5% UE for radial styloidectomy, resulting in a combined impairment of 30% UE or 18% WPI for the right wrist. She also found 12% UE for loss of function of the medial nerve or 7% WPI and 13% UE for loss of ulnar nerve function or 8% WPI. (Joint Exhibit 7, pages 38-39). For the left upper extremity, Dr. Chitnis opined 16% UE for loss of range of motion, 5% UE for carpal tunnel syndrome and 5% UE for radial styloidectomy, resulting in a combined impairment of 24% UE or 14% WPI for the right wrist. She also found 12% UE for loss of function of the medial nerve or 7% WPI and 13% UE for loss of ulnar nerve function or 8% WPI. (Joint Exhibit 7, pages 39-40).

Dr. Chitnis explained why she felt that the strict rating did not accurately reflect Applicant's level of impairment. Applicant's pain and symptomology was greater than one would relate to a simple and straightforward diagnosis. Applicant developed severe pathology. He underwent multiple surgeries on the left side, but his symptoms have worsened instead of improved. Applicant also had several surgeries on the right. He was left with significant loss of function in both hands (Joint Exhibit 7, pages 40-41).

Dr. Chitnis provided two different methodologies for rating. The first methodology relied upon Table 16-18 utilizing the maximum impairment values for disorders to specific joints, expressly the wrist which is 36% WPI. Dr. Chitnis opined that Applicant suffered a 70% loss of function of the right wrist resulting in 25% WPI (70% x 36% WPI = 25% WPI) and 80% loss of function of the left wrist resulting in 29% WPI (80% x 36% = 29%) (Joint Exhibit 7, pages 41- 42). However, Dr. Chitnis noted that there was a prolonged course of treatment and continued deterioration with further loss of muscle strength and conditioning, so she provided a second methodology analogizing Figure 16-2 (impairment for upper extremity amputation) as the most accurate method of rating given the complexities of the case. Applicant underwent several surgeries and was left with significant symptomology and functional deficit. She opined that Applicant essentially lost 75% of the function of his arms below the elbow resulting in 43% WPI for each upper extremity (75% loss of function x 57% WPI for amputation distal to the elbow joint = 43% WPI) (Joint Exhibit 7, page 42). Subsequent reporting and deposition testimony by Dr. Chitnis confirmed her opinion as to 43% WPI for each upper extremity.

The question remains as to whether these impairments should be added or combined. Dr. Chitnis was asked to address the recent en banc decision, *Vigil v. County of Kern* (2024) 89 Cal. Comp. Cases 686. In her report dated February 16, 2025, Dr. Chitnis stated that the impairments should be added per *Vigil,* however, the explanation was scant. Her opinion was a single sentence stating that there were extensive difficulties with dressing, showering, shaving, buttoning, cooking, chopping vegetables, washing dishes, driving, "Thus, per *Vigil*, Mr. Smith has overlap with amplification and thus, his WPIs need to be added, rather than combined" (Joint Exhibit 4, page 28). Dr. Chitnis did not state "how/why" there was overlap or amplification.

Dr. Chitnis was deposed August 20, 2025 (Joint Exhibit 12). She confirmed her opinion on impairment and answered questions about the application of *Vigil*. She confirmed that this case follows the example given in *Vigil*, of an injured worker with impairment in both hands making the ability to button one's shirt even more difficult (*Id*, page 31:14-23; See also *Vigil, supra*, at page 692). Once of the critical aspects of the *Vigil* decision was the lack of discussion by the QME of the injured worker's Activities of Daily Living. In the present case, Dr. Chitnis wrote extensively about Applicant's Activities of Daily Living and

confirmed in deposition that she had extensive discussions with the Applicant about his Activities of Daily Living.

Applicant credibly testified at trial as to the symptoms experienced in both upper extremities and various limitations in performing day-to-day activities. His testimony was in line with the symptoms and ADL limitations noted by Dr. Chitnis. For these reasons, Dr. Chitnis' opinion utilizing the third methodology for rating impairment per Figure 16-2 is the most persuasive. Based on the foregoing, I am persuaded that Dr. Chitnis' opinion on impairment constitutes substantial medical evidence. Not considering apportionment, which will be discussed below, the permanent disability rates as follows:

