MULLEN & FILIPPI
LAW OFFICES OF
MULLEN & FILIPPI, LLP

MULLEN & FILIPPI, LLP
111 SANTA ROSA AVENUE
SUITE 200
SANTA ROSA, CA 95404-5740
TELEPHONE (707) 542-4600
FACSIMILE (707) 526-9281
WEBSITE WWW.MULFIL.COM

CASE LAW UPDATE

APRIL 30, 2026 – Concord
MAY 7, 2026 – Costa Mesa

PRESENTED TO:
COUNCIL OF SELF-INSURED PUBLIC AGENCIES

CHICO

FRESNO

LOS ANGELES

OAKLAND

ORANGE

REDDING

RIVERSIDE

SACRAMENTO

SAN DIEGO

SAN FRANCISCO

SAN JOSE

STOCKTON

VAN NUYS

Presented by:

Mullen & Filippi, LLP

Anne E. Hernandez, Esq.
COSIPA North April 30, 2026
and
COSIPA South May 7, 2026

Prepared by:
Anne E. Hernandez &
Rachel Fortner, Esq.

WCAB FINDS INJURY AOE/COE UNDER PERSONAL COMFORT DOCTRINE WHERE REMOTE EMPLOYEE IS INJURED ANSWERING DOOR DURING WORK CALL

SOLIMAN v. UNIVERSITY OF CALIFORNIA, BERKELEY
2025 Cal. Wrk. Comp. P.D. LEXIS 421

Applicant, employed as an IT manager, claimed injury to her right shoulder on February 1, 2023, when she slipped and fell while working remotely from home and participating in a mandatory Zoom call. At the time of injury, applicant briefly stepped away from her computer to answer the door for a scheduled veterinary appointment and fell while "rushing" toward the door. The WCJ concluded applicant did not sustain injury arising out of and in the course of employment (AOE/COE) and therefore issued a "take nothing" Findings and Order on July 11, 2025. Applicant filed a Petition for Reconsideration, which the WCAB granted, rescinding the WCJ's decision and finding industrial injury.

The WCAB majority concluded that applicant met her burden of establishing injury AOE/COE. The Board emphasized that California's workers' compensation system broadly defines employment and recognizes that injuries occurring during acts of "personal convenience" may still be compensable where such acts are reasonably contemplated by the employment.

The central dispute concerned whether applicant's act of answering the door for a scheduled veterinary visit constituted a deviation from employment or fell within the personal comfort doctrine. The WCAB rejected the WCJ's finding of deviation, concluding that the act of answering a door while working from home is reasonably contemplated by the employment and therefore incidental to it.

The WCAB applied established principles governing AOE/COE and the personal comfort doctrine, focusing on whether the activity was reasonably contemplated by the employment. The Board, citing *Price v. WCAB* (1984) 37 Cal.3d 559, 567-568, noted that "acts necessary to the life, comfort, and convenience of the servant while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment." Thus, the Board reasoned that even if an employee is doing something purely personal at the time of injury, the employee may be considered to be performing services incidental to employment within the meaning of LC section 3600, especially in cases where the employee is being paid at the time of the injury.

Here, the Board found it significant that applicant was actively engaged in a work duty—a mandatory Zoom call—at the time of injury. The evidence showed that the work call took place from 11:00 a.m. until 12:30 p.m. and the vet appointment for her dog was

scheduled to start between 12:00 and 1:00 p.m. She was running to answer the door for the vet when the injury occurred. The WCAB rejected the WCJ's reasoning that applicant deviated from work by answering the door for a scheduling appointment during her work Zoom call. The WCAB observed that the fact the vet appointment was scheduled was irrelevant in that the act of answering the door "is one that can be reasonably contemplated by an employee working from home. As such, the act was not a deviation but one of personal convenience." Further, the Board reasoned that applicant likely would not have rushed to the door but for the fact that she was on a work call.

The medical evidence further supported compensability. The admitted QME report of Dr. Retodo documented objective findings, including MRI evidence of labral fraying and a supraspinatus tear, and concluded that applicant sustained an industrial right shoulder injury on the date in question. The WCAB found this reporting, combined with applicant's unrebutted testimony, constituted substantial evidence of injury AOE/COE.

The WCAB therefore rescinded the WCJ's Findings and Order and issued new findings that applicant sustained injury AOE/COE to the right shoulder, returning the matter to the trial level for further proceedings.

Commissioner Razo dissented, agreeing with the WCJ that the scheduled veterinary appointment constituted a purely personal activity not reasonably contemplated by employment. The dissent emphasized agreement with the WCJ that the scheduled vet appointment had "nothing to do with her remote employment" and was not intended "to serve or benefit her employer in any way." The appointment was planned and unrelated to job duties, and therefore the injury was the result of a "deviation…unrelated to personal comfort…arranged purely for the employee's benefit."

Practice Pointer:

Soliman reflects an expansion of the personal comfort doctrine in the context of remote work and presents a cautionary development for defendants. The WCAB majority's reasoning suggests that ordinary household activities—such as answering the door—will often be deemed "reasonably contemplated" when an employee is working from home, even if tied to planned personal matters. The dissent provides a useful roadmap for limiting *Soliman*'s reach, particularly by emphasizing that pre-arranged personal activities unrelated to work may fall outside the personal comfort doctrine.

PANEL RESCINDS WCJ'S FINDINGS AND ORDER AND REMANDS NOTING THAT QUESTION OF WHETHER INJURY WAS AOE/COE MUST BE BASED UPON MEDICAL EVIDENCE AND NOT SOLELY WITNESS CREDIBILITY

PAYNE v. UCLA
2026 Cal. Wrk. Comp. P.D. LEXIS 26

Applicant, a hospital lab technician for UCLA, alleged injuries to her bilateral upper extremities, bilateral wrists, bilateral hands, bilateral arms, neck, digestive system, fingers, both shoulders, elbow, internal, dental, nervous system, pulmonary and vision during the period May 1, 2014 through November 11, 2015 (ADJ10222709). Additionally, applicant alleged injuries to her cervical spine, neck, bilateral shoulders, bilateral hands, wrists, arms, elbows, internal, dental, nervous system, pulmonary, vision and stomach during the period May 11, 2014 through November 11, 2015 while employed by Los Robles Regional Medical Center as a pharmacy technician (ADJ11429678).

Both matters proceeded to trial on November 24, 2020 primarily regarding the issues of injury arising out of and in the course of employment (AOE/COE) and whether applicant was entitled to an additional panel in internal medicine or other discovery.

The Workers' Compensation Judge (WCJ) issued a Findings and Order December 28, 2021 finding as follows: that the testimony of applicant as a witness was not credible, "taking into account demeanor and presentation, and viewed in the context of contradictory impeachment evidence;" that the credibility of applicant and the persuasiveness of the evidence are questions of fact and therefore, questions for the WCJ and the Appeals Board; that all evidence was admitted and evidence relying on applicant's credibility was given very little or no weight; and that all other issues were rendered moot, deferred and reserved by the finding that applicant's testimony lacked credibility. The WCJ ordered that the testimony of applicant was found to be not credible; that the WCJ did not find injury due to applicant's lack of credibility; and that all other issues are rendered moot, deferred and reserved.

