WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

VIVIAN MARTIN, *Applicant*

vs.

COX CASTLE & NICHOLSON, LLP;
BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants*

Adjudication Number: ADJ6741809

Oakland District Office

OPINION AND ORDER
GRANTING PETITION
FOR RECONSIDERATION
AND DECISION
AFTER RECONSIDERATION

Defendant seeks reconsideration of the "Findings of Fact Findings and Award Opinion on Decision" (F&A) issued on April 3, 2024, by the workers' compensation administrative law judge (WCJ).

The WCJ found, in pertinent part, that applicant sustained permanent total disability after finding that applicant's disability rating as assigned by the qualified medical evaluators (QMEs) constituted substantial medical evidence per the holding of *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) The WCJ further found that applicant rebutted the Combined Values Chart (CVC) of the Permanent Disability Ratings Schedule (PDRS) and after application of *Kite* added applicant's impairments to reach 100% permanent total disability. (*East Bay Municipal Utility District v. Workers' Compensation Appeals Board* (*Kite*) (2013) 78 Cal.Comp.Cases 213 (writ den.).)

Defendant argues that the WCJ erred because the QME's analogy via *Guzman* did not constitute substantial medical evidence. Defendant further alleges that the psychiatric QME's opinion as to CVC rebuttal does not constitute substantial medical evidence because the QME failed to explain how and why applicant's impairments have created synergistic amplification. Defendant further argues that the QME's opinion is stale. Defendant further argues that a psychiatric QME is not the appropriate medical specialty to comment upon rebuttal of CVC.

Lastly, defendant argues that the WCJ improperly added internal impairments to the psychiatric and orthopedic, when no evidence exists to establish rebuttal of the CVC for the internal impairments. Finally, defendant argues that the holding in *Fitzpatrick* precludes rebuttal of the PDRS in this case. (*Department of Corrections and Rehabilitation* v. *Workers' Comp. Appeals Bd.*, (*Fitzpatrick*) (2018) 83 Cal.Comp.Cases 1680.)

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we 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 reconsideration and as our Decision After Reconsideration we will rescind the WCJ's April 3, 2024 F&A and return this matter to the trial level for further proceedings consistent with this decision.

FACTS

Applicant worked for defendant as a legal secretary, when she sustained industrial injury on April 8, 2008 to her cervical spine, lumbar spine, right shoulder, and psyche, and claimed to have sustained injury to her gastrointestinal system in the form of sleep disorder. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 6, 2021, p. 2, lines 8-14.)

A history of applicant's injury was taken as follows:

> Ms. Martin is a 56-year-old right-hand dominant female who was working as a full-time legal secretary for Cox, Castle and Nicholson at the time of injury on 04/08/08. At that time she was still non-weight-bearing and using bilateral crutches as a result of a slip and fall accident on BART on 12/28/07. On the first day she returned to work, she slipped in the bathroom and struck her low back and fell to the floor. She was helped up by a coworker and when she went to sit down, she felt a sharp pain in her low back. She filed a report and was sent to Concentra ER.

(Joint Exhibit 107, Report of M. Gail Price, Ph.D., July 22, 2014, p. 3.)

This matter was initially submitted in May 2021 on the issues of parts of body injured, permanent disability and apportionment, application of *Kite*, application of *Guzman*, need for future medical treatment, and attorney's fees. (*Id.* at p. 3, lines 3-26.) Thereafter, the matter was vacated for further development of the record. (See, Order Taking the Matter Out of Submission Order for Further Development of the Record, July 8, 2021.)

This matter proceeded to trial again on February 15, 2024. (See MOH/SOE, February 15, 2024; see also, Amended Minutes of Hearing, February 15, 2024.)[1] On reconsideration, defendant challenges the finding of permanent total disability.

Applicant was examined by multiple qualified medical evaluators (QMEs) in the fields of physical medicine and rehabilitation, internal medicine, and psychology.