Right Upper Extremity 16.01.01.02-43-[5]55-110E-52-60% PD

Left Upper Extremity 16.01.01.02-43-[5]55-110E-52-60% PD

60 + 60 = (120) 100% permanent disability before apportionment

APPORTIONMENT

In the initial evaluation report dated August 7, 2019, Dr. Chitnis opined that Applicant's disability was apportioned 10% to pre-existing non-industrial medical conditions, as well as nonindustrial activities of daily living and non-industrial recreational activities (Joint Exhibit 11, page 45). She did not find any apportionment to his work-related activities as a professor at community college (Id.). In May 2024 at deposition, Dr. Chitnis was asked questions by Defense counsel about prior sports activities, prior work history, subsequent work history, etc. She testified that she would need additional information to make a more accurate determination as to apportionment (Joint Exhibit 13, page 11:16 – 13:11, 14:1-15:4, 17:4-22). However, on cross-examination by Applicant counsel, she confirmed that in the absence of additional or available information her opinion remained at 10% apportionment to nonindustrial causes (Joint Exhibit 13, page 26:18-30:19). It does not appear from the record that the parties provided Dr. Chitnis with any further information. Based on review of the medical reports, deposition testimony and absence of additional information, I find that Dr. Chitnis' opinion on apportionment constitutes substantial medical evidence. Therefore, the ratings are as follows:

Right Upper Extremity 90 (16.01.01.02-43-[5]55-110E-52-60) 54% PD

Left Upper Extremity 90 (16.01.01.02-43-[5]55-110E-52-60) 54% PD

54 + 54 = (108) 100% permanent disability taking into account apportionment.

(Opinion on Decision, at pp. 1-5.)

The WCJ stated the following in the Report:

FACTS

Applicant filed an Application for Adjudication of Claim alleging a cumulative trauma injury through September 23, 2010, to his bilateral upper extremities, hands and wrists due to his work as an Administrative Law Judge for the State of California, Dept of General Services. The parties utilized Dr. Conrad Clifford as an Agreed Medical Evaluator. The case proceeded to trial on November 2, 2018. The trial judge issued a Findings of Fact & Order on February 1, 2019, stating that Dr. Clifford's opinion did not constitute substantial evidence for purposes of deciding the issues and order[ed] the appointment of Dr. Nichole Chitnis as a "regular physician" pursuant to Labor Code §5701.

The parties proceeded to a Mandatory Settlement Conference on September 23, 2025, where in the matter was set for trial on permanent disability, apportionment, medical treatment, attorney fees, and alleged temporary disability overpayment. The parties noted on the Pre-Trial Conference Statement additional issues of *Almaraz/Guzman* rating and addition versus CVC per *Kite* and *Vigil*.

A trial took place on November 13, 2025, wherein the parties presented their evidence, arguments and the injured worker's testimony on the issues of (1) permanent disability, (2) apportionment, (3) attorney fees and (4) whether there was a temporary disability overpayment from January 26, 2015, through April 5, 2015 (Minutes of Hearing, Summary of Evidence, dated November 13, 2025, Page 2, Line 22 to Page 3, Line 2).

On December 12, 2025, the undersigned issued a Findings, Award and Order finding that Applicant's injury caused permanent total disability of 100%, and reasonable value of services provided by Applicant's Attorney was 15% and awarded such. The issue of whether there was a temporary disability overpayment was deferred pending the parties' adjustment of benefits paid, with leave to return to the trial court if the parties were unable to do so and have the matter addressed further. Defendant is appealing the award of permanent total disability of 100%, contending that Applicant failed to carry his burden of proof to rebut the strict rating and that CVC should have been used in determining the final impairment rating.

DISCUSSION

THE MEDICAL RECORD COMBINED WITH APPLICANT'S CREDIBLE TESTIMONY ESTABLISHED BY PREPONDERANCE OF THE EVIDENCE THAT APPLICANT HAD REBUTTED THE STRICT RATING

Defendant argues that Dr. Chitnis did not explain why the strict rating did not accurately reflect Applicant's disability and did not appropriately explain how/why the alternative rating most accurately reflected Applicant's level of disability. There is nothing in Defendant's Petition for Reconsideration that appears to be particularly new or different than what was previously addressed in their Trial Brief which was reviewed and considered by the undersigned in arriving at the Findings, Award and Order.

First, Dr. Chitnis did provide a strict rating per the AMA Guides. In her initial report dated August 7, 2019 (Joint 11, pages 37-39), Dr. Chitnis provided a strict rating using range of motion, sensory and motor deficits, and radial styloidectomy. Dr. Chitnis provided strict ratings in her subsequent re-evaluation report dated April 15, 2023 (Joint 7, pages 38-40).

Second, Dr. Chitnis did explain why the strict rating did not accurately reflect the Applicant's disability. In her initial report, Dr. Chitnis stated that the strict rating did not accurately reflect Applicant's impairment because Applicant's pain and symptomology were greater than one would expect for a simple and straightforward diagnosis. She went on to discuss the development of severe pathology, surgical history, worsening of symptoms over time, loss of strength and deconditioning (Joint 11, pages 39-40).