Following applicant's petition for reconsideration, the WCJ's report stated in part that applicant "has no credibility to fortify the medical opinions in the matter and this judge has found no injury."

On reconsideration, the Appeals Board Panel ("panel") noted that pursuant to Labor Code (LC) section 5313, the WCJ is required to issue findings on ultimate facts. The panel observed that the WCJ's findings "do not purport to address the ultimate fact of whether applicant sustained injury, only the probative conclusion as to applicant's lack of credibility." According to the panel, the order that applicant could not establish injury is "otherwise without support because any determination of injury AOE/COE must be based upon medical evidence." In addition, the panel noted that the findings did not address

whether applicant was entitled to an additional panel or whether the medical opinions in the record were deficient, a finding required before augmentation of the record per *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc).

The panel rescinded the WCJ's Findings and Order and remanded the matter with recommendation that the WCJ first determine whether additional discovery sought by applicant was warranted and second, whether the medical record establishes injury AOE/COE in each case. The panel further noted that "although the question of whether the alleged cumulative trauma incidents giving rise to each injury…occurred is subject to determination by the WCJ's assessment of witness credibility, the ultimate determination of whether applicant sustained injury AOE/COE…**must be based upon medical evidence and not solely on witness credibility**."

WCAB AFFIRMS WCJ'S "TAKE NOTHING" AWARD AS SUPPORTED BY SUBSTANTIAL MEDICAL EVIDENCE

MORENO v. CITISTAFF SOLUTIONS, INC.
ADJ18384896, January 16, 2026

Applicant claimed to have sustained a cumulative trauma injury through August 4, 2023, while employed in a physically demanding warehouse position unloading merchandise. The claim involved multiple body parts, including the shoulders, wrists, and lumbar spine. The WCJ issued a "take nothing" finding, concluding that applicant failed to meet his burden of proving injury AOE/COE. Applicant filed a Petition for Reconsideration, which the WCAB denied.

The factual record reflected that applicant had a significant prior history of industrial injury, including a cumulative trauma claim in 2015–2016 involving largely the same body parts at issue in the current claim. Despite this history, applicant provided inconsistent accounts of the prior injury, at times describing it as a specific incident and at other times as cumulative trauma. At trial, applicant admitted that the earlier claim involved "pretty much the same body parts" as the present claim.

The WCJ found applicant's testimony lacked credibility, noting multiple inconsistencies in his reporting, exaggeration of work hours, and failure to seek treatment during employment despite claiming significant, systemic pain. The WCJ also observed that applicant assigned identical pain levels to numerous body parts without observable signs of distress, describing his presentation as "robotic." The Appeals Board gave great weight to the WCJ's credibility determination, emphasizing that such findings are entitled to deference where supported by the record.

The medical evidence was sharply divided. Primary treating physician Dr. Rosenzweig diagnosed widespread orthopedic conditions and assigned 31% whole person impairment based largely on range of motion findings. However, his reporting was found not to constitute substantial medical evidence. Dr. Rosenzweig failed to review any records relating to applicant's prior 2016 cumulative trauma claim, despite apportioning disability to that prior injury. Additionally, his treatment approach was inconsistent with MTUS guidelines, consisting of repeated and ineffective modalities without documented functional improvement, and his reporting contained internal inconsistencies, including simultaneously declaring applicant unable to perform activities of daily living while also releasing him to full duty.

For the WCAB, Dr. Rosenzweig's failure to review any records from the prior 2016 claim was dispositive, particularly where the applicant's current complaints mirrored those previously documented. His reliance on range of motion findings, without objective corroboration such as radiculopathy, structural pathology, or nerve root involvement,

rendered his impairment analysis inconsistent with AMA Guides requirements. The WCJ also noted that his use of the ROM method was unsupported by the necessary predicate findings, such as recurrent disc herniation or documented alteration of motion segment integrity.

In contrast, PQME Dr. Steven Schwartz conducted a comprehensive evaluation, including review of 53 medical records, deposition testimony, and diagnostic imaging. Dr. Schwartz found minimal objective abnormalities on examination and diagnostic studies, with MRI findings showing only degenerative changes and no evidence of nerve root impingement or other acute pathology. He opined that there was "no foundation for cumulative trauma" during the claimed period and attributed any residual impairment to the prior 2016 injury.

Dr. Schwartz's deposition testimony further emphasized that applicant's subjective complaints were unreliable and inconsistent, describing applicant as a poor historian with issues of veracity. While acknowledging some loss of lumbar range of motion, Dr. Schwartz explained that such findings are common in asymptomatic individuals and do not establish impairment absent corroborating objective pathology. He maintained that applicant's ability to perform his job for years without documented impairment undermined the claim of a new cumulative injury.

Dr. Schwartz deferred final conclusions pending diagnostic imaging, evaluated both subjective and objective findings, and contextualized his opinions within the applicant's prior injury history. Importantly, his skepticism of applicant's subjective complaints was not conclusory, but was grounded in both clinical findings and inconsistencies in reporting. The WCAB accepted this reasoning, reaffirming that medical opinions may properly consider issues of credibility where supported by the record.

The WCAB affirmed that applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. The Board concluded that Dr. Schwartz's opinion constituted substantial evidence, as it was based on an adequate history, thorough review of records, and objective findings. In contrast, Dr. Rosenzweig's opinion was not substantial evidence due to his failure to consider prior medical records and reliance on unsupported assumptions. Because applicant failed to meet his burden of proof, reconsideration was denied.

Practice Pointer:

Moreno provides a roadmap for defeating questionable CT claims. First, aggressively develop the prior medical history and ensure that any evaluating physician—especially the PQME—has a complete record for review. A treater's failure to review prior records can be fatal to the applicant's case, as it undermines the foundation of any causation or apportionment opinion. Second, focus on objective findings (or lack thereof) and challenge

attempts to rely solely on subjective complaints or range of motion deficits absent supporting pathology. Finally, *Moreno* reinforces that a physically demanding job alone does not establish industrial injury; the defense should consistently frame the issue as one requiring substantial, credible, and medically supported evidence—not assumptions based on job duties alone.

WCAB REJECTS INTOXICATION DEFENSE WHERE TOXICOLOGY EVIDENCE AND QME OPINION FAIL TO ESTABLISH INTOXICATION OR CAUSATION UNDER LC § 3600(a)(4)

GRIFFITH v. SALUTE MISSION CRITICAL
2025 Cal. Wrk. Comp. P.D. LEXIS 411

Decedent, a commercial traveler, sustained a fatal injury on February 1, 2022 when he was struck and killed by a tow truck while crossing a roadway near his hotel during a business trip. Defendant asserted the intoxication defense under Labor Code (LC) section 3600(a)(4), contending that decedent's death was caused by intoxication based on toxicology findings and QME opinion. The WCJ found the death compensable and awarded death benefits. The WCAB denied reconsideration and affirmed.