Applicant was examined for her orthopedic complaints by Manijeh Ryan, M.D., who authored four reports in evidence and was deposed once. (Joint Exhibits 110, 111, and 113 through 116.)[2][3]

Upon initial examination, Dr. Ryan found applicant permanent and stationary as of April 14, 2016. (Joint Exhibit 110, at p. 57.) Upon reexamination, Dr. Ryan assigned 18% whole-person impairment (WPI) to the cervical spine, 13% WPI to the lumbar spine, 10% to the right shoulder. (Joint Exhibit 113, at p. 110.) Dr. Ryan found applicant's orthopedic disabilities 90% industrial. (*Id*. at p. 114.) Dr. Ryan, later included a 3% pain add-on for the right shoulder. (Joint Exhibit 115, p. 9.)

Dr. Ryan assigned 10% WPI to the right shoulder through both a range of motion analysis, which rated to 4% WPI, and by assigning 6% WPI per Table 16-27 of the AMA Guides for distal clavicle resection. (Joint Exhibit 103, pp. 110-111.) However, it was noted in deposition that applicant did not have distal clavicle resection, but instead the surgery to applicant's right shoulder involved resection of the bursa. (Joint Exhibit 116, p. 10, lines 6-12.) Dr. Ryan opined that she would rate the shoulder by analogy if the strict rating was not correct.

> Q. Okay. And if she does not qualify for the rating under the AMA Guides for the surgery, would you apply that by analogy through Almaraz/Guzman due to her functional limitations?
>
> A. Actually, I -- I would do it through Almaraz/Guzman, but because of the surgery, the bursa was resected. The rating in the AMA Guides, the one that I applied to, was distal clavicle resection rating which -- which usually for this surgery we do apply it because of the extensivity of the surgery. This person had high-grade partial

[1] The February 15, 2024 minutes do not list the issues for trial, but it appears based upon the pleadings that the partis proceeded upon the same issues raised as the May 6, 2021 trial.
[2] Joint Exhibits 110 and 111 appear to be duplicative as they are the same April 14, 2016 report.
[3] Applicant was also evaluated by QME James Han, D.O., who authored two reports in evidence. (Defendant's Exhibits A and B.) However, Dr. Han's reports were from 2012 and issued prior to applicant becoming permanent and stationary and thus, they are not germane to the analysis of applicant's permanent disability.

> tear estimated at about 80 percent, and I'm reading off of the actual operative report.

(*Id*. at p. 10, lines 2-15.)

In 2016, Dr. Ryan took the following history of impact upon activities of daily living (ADLs):

> **Self-Care, personal hygiene:**
>
> She is able to do the following without any difficulty: take a shower, wash and dry face, turn on and off faucets, brush teeth, lift glass/cup to mouth, lift fork/spoon to mouth. She is able to do the following with some difficulty: take a bath, wash and dry body, get on/off toilet, comb/brush hair, dress self, make a meal. She is able to do the following with much difficulty: put on/off shoes/socks, open a jar.
>
> **Physical Activity:**
>
> She is able to do the following with some difficulty: stand, sit, recline, get in/out of bed, walk. She is able to do the following with much difficulty: rise from a chair, shop/do errands, lift 5 lbs., lift 10 lbs., lift 20 lbs., care for children or parents, engage in hobbies (indicate hobby) (*sic*). She is mostly unable to do the following: climb flight of 10 stairs, work outdoors, light housework, carry groceries, lift 30 lbs.
>
> **Communication:**
>
> She is able to do the following without any difficulty: write a note, speak clearly, hear clearly. She is able to do the following with some difficulty: type a message on a computer/typewriter, see a television screen, use a telephone.
>
> **Nonspecified hand activities:**
>
> She is able to do the following without any difficulty: write with a pen/pencil, steer wheel of car. She is able to do the following with some difficulty: pick up small items, tum a knob on a door.
>
> **Sensory function:**
>
> She is able to do the following without any difficulty: feel what you touch, taste what you eat, smell what you eat.

Travel:

She is able to do the following without any difficulty: ride in a car. She is able to do the following with some difficulty: get in/out of a car, drive a car, fly in a plane. She is mostly unable to do the following: ride a bicycle.