Third, Dr. Chitnis provided an alternative rating using the four corners of the Guides. In the August 7, 2019 report, she provided an alternative rating using Table 16-18 and Figure 16-2 (Id. Pg 40-41). Dr. Chitnis reiterated her alternative rating in her subsequent report dated April 15, 2023 (Joint 7, pages 40-42), again using Table 16-18 and Figure 16-2[.]

Finally, Dr. Chitnis explained why the alternative rating most accurately reflected Applicant's level of disability. Defendant argues that Dr. Chitnis provided two alternative ratings, so which rating should be used? However, Dr. Chitnis did explain why the second methodology using Figure 16-2 was more appropriate. Applicant underwent several surgeries and was left significant symptomology and functional deficit (Joint Exhibit 7, page 42). She confirmed her use of the second alternative rating at deposition comparing someone with an amputation who would no longer be limited with ongoing pain versus Applicant who will be limited by pain, numbness, weakness, etc. (Joint Exhibit 12, 12:13 – 14:7, 16:6-14).

Defendant relies upon the Board's opinion in *Weaver v. Los Angeles Unified School District,* 2015 Cal. Wrk. Comp. P.D. LEXIS 766, for the proposition that a percentage loss of use of a body part does not automatically equate to the percentage of impairment for that body part. In the *Weaver* case, the AME provided an alternative impairment rating based on his view that the applicant had lost 50% use of her upper extremities – namely, that the maximum impairment of the upper extremity is 60% whole person impairment and because

applicant had lost 30% of use of each upper extremity, the AME assigned 30% impairment for each upper extremity. The injured worker was diagnosed with bilateral carpal tunnel syndrome and bilateral deQuervian's Tenosynovitis (trigger thumb), which are medical conditions that affect the wrists and hands, not the entire upper extremity. The Board did not follow the AME's alternative rating because the applicant failed to provide substantial evidence that she had lost the use of her entire upper extremity.

Here, the facts of *Weaver* are distinguishable. Dr. Chitnis did not provide an alternative rating based on the loss of use of the entire upper extremity. Dr. Chitnis provided a loss of function of the arms below the elbow (Joint Exhibit 7, page 42) based on a diagnosis of persistent bilateral carpal tunnel syndrome and cubital tunnel syndrome, which was confirmed in multiple reports and deposition testimony.

Also, Defendant contends that giving an award of permanent total disability to this injured worker is analogous to someone who has lost both hands or the use thereof under Labor Code §4662. Applicant did not argue permanent total disability per Labor Code §4662. Applicant argued permanent total disability based on the ratings provided by Dr. Chitnis under the AMA Guides based on the principles set forth in *Almaraz/Guzman* and *Vigil*. Defendant asserts Applicant can do some activities such as grocery shopping, light weightlifting, walking his dog, and consulting positions. However, Defendant fails to understand that Dr. Chitnis did not opine that the applicant fully lost both hands or the use thereof. She opined that there was loss of 75% of function of the arms below the elbow. She acknowledged that Applicant was able to do some activities but was severely limited so doing some things are good to maintain strength and flexibility and confirmed 75% loss of function (Joint Exhibit 12, 15:5 – 16:5). Dr. Chitnis opined that Applicant was worse off than someone who had an amputation because his condition is progressive with persistent pain, numbness and weakness, whereas someone with an amputation with prosthesis allows them to do more activities without pain (Joint Exhibit 12, 12:13 – 14:7, 16:6-14).

THE USE OF ADDITION AS OPPOSED TO THE USE OF CVC TO COMBINE APPLICANT'S DISABILITY IS SUPPORTED BY THE MEDICAL RECORD

Defendant argues that the CVC should have been used in determining the final impairment rating because Dr. Chitnis's opinions were not enough to deviate from using the CVC. She did not explain how and why, thus, Applicant failed to rebut the usage of CVC per *Almaraz/Guzman, Kite* and *Vigil*.

Dr. Chitnis opined that Applicant's impairments should be added (Joint Exhibit 4, page 28). During her deposition on August 20, 2025, Dr. Chitnis confirmed that Applicant's situation fell squarely in line with the example given in *Vigil* of

an individual with impairment in both hands making it more difficult to perform ADLs (Joint Exhibit 12, 31:14-23). Applicant testified credibly at trial as to the symptoms experienced in both upper extremities and various limitations in performing day-to-day activities, including the use of adaptive devices and his wife's assistance (Summary of Evidence, pages 5-6). His testimony was in line with the symptoms and ADL limitations noted by Dr. Chitnis which she went over with him during the examinations.