The parties stipulated that the commercial traveler rule applied, thereby extending the course of employment to activities reasonably incidental to travel, including personal comfort activities such as obtaining food. The central issue on reconsideration was whether defendant met its burden to establish the intoxication defense, which requires proof that (1) the employee was intoxicated, and (2) the intoxication was a proximate or substantial cause of the injury.

The WCAB held that defendant failed to meet its burden on both prongs. With respect to intoxication, defendant relied primarily on a toxicology report showing the presence of multiple substances, including PCP, THC, alcohol, and prescription medication, as well as QME reporting interpreting those results. However, the Board emphasized that toxicology results alone are not determinative of intoxication and must be weighed in conjunction with other evidence, including witness testimony and observed behavior. Critically, the record contained no testimony or evidence regarding decedent's condition, behavior, or level of impairment in the hours preceding the accident. There were no witnesses, no surveillance evidence, and no contemporaneous observations indicating that decedent appeared intoxicated. The WCAB therefore found that the toxicology evidence, standing alone, was insufficient to establish intoxication.

The Board also rejected the QME's opinion as not constituting substantial medical evidence. The QME concluded that decedent was intoxicated based on PCP levels in his blood, but the WCAB found that this opinion mischaracterized the underlying toxicology data. The toxicology report itself indicated that there is no established correlation between PCP blood levels and degree of intoxication, undermining the foundation of the QME's conclusions. The WCAB contrasted this case with *Smith v. WCAB* (1981) 123 Cal.App.3d 763, where expert testimony established a clear relationship between blood alcohol levels and functional impairment.

Additionally, the QME failed to account for the combined or interactive effects of multiple substances identified in the toxicology report, further undermining the reliability of the opinion. The absence of any clinical correlation—such as observed impairment, cognitive dysfunction, or behavioral abnormalities—left the opinion unsupported by the type of evidence typically required to establish intoxication in the workers' compensation context.

Even assuming arguendo that intoxication had been established, the WCAB held that defendant also failed to prove causation. The record demonstrated multiple alternative causative factors unrelated to intoxication, including a dark, unlit roadway due to inoperable streetlights, absence of crosswalks or traffic controls, and a tow truck operating with only 40% braking capacity due to poor tire condition. The WCAB concluded that attributing the accident to intoxication under these circumstances would be speculative.

Applying the commercial traveler rule and positional risk doctrine, the WCAB further held that decedent's presence at the location of injury was itself a function of employment. The environmental hazards associated with that location—including darkness and unsafe roadway conditions—constituted industrial risk factors sufficient to support compensability.

Practice Pointer:

Griffith is a cautionary tale regarding the intoxication defense. Simply establishing the presence of drugs or alcohol in a toxicology report is not enough—defendant must present substantial evidence of both actual impairment and causation. From a defense perspective, this case underscores the importance of developing a complete evidentiary record, including witness testimony, surveillance, or other contemporaneous observations of impairment. Equally critical is retaining the right expert: toxicology opinions must be grounded in scientifically established correlations between substance levels and functional impairment, not generalized or anecdotal references. Finally, *Griffith* reinforces that in commercial traveler cases, causation analysis is heavily influenced by the positional risk doctrine. Even risky or questionable employee conduct—such as crossing a dark roadway mid-block—will not defeat compensability absent a clear showing of substantial deviation or a well-supported intoxication defense.

WCAB HOLDS QME PANEL STRIKE IS VALID WHEN TIMELY COMMUNICATED—FORMAL SERVICE NOT REQUIRED UNDER LABOR CODE § 4062.2

RAMOS v. AQUA CONSTRUCTION, INC.
2025 Cal. Wrk. Comp. P.D. LEXIS 378

Applicant filed a Petition for Removal challenging a WCJ's Findings and Order which held that a strike of a QME panel must be served by first-class mail pursuant to Cal. Code Regs., tit. 8 (CCR), section 10205.6(b) (AD Rule 10205.6(b)), absent agreement of the parties. The WCAB granted removal, rescinded the WCJ's decision, and issued a new finding that applicant's electronically transmitted strike was valid.

Defendant initiated the QME process on September 27, 2024 by objecting to the report of the treating physician and then requested an orthopedic panel from the Medical Unit. The defendant served the panel along with its strike via first-class mail on November 5, 2024. Applicant responded within the statutory 10-day period by emailing a strike to defense counsel but did not serve the strike by mail. There was no evidence in the record that the parties ever made an agreement on the method of service in this case, although defendant used first class mail as the "so-called default method of service." Defendant rejected applicant's strike as invalid based on the method of service and attempted to exercise an additional strike.

The WCJ agreed with defendant, concluding that the applicable administrative rules required service by first-class mail under AD Rule 10205.6(b) absent agreement of the parties and that WCAB Rule 10625(b)(2) did not authorize electronic service of a QME strike. Applicant sought removal, arguing that electronic transmission was sufficient.

The WCAB granted removal, finding that the WCJ's ruling resulted in substantial prejudice by improperly depriving applicant of the statutory right to strike a QME. The Appeals Board emphasized that removal is appropriate where an interlocutory order is based on an incorrect interpretation of law and results in irreparable harm.

The WCAB grounded its decision in the plain language of LC section 4062.2, which governs the QME panel selection process. The statute provides that each party may strike one name from the panel within 10 days but does not prescribe any specific method of service or communication. The Board emphasized that the statutory requirement is simply that a party "exercise" the right to strike within the prescribed time period.

Because the statute does not require formal service, the WCAB rejected the premise that administrative service rules—such as AD Rule 10205.6(b) or WCAB Rule 10625—control the validity of a strike. The Board reasoned that a strike is not a "pleading" or document requiring service, but rather an act effectuating a statutory right. Accordingly, the only relevant inquiry is whether the opposing party received timely notice.

The WCAB further relied on longstanding principles favoring informality in workers' compensation proceedings. The Board cited multiple authorities including its recent en banc decision in *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830 (Appeals Board en banc), emphasizing that the workers' compensation system is intended to provide a "simple and nontechnical path to relief," and that procedural technicalities should not defeat substantive rights. The Board reiterated that pleadings and procedural acts are to be liberally construed, and that technical defects do not invalidate otherwise timely and sufficient actions.

Applying these principles, the WCAB concluded that applicant's email—sent within the 10-day statutory period—constituted a valid exercise of the right to strike. The WCAB also observed that to the extent a conflict exists between AD Rules and WCAB Rules, pursuant to LC sections 5307 and 5500.3 the Appeals Board retains exclusive authority to regulate the adjudication process "so that to the extent that an AD Rule and an WCAB Rule conflict, the WCAB Rule applies."