Sexual function:

She is mostly unable to do the following: engage in sexual activity.

Sleep:

She is able to do the following with much difficulty: get to sleep, sleep through the night, have restful sleep, feel refreshed after sleep.

(*Id*. at p. 11.)

Upon re-examination in 2021, Dr. Ryan took a new history of ADLs as follows:

Self-Care, personal hygiene: She is able to do the following without any difficulty: take a shower, take a bath, wash and dry body, wash and dry face, tum on and off faucets, brush teeth, comb/brush hair, lift glass/cup to mouth, lift fork/spoon to mouth. She is able to do the following with some difficulty: get on/off toilet, dress self, open carton of milk, open a jar, make a meal. She is able to do the following with much difficulty: put on/off shoes/socks. Describe other: "constipation"

Physical Activity: She is able to do the following without any difficulty: stand, recline, lift 5 lbs, walk. She is able to do the following with some difficulty: rise from a chair, get in/out of bed, shop/do errands, lift 10 lbs, care for children or parents. She is able to do the following with much difficulty: sit, climb flight of 10 stairs, light housework, carry groceries, lift 20 lbs. She is mostly unable to do the following: lift 30 lbs, engage in hobbies. N/A: work outdoors.

Communication: She is able to do the following without any difficulty: write a note, see a television screen, use a telephone, speak clearly, hear clearly. She is able to do the following with some difficulty: type a message on a computer/typewriter.

Nonspecified hand activities: She is able to do the following without any difficulty: pick up small items, tum a knob on a door, write with a pen/pencil, steer wheel of car.

> **Sensory function:** She is able to do the following without any difficulty: feel what you touch, taste what you eat, smell what you eat.
>
> **Travel**: She is able to do the following with some difficulty: get in/out of a car, drive a car, ride in a car, fly in a plane. She is able to do the following with much difficulty: ride a bicycle.
>
> **Sexual function**: She is able to do the following with much difficulty: engage in sexual activity. Describe other: "Orgasm"
>
> **Sleep**: She is able to do the following with much difficulty: get to sleep, sleep through the night, have restful sleep, feel refreshed after sleep. Describe other "tired in daytime."

(Joint Exhibit 113, p. 20.)

Applicant was examined by internist Richard Shaw, M.D., who authored four reports in evidence and was deposed twice. (Joint Exhibits 101 through 106.) Dr. Shaw appears to have been replaced as a QME as applicant was also examined by internist QME Kathryn Raphael, M.D., who authored one report in evidence. (Joint Exhibit 112.) Dr. Raphael's report was used to rate applicant's internal complaints. Dr. Raphael assigned 9% WPI for complaints of GERD, 3% WPI for constipation, 5% WPI for sleep disorder, 10% WPI for sexual dysfunction, and 3% WPI for headaches. (*Id*. at pp. 53-58.)

Dr. Raphael took the following history of the impact upon applicant's ADLs:

> Self-Care/Personal Hygiene (toilet, dress, eat, groom): Normal. Can no longer style her hair due to right shoulder pain and loss of motion.
>
> Communication (write, see, hear, and speak): Normal.
>
> Physical Activity (stand, walk, sit, lie, and stairs): Prolonged sitting causes increased back pressure. Can't walk further than a half mile as she gets burning sensation in both legs. Avoids stairs because that also causes increased burning in her legs. Lying down aggravates her neck pain.
>
> Sensory Function (hear, see, feel, taste, and smell): Normal.
>
> Hand, non-specialized activities (grasping, lifting, tactile discrimination): Drops stuff when holding items with her right hand due to relative weakness of right hand.

> Travel (car, airplane, and public transportation): Can drive but time limited as driving makes her sleepy. Can drive up to an hour maximum.
>
> Sexual (erectile and other forms of male/female dysfunction): Unable to reach an orgasm since 2013. Sexual relations cause worsening pain in her neck and her back. Decreased mobility.
>
> Sleep (restful, nocturnal pattern, naps during day): Does not nap. Sleeps 3-4 hours at night. If she turns over, her neck pain awakens her. No excessive daytime sleepiness except as noted above while driving.