There is nothing in Defendant's Petition for Reconsideration or Defendant's Trial Brief which was reviewed and considered by the undersigned that changes the analysis, opinion or decision on the use of addition in arriving at a finding of permanent total disability.

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

(Report, at pp. 1-5, footnotes omitted.)

III.

Section 4660 provides that permanent disability is determined by consideration of whole person impairment within the four corners of the AMA Guides, as applied by the Permanent Disability Rating Schedule (PDRS) in light of the medical record and the effect of the injury on the worker's future earning capacity. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [72 Cal.Comp.Cases 565] ["permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity"]; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680] (*Fitzpatrick*); *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837] (*Guzman*).)

However, the scheduled rating is not absolute. (*Fitzpatrick, supra*, at pp. 619-620.) A rating obtained pursuant to the PDRS may be rebutted by showing an applicant's diminished future earning capacity is greater than that reflected in the PDRS. (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624] (*Ogilvie*); *Contra Costa County v. Workers' Comp. Appeals Bd. (Dahl)* (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 1119] (*Dahl*).) In analyzing the issue of whether and how the PDRS could be rebutted, the Court of Appeal has observed:

> Another way the cases have long recognized that a scheduled rating has been effectively rebutted is when the injury to the employee impairs his or her rehabilitation, and for that reason, the employee's diminished future earning capacity is greater than reflected in the employee's scheduled rating. This is the rule expressed in *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [193 Cal.Rptr. 547, 666 P.2d 989]. In *LeBoeuf*, an injured worker sought to demonstrate that, due to the residual effects of his work-related injuries, he could not be retrained for suitable meaningful employment. (*Id*. at pp. 237-238.) Our Supreme Court concluded that it was error to preclude LeBoeuf from making such a showing, and held that "the fact that an injured employee is precluded from the option of receiving rehabilitation benefits should also be taken into account in the assessment of an injured employee's permanent disability rating."
>
> (*Ogilvie, supra*, at p. 1274.)

Thus, "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, supra*, at p. 1277.)

Moreover, pursuant to *Fitzpatrick, supra*, impairments "are generally combined" using the combined values chart (CVC) found in the permanent disability rating schedule (PDRS). However, the "scheduled rating is not absolute" and other methodologies may be used to calculate permanent disability. (*Id*. at p. 614.) Thus, while the PDRS is prima facie evidence of an employee's permanent disability, it is rebuttable. (*Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School Dist. (Almaraz-Guzman II)* (2009) 74 Cal.Comp.Cases 1084, 1106 (Appeals Board en banc); see *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613 (Appeals Board en banc); *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360, 167 Cal. Rptr. 3d 1.) Ultimately, however, the goal in rating impairments is accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].)

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), the Appeals Board held that if there is substantial medical evidence that two or more impairments have a synergistic effect which causes the resulting impairment to be greater than that reflected through use of the CVC, the impairments should be added for purposes of

accuracy. In *Kite*, the applicant underwent bilateral hip replacement surgeries and the orthopedic QME opined that there was a "synergistic effect of the injury to the same body parts bilaterally versus body parts from different regions of the body," and, as such, "the best way to combine the impairments to the right and left hips would be to add them versus using the combined values chart, which would result in a lower whole person impairment." (*Id*. at p. 5.) Accordingly, in *Kite*, the WCJ found that the impairment for the applicant's hips should be added rather than combined.

Subsequent to *Kite*, the Appeals Board issued *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, 688–689 (Appeals Board en banc) wherein it was determined that if an applicant seeks to rebut the CVC and add rather than combine impairments, the applicant must establish that 1) the activities of daily living (ADLs) impacted by each impairment, and 2) the ADLs either do not overlap, or overlap in such a way that it increases or amplifies the impact of the overlapping ADLs.

Lastly, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza, supra*; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion … It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) To constitute substantial evidence "… a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Furthermore, the physician must explain the nature of the disease and how and why it is causing disability at the time of the evaluation. (*Id*.)

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. *(Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

Based on the record in this case and for the reasons stated in the WCJ's Opinion and Report, as quoted herein, we agree with the WCJ's determination that Dr. Chitnis' opinion is substantial evidence, that the record supports addition of applicant's impairment pursuant to *Kite* and *Vigil*, and that applicant is 100% permanently and totally disabled. Accordingly, we deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 16, 2026

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

STEPHEN SMITH
THE LAW OFFICES OF MARCUS & PULLEY, LLP
STATE COMPENSATION INSURANCE FUND

PAG/bp

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