Practice Pointer:

For defendants, the key takeaway is that attempting to invalidate a strike based on the method of service is unlikely to succeed where the opposing party can demonstrate timely notice. Defendants should focus on the timing of the strike rather than the method of transmission. Further, given the WCAB's holding in *Ramos,* AAs cannot invalidate defendants' QME strikes based on method of service or failure to include a proof of service so long as they are timely. That said, as a best practice, defense counsel should still provide proof of service and confirm receipt to avoid factual disputes.

WCAB HOLDS NO EX PARTE COMMUNICATION WHERE DEFENSE SERVES PQME AND OPPOSING COUNSEL SIMULTANEOUSLY AND APPLICANT WAIVES OBJECTION BY UNTIMELY RESPONSE

LARA v. LOS ANGELES UNIFIED SCHOOL DISTRICT
2025 Cal. Wrk. Comp. P.D. LEXIS 394

Applicant filed a petition for removal seeking replacement of the panel QME, arguing that defendant violated Labor Code (LC) section 4062.3 by failing to properly serve an advocacy letter 20 days prior to the PQME evaluation. The WCJ denied applicant's request for a replacement panel, and the WCAB affirmed, denying removal.

The underlying facts were largely undisputed. Applicant's counsel scheduled a PQME evaluation for February 16, 2024 and served an advocacy letter on January 10, 2024. Defendant subsequently served its own proposed advocacy letter on applicant's counsel on January 29, 2024, 18 days prior to the examination. Applicant objected to the letter the day before the evaluation (February 15, 2024), asserting it contained improper "non-medical information and unsworn statements" and was untimely. Defendant served its advocacy letter with enclosures after the evaluation on March 12, 2024, copying applicant's counsel and the PQME simultaneously. The PQME thereafter issued a report, and only after receiving the report did applicant seek replacement of the panel.

The WCAB rejected applicant's arguments and held that no improper ex parte communication occurred. Relying on *Maxham v. California Department of Corrections and Rehabilitation* (2017) 82 Cal.Comp.Cases 136 (Appeals Board en banc), the Board emphasized that a communication is not "ex parte" where it is served on the opposing party at the same time it is sent to the evaluator. Because defendant copied applicant's counsel when transmitting the advocacy letter to the PQME, the communication did not violate LC section 4062.3(e) applying to communications occurring *after* the initial evaluation.

The WCAB carefully distinguished between "communication" and "information" under LC section 4062.3, adopting the analytical framework set forth in *Maxham* and *Suon v. California Dairies* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc). A "communication" includes advocacy letters, while "information" encompasses medical and non-medical records relevant to the evaluation. Where a communication includes reference to records, it may be subject to the separate procedural requirements governing "information" under LC section 4062.3(b) which must be served on the opposing party 20 days before it is provided to the QME.

Here, defendant's advocacy letter contained both communication and information. The WCAB noted that per LC section 4062.3(e), communications before a medical evaluation must be served on the opposing party 20 days in advance of the evaluation. However, it further provides that any *subsequent* communication (i.e. after the evaluation)

with the medical evaluator shall be served on the opposing party when sent to the QME. The Board found that, as a communication, defendant's correspondence was properly served because it was provided to both the PQME and applicant's counsel simultaneously *after* the evaluation. As to the informational component, the Board concluded that it was served well beyond the statutory 20-day period, thereby satisfying the timing requirement.

Equally significant was the Board's finding that applicant waived any objection. Applicant received defendant's proposed advocacy letter on January 29, 2024 but did not object until February 15, 2024—well outside the 10-day objection window contemplated by section 4062.3(b) with respect to non-medical records. This delay alone constituted waiver of any challenge to the contents of the letter as "information." Moreover, applicant proceeded with the PQME evaluation and waited until after receiving an unfavorable report before seeking a replacement panel. The WCAB noted that pursuant to *Suon,* this inaction by an aggrieved party following discovery of an ex parte communication "inconsistent with a timely election to terminate the evaluation" is in effect an election to proceed with the QME.

The WCAB further emphasized that removal is an extraordinary remedy requiring a showing of substantial prejudice or irreparable harm. Applicant failed to meet this burden, particularly where the alleged procedural defect did not result in an improper ex parte communication and where applicant had an adequate remedy through reconsideration following a final decision.

Practice Pointer:

Lara is a rare defense-friendly decision reinforcing that technical violations of LC section 4062.3 will not automatically result in panel replacement—especially where there is no true ex parte communication and no timely objection. Defendants should assert waiver where applicant delays objection or proceeds with the evaluation despite knowledge of the alleged defect. This case is a reminder that parties must act immediately upon receipt of objectionable materials—waiting until after an unfavorable QME report will likely be deemed a forfeiture of the right to seek panel replacement. As a side note, most QMEs will not consider any communications or information submitted by a party *after* an evaluation within their initial report. Most QMEs will only address those late submitted records/advocacy letters in a supplemental report. The QME in *Lara* was unusually generous in that the QME *did* consider defendant's correspondence and records submitted well after the evaluation.

WCAB EN BANC HOLDS DUE PROCESS REQUIRES FLEXIBLE APPLICATION OF REMOTE-TESTIMONY RULES; ELECTRONIC WITNESS TESTIMONY SHOULD BE PERMITTED ABSENT PREJUDICE

PEREZ v. CHICAGO DOGS
(2025) 90 Cal.Comp.Cases 830 (Appeals Board en banc)

In *Perez v. Chicago Dogs* (2025) 90 Cal.Comp.Cases 830 (Appeals Board en banc), the Workers' Compensation Appeals Board (WCAB) issued a significant en banc decision clarifying the application of WCAB Rule 10817(a) governing electronic witness testimony and reaffirming that due process and the constitutional mandate to accomplish substantial justice take precedence over rigid procedural formalities. The WCAB concluded that a request made on the record at the start of trial for electronic testimony—with an opportunity for the opposing parties to respond—may satisfy the "petition showing good cause" requirement of Rule 10817(a), and that electronic testimony should be readily permitted where necessary to ensure a fair hearing.

Applicant Tyson Perez filed an Application alleging cumulative trauma arising out of his employment as a professional baseball player between June 1, 2011 and June 25, 2022. The Chicago Dogs were subsequently joined as defendants based on Perez's employment with the team from May 18, 2018 to July 7, 2018. The Chicago Dogs and their insurer disputed that California had personal jurisdiction over them and sought adjudication solely on that threshold issue.

At the mandatory settlement conference, the matter was set for trial limited to the issue of personal jurisdiction. Prior to trial, the Chicago Dogs identified their Chief Operating Officer, Trish Zuro, as a witness and served an affidavit in which she attested that the team had no offices, no games, no injuries, and no meaningful business operations in California. The affidavit was offered to rebut applicant's claim that the team had sufficient minimum contacts with California.