(*Id*. at pp. 7-8.)

Applicant was examined by psychologist M. Gail Price, Ph.D., who authored two reports in evidence and was deposed. (Joint Exhibits 107 through 109.) In 2014, Dr. Price assigned applicant a GAF score of 60. (Joint Exhibit 107, p. 37.)

In 2014, Dr. Price took a history of the impact upon applicant's activities of daily living as follows:

> Continuing independent self-care and personal hygiene. However many physical activities are interfered with and made more difficult by the pain, lifting limitations and limited range of motion. Some activities such as housecleaning have to be done slowly and carefully with frequent breaks to rest. Shopping, driving, cooking, cleaning are done even though these things cause pain. The spouse helps with tasks such as lifting. Walking and standing for extended periods cause increased pain.
>
> She can only lift light objects, has some difficulty reaching and grasping at chest level, has difficulty reaching overhead, can only push or pull very light objects. She has difficulty with cooking, laundry, housekeeping and shopping. She can walk only short distances, climb one flight of stairs, sit between 1-2 hours at a time, stand/walk 1-2 hours at a time. She has some difficulty with repetitive motions such as typing, some difficulty with forceful activities with her arms and hands, a lot of difficulty kneeling, bending or squatting. Pain is reported as moderate most of the time at 6/10 and at its worst at 9/10. Her injury interferes with her ability to travel more than short distances.
>
> The applicant reports a reduced sexual desire and pain during certain sexual intercourse due to the back pain and depression. Difficulty falling or staying asleep is reportedly experienced every

night of the week because of pain. Once awakened, ruminations about injury related losses and fears of never regaining full and pain-free functioning occur. Interrupted night sleep leads to daytime fatigue. Episodic crying and frequent lack of motivation and energy are reported.

She reports that pain interferes with her sleep. She usually does not fall asleep until past midnight, due to pain and a tendency to take sleep medication at 2 or 3 am and then sleep late in the morning. Her sleep is usually interrupted at night by pain. She regularly takes Ambient and or pain medications or muscle relaxants at night to help her sleep. With the use of medication she usually gets 4 to 6 hours of sleep. She does not report significant daytime drowsiness.

She She (*sic*) reports a loss of libido and back pain during sexual intercourse that leads her to avoid sexual activities.

She reports a 40 lb weight gain since her broken ankle and industrial fall injuries.

SOCIAL FUNCTIONING

Verbal communication effectiveness is intact. Handwritten and computer based communication are reportedly limited on a physical, but not psychological basis. Prior to the injuries caused by the fall at work, physical activity was limited by her broken ankle of nonindustrial cause. She was unable to engage in her usual exercise and recreational activities due to the broken ankle and those limitations have continued after the injuries at work. After the fall at work her social activities were further limited by pain, low energy and motivation and emotional distress. Daily contact is maintained with her husband.

CONCENTRATION, PERSISTANCE AND PACE

No difficulties concentrating were observed or reported. Ruminations about health, career and income, plus fatigue interfere somewhat with focus and pace. Depressed motivation since the injuries reportedly interferes with initiation and persistence.

DETERIORATION IN A WORK OR WORKLIKE SETTING

Low energy, depressed motivation, depressed self-confidence, needing to take multiple breaks, and fatigue would somewhat increase the likelihood of deterioration in a fast-paced work setting.

(Joint Exhibit 107, *supra* at pp. 8 - 9.)

Dr. Price opined in 2017 that applicant's psychological impairment amplified the impact upon her ADLs and should be added to her orthopedic impairments. (Joint Exhibit 108.)