At trial, the workers' compensation judge (WCJ) excluded the affidavit and denied the Chicago Dogs' request to have Ms. Zuro testify electronically. The WCJ reasoned that no petition showing good cause for remote testimony had been filed before trial as required by WCAB Rule 10817(a) and further declined to permit telephonic testimony in the absence of a stipulation. The WCJ thereafter relied primarily on applicant's testimony regarding recruitment communications occurring while he was in California and found that the WCAB had personal jurisdiction over the Chicago Dogs.

The Chicago Dogs filed a Petition for Reconsideration, contending that the denial of electronic testimony deprived them of due process and resulted in a jurisdictional finding based on an incomplete evidentiary record.

The Appeals Board in its ruling notes that all parties have a right to due process and a fair hearing. Noting the workers' compensation system's purpose to afford a simple and nontechnical path to relief, the Appeals Board affirmed the inherent processes in a workers' compensation case that pleadings may be informal; that claims should be decided based on substance rather than form; that pleadings should be liberally construed; and that technically deficient pleadings do not deprive the Board of jurisdiction.

The Appeals Board notes that these principles of liberal pleading are further reflected in Labor Code (LC) section 5506, which authorizes the Appeals Board to relieve a defendant from default or dismissal due to mistake, inadvertence, surprise or excusable neglect in accordance with Code of Civil Procedure section 473.

Applying these principles, the WCAB rejected a rigid, hyper-technical reading of Rule 10817(a). While the rule references a pre-hearing petition showing good cause, the Board held that a request placed on the record at the beginning of trial—with the opportunity for objection and argument—can satisfy the rule's purpose and provide a sufficient procedural framework for adjudicating the issue of electronic testimony.

Critically, the WCAB concluded that the due process right to a fair hearing and a decision on the merits itself constitutes "good cause" for allowing electronic testimony where a witness cannot reasonably appear in person. The Board observed that excluding material testimony based solely on procedural technicalities, without consideration of prejudice or fairness, undermines the Legislature's intent and the constitutional mandate governing workers' compensation proceedings. The effect of the Appeals Board decision is as follows: "Therefore, when a witness is unable to appear in person, as a matter of due process, a request to testify electronically should be readily permitted."

Practice Pointer:

Although this case confirms the due process right of a defendant, it is advised that Pre-trial Conference Statements reserve the right to remote testimony and identify all witnesses and witness statements. It is further advised that defendants provide all statements in advance of a Mandatory Settlement Conference. Finally, defendants should, where necessary, file a Petition for Remote Testimony.

WCAB ENFORCES DUE PROCESS LIMITS—ISSUES NOT IDENTIFIED FOR TRIAL CANNOT BE ADJUDICATED

NANEZ v. PASADENA UNIFIED SCHOOL DISTRICT
2025 Cal. Wrk. Comp. P.D. LEXIS 235

Defendant sought reconsideration of a Findings, Award and Order in which the WCJ awarded accrued temporary disability indemnity and attorney's fees, despite those issues not being identified for trial. The WCAB granted reconsideration, affirming in part but amending the decision to defer the issues of accrued temporary disability and attorney's fees on due process grounds.

The case arose from claims filed by Nanez against her employer, Pasadena Unified School District. The parties proceeded with an Agreed Medical Evaluator (AME), Richard Siebold, M.D. On March 10, 2025, the WCJ issued Findings, Award, and Order determining that Nanez had not reached permanent and stationary status before her death and therefore was not entitled to permanent disability indemnity. However, the decision went further. The WCJ reclassified disability indemnity payments previously made as temporary disability and awarded $26,239.84 in accrued temporary disability benefits, less attorney's fees withheld for applicant's counsel.

Defendant petitioned for reconsideration, arguing that the award of accrued temporary disability and associated attorney's fees violated due process because those issues had not been identified at the pre-trial conference or listed in the Minutes of Hearing. The Appeals Board agreed in part. While affirming the remaining findings, it granted reconsideration as to accrued temporary disability and attorney's fees and deferred those issues for further proceedings.

Although workers' compensation proceedings are intended to be streamlined and efficient, the Appeals Board reiterated that constitutional due process requirements apply with full force. As the Court of Appeal explained in *Rucker v. Workers' Comp. Appeals Bd*. (2000) 82 Cal.App.4th 151,157-158, a fair hearing requires notice of the issues, the opportunity to present evidence, and the right to cross-examine adverse witnesses. In *Nanez*, accrued temporary disability was not identified as a disputed issue in the pre-trial conference statement or in the Minutes of Hearing. The defense prepared and tried the case on the issues as framed—principally permanent disability and general entitlement to benefits. By adjudicating accrued temporary disability *sua sponte*, the WCJ deprived the defendant of notice that liability for that category of benefits was at stake.

The Appeals Board made clear that even where temporary disability and permanent disability issues overlap factually or legally, that relationship does not excuse the requirement that the issue be formally noticed. Administrative efficiency and equitable considerations cannot override the constitutional requirement that parties have a

meaningful opportunity to be heard before liability is imposed. Because the defendant lacked notice that accrued temporary disability would be adjudicated, the award on that issue could not stand.

The Board also addressed the limits of a Workers' Compensation Judge's authority to develop the record. Labor Code section 5701 permits a WCJ to "inquire into the matters at issue," and section 5906 authorizes the WCAB to remand or reopen proceedings to complete the evidentiary record. However, the decision emphasizes that these statutory powers are bound by due process. While the WCJ may have intended to resolve the matter efficiently by addressing accrued temporary disability in the same decision, the proper course—once it became apparent that the issue required adjudication—was to provide notice and reopen proceedings, not to decide the issue without affording the parties an opportunity to litigate it. Accordingly, the Board deferred the temporary disability and attorney's fee issues for further development.

The Appeals Board also examined the treatment of the AME's report. The WCJ had determined that Dr. Siebold's report did not constitute substantial medical evidence, and the Board agreed with that assessment. The decision addressed medical-legal cost liability under Labor Code section 4062.3(h), explaining that responsibility for medical-legal expenses rests with the requesting party and that reimbursement is appropriate only where the report is admissible and material. By deferring cost issues rather than ordering reimbursement, the Board reinforced the principle that a report lacking substantial evidentiary value cannot serve as the basis for shifting medical-legal costs.

Practice Pointer:

For practitioners, the practical implications of *Nanez* are significant. First, precision in framing issues at the pre-trial conference is critical. Any issue that may result in liability—whether temporary disability, permanent disability, penalties, or fees—must be clearly identified. Second, judicial efficiency cannot substitute for procedural safeguards. Even closely related issues cannot be adjudicated unless they are properly noticed. Third, when an issue emerges post-trial, the appropriate remedy is to seek to reopen the record under sections 5701 or 5906 rather than risk reversal on reconsideration. Finally, the decision provides useful guidance on medical-legal cost disputes, reinforcing the importance of ensuring that AME reports meet the substantial evidence standard before seeking cost shifting.

Ultimately, *Glory Nanez v. Pasadena Unified School District* reaffirms that due process remains the cornerstone of California's workers' compensation system. The system's administrative character does not diminish the constitutional requirement that parties receive notice and an opportunity to be heard on the issues that determine their liability. By deferring the improperly noticed issues rather than allowing them to stand, the Appeals Board preserved the integrity of the adjudicatory process. For both applicant and

defense practitioners, the decision serves as a cautionary reminder that careful issue framing and procedural vigilance are indispensable to sustaining awards on review.

COURT OF APPEAL HOLDS UR/IMR IS EXCLUSIVE REMEDY FOR MEDICAL NECESSITY—REJECTS "ONGOING TREATMENT" EXCEPTION; CALIFORNIA SUPREME COURT GRANTS REVIEW

ILLINOIS MIDWEST INSURANCE AGENCY LLC v. WCAB (RODRIGUEZ)
(2025) 115 Cal.App.5th 1168; review granted January 21, 2026, 581 P.3d 1161

In *Illinois Midwest Insurance Agency LLC v. Workers' Compensation Appeals Bd. (Rodriguez)* (2025) 115 Cal.App.5th 1168, the Second District Court of Appeal issued a sweeping clarification of California's medical treatment dispute framework, squarely rejecting the long-relied-upon *Patterson v. The Oaks Farm* (2014) 79 Cal.Comp.Cases 910 and restoring the primacy of Utilization Review (UR) and Independent Medical Review (IMR) for post-2013 medical-necessity disputes. The Court of Appeal held that the WCAB lacked jurisdiction to adjudicate a disagreement over home health care following a UR denial, emphasizing that IMR is the exclusive remedy under Labor Code section 4610.5(e). The court annulled the WCAB's award of ongoing home health care services and remanded the matter. The opinion carries substantial implications for claims involving extended or continuing treatment such as home health, nursing, and attendant care services.

On January 21, 2026, the California Supreme Court granted review in *Ill. Midwest Ins. Agency LLC v. Workers' Comp. Appeals Bd. & Orlando Rodriguez* (2026) 581 P.3d 1161. Pending review, the Court of Appeal's opinion may be cited for its persuasive value and for the limited purpose of establishing the existence of a conflict in authority pursuant to California Rules of Court, rule 8.1115(e)(3). The Supreme Court's ultimate disposition will determine the precedential status of the decision discussed below.

The case arose from a 2016 traumatic brain injury suffered by Orlando Rodriguez while employed as a mechanic. Beginning in September 2018, his primary treating physician, Dr. Yong Lee, requested home health care services in six-week increments. Illinois Midwest repeatedly authorized these requests, sometimes voluntarily and sometimes after submission to UR. According to the record, the insurer approved at least eight RFAs between September 2018 and August 2019, reflecting authorizations limited to the duration requested by the physician. (*Rodriguez, supra*, 115 Cal.App.5th at pp. 1176-1177.)

In September 2019, Dr. Lee again sought authorization for an additional six-week period of home health care. The UR reviewer issued a timely denial on September 19, 2019. (*Id*.) Rather than pursue IMR, Rodriguez sought an expedited hearing before a WCJ, contending that his need for home health care was ongoing and that the insurer could terminate the treatment only upon proof of a material change in condition. The WCJ agreed, found the UR denial "moot," and concluded that the WCAB retained jurisdiction because the need for care was ongoing. The WCJ relied heavily on *Patterson*, a significant

panel decision often cited for the proposition that once ongoing treatment is authorized, it must continue absent proof of changed circumstances.

On reconsideration, the WCAB affirmed relying on *Patterson's* reasoning. The Board concluded that the employer could not "place arbitrary time limits" on authorized treatment and that future RFAs for the same care were unnecessary unless the employer demonstrated a change in condition. The WCAB further suggested that the Court of Appeal had implicitly endorsed *Patterson* through prior summary denials of petitions for review. (*Id*. at pp. 1177-1178.)

The Court of Appeal rejected these conclusions. The opinion begins with a detailed review of the 2004 and 2013 legislative reforms, explaining that the Legislature deliberately removed medical-necessity determinations from litigation and placed them within a structured process grounded in evidence-based medicine and conducted by medical professionals. (*Id*. at pp. 1178-1183.) Labor Code section 4610.5(e) provides that a UR decision "may be reviewed or appealed only" through IMR. The court characterized this language as unequivocal and applicable to Rodriguez's 2016 injury and the 2019 UR denial. Because IMR is the exclusive remedy, the WCAB lacked jurisdiction to adjudicate the dispute. (*Id*. at pp. 1183-1184.)

Turning to *Patterson*, the court explained that the case involved a *pre*-2013 statutory framework and a unilateral termination of services that had not proceeded through UR. (*Id*. at pp. 1184-1186.) The court concluded that *Patterson* was factually distinguishable and legally incompatible with the post-SB 863 statutory scheme. To the extent *Patterson* had been interpreted as creating an exception for "ongoing" treatment once previously authorized, that interpretation was expressly rejected. (*Id*. at pp. 1186-1187.)

The Court of Appeal further rejected the WCAB's theory that previously authorized treatment becomes indefinitely authorized absent proof of changed circumstances. The court found no statutory language supporting such a burden-shifting framework. Instead, the statutory scheme contemplates new RFAs and periodic reassessments consistent with the Medical Treatment Utilization Schedule (MTUS). The court cited MTUS provisions requiring that home health care frequency and duration be individualized, documented in a treatment plan, and reassessed at regular intervals—underscoring that duration and continuing necessity are medical determinations entrusted to physicians, not adjudicators. (*Id*. at pp. 1187-1189.) The court also clarified that summary denials of petitions for review have no precedential value and cannot be construed as appellate approval of *Patterson*. No published appellate decision had adopted *Patterson's* reasoning, and the court declined to do so. (*Id*. at p. 1190.)

Ultimately, the Court of Appeal held that the WCAB acted in excess of its jurisdiction. Because Rodriguez did not pursue IMR following the UR denial, the WCAB had no authority to award ongoing home health care. The decision was annulled and the matter

remanded. (*Id*. at p. 1191.) The Supreme Court's forthcoming opinion will determine whether that framework remains intact or whether any limitation on the scope of UR/IMR exclusivity will be recognized.

WCAB AFFIRMS PTD WHERE QME ADEQUATELY REBUTS CVC THROUGH ADL ANALYSIS AND SUBJECTIVE SYMPTOMS SUPPORT WPI

MARTIN v. EAST BAY REGIONAL PARK DISTRICT
ADJ15844920, February 13, 2026

Applicant, employed as a park ranger, sustained industrial injury on June 3, 2020 to the head, vision, psyche, and neurocognitive systems following a traumatic incident. The WCJ issued a Findings and Award determining that applicant was permanently and totally disabled (PTD). Defendant sought reconsideration, challenging both the addition of neurological impairments rather than use of the Combined Values Chart (CVC), and the finding of ratable psychiatric impairment. The WCAB denied reconsideration and affirmed the award.