> I conclude, to a reasonable degree of medical certainty, that Ms. Martin's industrially caused mental disorders create an additional burden, additional impairments, beyond her orthopedic impairments and that the psychological impairments are synergistic with her orthopedic impairments.
>
> The physical pain and orthopedic limitations and disabilities have created emotional distress that have negative impacts on her functionality that are in addition to the impact on her life of the physical disabilities and pain.
>
> Ms. Martin experiences depression that reduces her motivation, energy, interest and pleasure in life activities, reduces her likelihood of initiating and persisting in activities whether in her personal life or at work. For example she reported that sometimes her husband has to persuade her to get out of bed. She stays in bed not because of the physical pain and disabilities, but because she feels discouraged, hopeless, not interested in the doing the things she could physically do. She withdraws from social activities that physically she could do because she feels depressed and has low emotional energy. In addition to the impact of low back pain on her sexual activities, she has lost interest in having sex due to depression. Pain disturbs her sleep, but in addition negative ruminations further disturb her sleep. She does not deal as well with other people because in depression she feels less good about herself and is more interpersonally sensitive and irritable. She would have more trouble succeeding in the workforce because depression has lowered her motivation to persist, lowered her abilities to cope successful with frustrations, and lessened abilities to handle conflict. The lowered abilities in the workplace are caused by her emotional distress that is in addition to the pain and physical limitations.

(*Id*. at p. 2.)

Dr. Price affirmed her opinion on adding the orthopedic and psychological impairments at deposition in 2017. (See generally, Joint Exhibit 109.)

The WCJ found the *Guzman* and *Kite* analysis of the QMEs substantial and rated applicant's permanent disability as follows:

UPPER DIGESTIVE TRACT
06.01.00.00 - 9 - [6)12 - 112F - 12 - 14

COLON
06.02.00.00 - 3 - [6)4 - 112F - 4 - 5

REPRODUCTIVE SYSTEM
60% (07.05.00.00 - 10 - [2)11 - 112F - 11 - 13) 8

HEADACHES
13.01.00.99 - 3 - [6)4 - 112H - 6 - 7

AROUSAL DISORDER
13.03.00.00 - 5 - [6)7 - 112H - 10 - 11

PSYCHIATRIC - MENTAL AND
BEHAVIORAL
14.01.00.00 - 15 - [8)21 - 112I - 28 - 31

CERVICAL - RANGE OF MOTION - SOFT TISSUE LESION
90% (15.01.02.02 - 17 - [5)22 - 112D - 18 - 20) 18

CERVICAL - RANGE OF MOTION - NERVE ROOT/SPINAL
CORD-MOTOR
90% (15.01.02.06 - 10 - [5)13 - 112D - 10 - 11) 10

LUMBAR - DIAGNOSIS-RELATED ESTIMATE
90% (15.03.01.00 - 13 - [5]17 - 112D - 14 - 16) 14

RIGHT-SHOULDER - OTHER
90% (16.02.02.99 - 10 - [7]14 - 112H - 18 - 20) 18

LOWER EXTREMITIY – GAIT DERANGEMENT
90% (17.01.07.00 - 15 - [5]19 - 112C - 14 - 16) 14

[31 C 18 C 18 C l4 C 14 C 14 C 11 C 10 C 8 C 7 C 5] = 81 FINAL

PD RATING PER KITE DECISION:
[18 C 18 C 14 C 14 C 11 C 10 C 8 C 7 C 5) = 72 ADD PSYCHE:
[72 + 31] = 100 FINAL PD (MAX)

(WCJ's Report, p. 4.)

DISCUSSION

1. Rebuttal via *Guzman*

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).)

The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd*. (*Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) As the Sixth District stated in *Guzman*:

> Section 4660, subdivision (b)(1), recognizes the variety and unpredictability of medical situations by requiring incorporation of the descriptions, measurements, and corresponding percentages in the Guides for each impairment, not their mechanical application without regard to how accurately and completely they reflect the actual impairment sustained by the patient.

(*Id*.)

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

Here, we agree with the WCJ that the analysis of Dr. Ryan was sufficient to warrant the 6% WPI assigned to the right shoulder by analogy to a distal clavicle resection.

2. Rebuttal of the Combined Values Chart

In a recent en banc decision, the Appeals Board clarified the process for rebutting the CVC.