The medical evidence included reporting from neurology QME Dr. Barbara McQuinn, ophthalmology QME Dr. Edington, and neuropsychology AME Dr. Sussman. Dr. McQuinn diagnosed post-traumatic headaches and vertigo/disequilibrium, assigning 22% WPI and 29% WPI respectively. She opined that these impairments should be added, rather than combined, because they affected different activities of daily living (ADLs) and therefore did not overlap. After adjustment, these impairments alone resulted in permanent disability exceeding 100 percent.

Defendant argued that Dr. McQuinn's opinions were not substantial evidence because they relied heavily on applicant's subjective complaints and lacked objective neurological findings. The WCAB rejected this argument, holding that the absence of objective findings does not preclude a valid impairment rating where the physician conducts a comprehensive evaluation and exercises clinical judgment consistent with the *AMA Guides*. Citing *Milpitas Unified School Dist. v. WCAB (Guzman)* (2010) 187 Cal.App.4th 808, 823 and *City of Sacramento v. WCAB (Cannon)* (2013) 222 Cal.App.4th 1360, 1371 the Board emphasized that there is nothing in section 4660 "that precludes a finding of impairment based on subjective complaints of pain where no objective abnormalities are found."

The WCAB found that Dr. McQuinn's opinions constituted substantial medical evidence because they were based on a thorough clinical evaluation, review of extensive medical records, and detailed assessment of applicant's functional limitations. Although the physician acknowledged that headache and vertigo symptoms are inherently subjective, she integrated applicant's symptom reporting with treatment history, therapy records, and observed deficits in ADLs to arrive at a reasoned impairment rating.

The WCAB placed significant weight on the methodological approach employed by Dr. McQuinn in assessing impairment. Rather than relying solely on applicant's subjective complaints, the QME conducted serial evaluations, reviewed longitudinal treatment

records, and carefully analyzed applicant's ADLs. The physician documented that applicant's vertigo affected balance, visuomotor coordination, and physical activities such as operating machinery or working at heights, while the headache condition primarily affected cognitive functioning, including concentration, reading, and tolerance for sensory stimuli such as noise and screen exposure.

Importantly, the QME explained that although these conditions could trigger one another, they impacted distinct domains of functioning. This distinction formed the basis for her conclusion that the impairments did not overlap in terms of ADLs. The WCAB found this analysis consistent with the framework articulated in *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686, which requires a detailed evaluation of how each impairment affects ADLs in determining whether the CVC has been rebutted. The Board emphasized that the proper inquiry is not whether body parts overlap, but whether the functional limitations imposed by each condition overlap or interact.

The neuropsychological evidence further supported the finding of permanent total disability. AME Dr. Sussman identified additional cognitive impairment and opined that there was a synergistic interaction between applicant's neurological and psychological conditions, such that each exacerbated the other. Even if the neurological impairments had been combined rather than added, the inclusion of neuropsychological impairment resulted in an overall rating reaching 100 percent, independently supporting the finding of PTD.

Applying the principles set forth in **Vigil**, the WCAB concluded that the QME's analysis sufficiently established a lack of overlap in ADLs, thereby rebutting the CVC and justifying addition of the impairment values. The Board further noted that even under an alternative calculation using the CVC, applicant would still be PTD when all impairments were considered. Because the finding of PTD was supported by the neurological and neuropsychological evidence alone, the WCAB declined to address defendant's arguments regarding the applicability of the catastrophic injury exception under Labor Code section 4660.1(c)(2)(B).

Practice Pointer:

Martin highlights the increasingly critical role of ADL analysis in rebutting the CVC post-*Vigil*. For defendants, the key takeaway is that conclusory statements regarding "no overlap" or "synergy" are insufficient. The question is whether the physician provides a detailed, function-based explanation of how each impairment affects distinct (or interacting) ADLs. Here, the defense challenge failed because the QME articulated a clear distinction between physical/balance-related ADLs and cognitive/attention-based ADLs. In future cases, defense strategy should focus on attacking that distinction: identify real-world activities that require both functions (e.g., driving, workplace tasks, household activities) to demonstrate overlap, and force the physician to reconcile those overlaps during deposition. Additionally, *Martin* underscores that subjective symptom-based

impairments—particularly in neurological and post-concussive cases—will be upheld if supported by a thorough clinical evaluation and longitudinal record review.

WCAB HOLDS TEMPORARY DISABILITY AND LC § 4850 BENEFITS RUN CONCURRENTLY WHERE INJURIES CAUSE OVERLAPPING DISABILITY

FONTENETTE v. LOS ANGELES UNIFIED SCHOOL DISTRICT
2026 Cal. Wrk. Comp. P.D. LEXIS 15

Applicant, employed as a Deputy Chief by the Los Angeles Unified School District Police Department, sustained two industrial injuries: a cervical spine injury on December 5, 2017, and a lumbar spine injury on January 3, 2018. The medical record reflected ongoing complaints of both neck and back pain beginning in June 2018, with applicant treated by primary treating physician (PTP) Dr. Chon and evaluated by orthopedic AME, Dr. Silverman. Both physicians ultimately opined in deposition testimony that applicant's work restrictions and disability were attributable to both injuries, and that the conditions operated simultaneously.

The underlying medical evidence was critical to the WCAB's analysis and demonstrated a consistent overlap in symptomatology and functional limitations. Dr. Chon's reporting from June through July 2018 documented complaints of both cervical and lumbar pain, with diagnoses including cervical myelopathy and lumbar radiculopathy. Although certain work restrictions were phrased "per back pain," the physician contemporaneously identified both cervical and lumbar pathology and maintained ongoing restrictions that were not meaningfully separable by body part. This longitudinal reporting supported a finding that applicant's disability was not attributable to a single injury in isolation, but rather to the combined effect of both conditions.

The deposition testimony of both the AME and PTP further reinforced this conclusion. AME Dr. Silverman testified that applicant's cervical spine restrictions would have been operative at the same time as her lumbar spine restrictions, and that if applicant could not perform modified work, she would have been temporarily totally disabled due to both conditions. Similarly, Dr. Chon acknowledged in deposition that applicant was a surgical candidate for her cervical spine as early as June 2018 and confirmed that the work restrictions imposed in mid-2018 were "probably equally applicable" to both the cervical and lumbar injuries. This testimony was pivotal in establishing that the periods of disability were overlapping rather than sequential, undermining the WCJ's conclusion that separate periods of disability existed.

The parties proceeded to trial on the issue of temporary disability and entitlement to Labor Code section 4850 benefits. The WCJ issued a Findings and Award determining that applicant sustained two separate periods of temporary disability: one attributable to the lumbar spine injury beginning July 18, 2018, and a second beginning March 18, 2019, following cervical spine surgery. Based on this finding, the WCJ awarded two separate periods of section 4850 benefits.

Defendant filed a Petition for Reconsideration, arguing that the medical evidence established that applicant's temporary disability from both injuries ran concurrently beginning July 18, 2018, and therefore applicant was entitled to only one period of section 4850 benefits.

The WCAB granted reconsideration, rescinded the WCJ's decision, and substituted new Findings of Fact. The Appeals Board found that substantial medical evidence, including the deposition testimony of both the AME and PTP, demonstrated that applicant's cervical and lumbar spine conditions jointly contributed to her inability to work beginning July 18, 2018. The Board emphasized that although the PTP's work restrictions were sometimes framed in terms of the lumbar spine, the medical evidence established that both injuries were operative and disabling during the same period.

Relying on *Foster v. WCAB* (2008) 161 Cal.App.4th 1505, the WCAB held that where multiple injuries result in overlapping periods of temporary disability, the statutory limitation on temporary disability benefits runs concurrently. The Board reiterated that Labor Code section 4656(c)(2) limits temporary disability to 104 compensable weeks within five years of the date of injury, and that section 4850 salary continuation benefits are included within that aggregate limitation.

Applying these principles, the WCAB concluded that applicant's entitlement to section 4850 benefits began on July 18, 2018—when she was first taken off work—and continued for one year, ending July 18, 2019. Because both injuries caused overlapping periods of temporary total disability, applicant was not entitled to separate or successive periods of section 4850 benefits. Instead, she was entitled to a single one-year period of salary continuation, followed by additional temporary total disability benefits subject to the 104-week cap.

The WCAB therefore issued new Findings of Fact that applicant's injuries resulted in a single period of overlapping temporary disability beginning July 18, 2018, with section 4850 benefits payable for one year, and thereafter temporary total disability benefits payable until the earlier of permanent and stationary status or exhaustion of the statutory cap.

Practice Pointer:

This decision provides a strong defense framework for opposing attempts by applicants to "stack" multiple periods of Labor Code section 4850 benefits across separate injuries. The key litigation strategy is to develop medical evidence—preferably through deposition testimony—that the applicant's work restrictions and disability are attributable to multiple body parts simultaneously, rather than in distinct phases. Even where treating reports appear to attribute disability to a single condition (e.g., "per low back pain"), Fontenette

demonstrates that the WCAB will look beyond the phrasing of restrictions to the totality of the medical record, including diagnoses, treatment recommendations, and expert testimony. Defense counsel should therefore focus on eliciting opinions that restrictions overlap in time and function, and that the applicant would have been temporarily totally disabled due to either condition independently.

WCAB HOLDS APPORTIONMENT TO PRIOR AWARDS UNDER LABOR CODE § 4664(b) APPLIES DESPITE NON-ATTRIBUTION CLAUSE IN LC § 4663(e) AND MUST BE CALCULATED BY SUBTRACTING PERCENTAGES, NOT DOLLAR VALUES

CANTO SHADOAN v. CITY OF SAN DIEGO
2025 Cal. Wrk. Comp. P.D. LEXIS 435

Applicant, employed as a police detective, sustained a cumulative trauma (CT) injury to her low back through March 2, 2017, in addition to a prior specific low back injury in 2010 that resulted in a 9% permanent disability award. The parties stipulated that applicant's current disability was 24% prior to apportionment due to the combined effects of the 2010 injury and the CT through March 2, 2017 and that the injury was subject to the duty-belt presumption under Labor Code (LC) section 3213.2.

The WCJ found that while apportionment to the prior award under LC section 4664 applied, the non-attribution clause of section 4663(e) precluded subtracting the prior percentage of disability. Instead, the WCJ deducted the monetary value of the prior award from the current award, resulting in a finding of 24% permanent disability after apportionment.

Defendant filed a Petition for Reconsideration, arguing that the WCJ applied an incorrect legal standard and failed to follow the California Supreme Court's holding in *Brodie v. WCAB* (2007) 40 Cal.4th 1313, which requires subtraction of prior disability percentages rather than dollar values.

The WCAB granted reconsideration, rescinded the WCJ's decision, and substituted a new finding of 15% permanent disability, calculated by subtracting the prior 9% disability from the current 24% disability.

The WCAB held that apportionment under LC section 4664(b) applies independently of the non-attribution clause in section 4663(e). While section 4663(e) precludes apportionment based on causation for presumptive injuries, section 4664(b) addresses apportionment based on prior awards and overlapping disability—not causation. Accordingly, the statutory bar on causation-based apportionment does not preclude apportionment to prior awards.

The WCAB provided an extensive discussion of the historical and legal framework governing apportionment to prior awards. Section 4664(b) creates a conclusive presumption that prior permanent disability continues to exist at the time of a subsequent injury, provided the defendant establishes the existence of a prior award. Once established, the applicant is not permitted to show medical rehabilitation from the disabling effects of the earlier industrial injury and the analysis turns to whether the prior and current

disabilities overlap. It is defendant's burden to prove overlap as well as the existence of the prior award.

The WCAB emphasized that overlap is not determined by body part alone, but by the "factors of disability"—that is, the functional limitations or impairments underlying the ratings. Under the current *AMA Guides*-based system, this analysis focuses on the impact of each impairment on activities of daily living (ADLs), rather than work restrictions. Overlap may be established where the same ADLs are affected by both the prior and current injuries, or where the subsequent impairment represents a progression of the prior condition using the same rating methodology.

In cases where disability is not rated using a progression within the same chart or table, overlap is a *factual* issue, which the Board emphasized requires medical evidence establishing overlap between the two disabilities. "Where the disability is not rated using a progression within the same chart or table, overlap may be shown when the medical evidence demonstrates the following: 1. The impacts of the ADLs from the prior award of disability are to the same body region. 2. The impacts to the ADLs from the current award of disability overlap the impacts to the ADLs measured in the prior disability." Physicians must identify whether the functional limitations attributable to the prior disability are encompassed within the current disability. Where overlap is established, the prior percentage of disability must be subtracted from the current rating pursuant to *Brodie.*

Importantly, the WCAB rejected reliance on prior panel decisions suggesting that presumptive injuries are categorically exempt from section 4664 apportionment. The Board specifically declined to follow *California Highway Patrol v. WCAB (Santiago)*, 2022 Cal. Wrk. Comp. P.D. LEXIS 51, finding that it failed to adequately distinguish between causation-based apportionment under section 4663 and overlap-based apportionment under section 4664.

Practice Pointer:

Canto Shadoan is a favorable defense decision clarifying two critical apportionment principles. First, it confirms that LC section 4664(b) remains applicable even in presumptive injury cases subject to the non-attribution clause of section 4663(e). Defense counsel should therefore always evaluate prior awards for potential overlap, even where causation-based apportionment is barred. Second, the case reinforces that the only legally correct method of calculating section 4664 apportionment is the *Brodie* formula—subtracting prior disability percentages, not dollar values. Finally, the decision underscores the importance of developing strong medical evidence on overlap, particularly through detailed analysis of ADLs and impairment methodology. Where the same functional limitations are implicated, defendants can reduce exposure by establishing partial or total overlap with prior awards.