> One element of the PDRS is the Combined Values Chart (CVC). The purpose of the CVC is described within the PDRS, which cites to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (2001) (AMA Guides), which is adopted and incorporated for purposes of rating permanent disability under the 2005 PDRS. (Lab. Code, §§ 4660, 4660.1; Hoch, Andrea, Schedule for Rating Permanent Disabilities, (2005), p. 1-11; AMA Guides, pp. 9-10.) In sum, impairment under the AMA Guides is designed to reflect how a disability affects a person's activities of daily living ("ADLs") (self-care, communication, physical activity, sensory function, non-specialized hand activities, travel, sex, and sleep). (AMA Guides,

> pp. 2-9.) CVC "values are derived from the formula A + B(1-A) = combined value of A and B, where A and B are the decimal equivalents of the impairment ratings." (AMA Guides, p. 604.)5
>
> Impairments to two or more body parts are usually expected to have an overlapping effect upon the activities of daily living, so that generally, under the AMA Guides and the PDRS, the two impairments are combined to eliminate this overlap.

(*Vigil v. County of Kern*, 2024 Cal. Wrk. Comp. LEXIS 23 at *7-8, (Appeals Board en banc).)

> The Combined Values Chart (CVC) in the Permanent Disability Ratings Schedule (PDRS) may be rebutted and impairments may be added where an applicant establishes the impact of each impairment on the activities of daily living (ADLs) and that either:
>
> (a) there is no overlap between the effects on ADLs as between the body parts rated; or
>
> (b) there is overlap, but the overlap increases or amplifies the impact on the overlapping ADLs.

(*Id.* at *13.)

Applicant presented evidence that the psychological and orthopedic impairments should be added and not combined using the CVC. However, the WCJ exceeded the scope of Dr. Price's opinion and added the psychological impairments with both the orthopedic *and the internal* impairments. To the extent that applicant is seeking to add all impairments, Dr. Price never addressed this. Her ratings report issued in 2014. Her CVC rebuttal report and deposition issued in 2017. Dr. Price never reviewed the ratings report of internist Dr. Raphael, which issued in 2021. Accordingly, to the extent that applicant seeks to add *all* impairments, Dr. Price's report is not substantial evidence because it is based upon an inadequate review of the records and did not address the issue raised.

Defendant argues that the reporting of Dr. Price is stale. Reports do not generally have expiration dates. Where years have passed since a report's issuance, the question to answer is whether the report remains substantial evidence. In other words, have the facts of the case substantively changed to the extent that the prior report is no longer based upon an adequate history or examination. Here, applicant's ADLs changed from Dr. Ryan's 2016 examination to the 2021 examination. Furthermore, applicant sought an internal evaluation, which resulted in multiple

ADLs warranting independent ratings. Based upon the change in reporting, Dr. Price's 2017 opinion no longer constitutes substantial evidence and it would appear that further development of the record is warranted.

Finally, defendant argues that the holding in *Fitzpatrick* precludes applicant from rebutting the PDRS in this case. (*Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd.*, (*Fitzpatrick*), (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224.). The holding in *Fitzpatrick* and multiple other cases from the Court of Appeals directly contradict defendant's argument.

> The scheduled rating (or component parts of the rating) may be rebutted based on the specific circumstances of a case. (See *Ogilvie v. Workers' Comp. Appeals Bd.*, *supra*, 197 Cal.App.4th at pp. 1266–1276; *Contra Costa County v. Workers' Comp. Appeals Bd.* (2015) 240 Cal.App.4th 746, 755–761 [193 Cal. Rptr. 3d 7]; *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.*, *supra*, 187 Cal.App.4th at pp. 827–829.)

(*Id*. at 614.)

Accordingly, we will grant reconsideration and as our Decision After Reconsideration we will rescind the WCJ's April 3, 2024 F&A and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the April 3, 2024 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 3, 2024 Findings and Award is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings consistent with this decision**.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 25, 2024

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

VIVIAN MARTIN
LAW OFFICES OF JOHN E. HILL
LAUGHLIN, FALBO, LEVY & MORESI

EDL/mc

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