# **1 Index to CA - WCAB Noteworthy Panel Decisions § 35D, Part 1 of 2**

***CA - WCAB Noteworthy Panel Decisions Subject Matter Index* > *CA WCAB Noteworthy Panel Decisions Subject Matter Index***

**§ 35D PERMANENT DISABILITY—RATINGS**

**Guadalupe Medina, Applicant v. Mi Pueblo Food Center, Safety National Casualty Corp., Adjusted by York/Sedgwick, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 325. Permanent Disability—Rating—Occupational Group Numbers—WCAB, granting reconsideration, rescinded WCJ’s decision, and returned matter to trial level for WCJ to determine single occupational group number for all injuries incurred by applicant and modify permanent disability ratings accordingly, when WCAB reasoned that disability caused by single injurious incident is to be rated by applying same occupational group number to each injured body part, and that where employee’s duties involve duties of two different occupations, rating should be for occupation that carries highest percentage.

**Salvador Correa Medina, Applicant v. BMG Roofing, California Insurance Company, adjusted by Applied Risk Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 341. Permanent Disability—Rating—Vocational Expert Evidence—WCAB, denying removal, affirmed WCJ’s Mandatory Settlement Conference order taking matter off calendar over defendant’s objection to allow medical evaluators to review vocational rehabilitation expert’s reporting, when WCAB reasoned that WCJ’s order did not result in substantial prejudice or irreparable harm to defendant so as to support removal, that vocational evidence may be considered by evaluating physicians as relevant to their determination of permanent disability and may assist parties and WCJ in assessing various factors of permanent disability, including factors such as whether applicant is feasible candidate for vocational rehabilitation and whether reasons underlying any non-feasibility arise solely out of industrial injury or are multifactorial, and that WCJ has discretion to order development of record if there is insufficient evidence upon which to base fair decision.

**Jose Mejia, Applicant v. J. B. Critchley, Incorporated, PSI, administered by American Claims Management, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 345. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, after granting reconsideration, affirmed WCJ’s decision that applicant was permanently totally disabled from 8/4/2010 injuries sustained while employed as semi-truck driver/laborer, when WCAB found that WCJ properly analyzed entire record in this matter, including extensive medical-legal evidence, treating physician’s reports, trial testimony of applicant’s son, and vocational evidence, and, notwithstanding apportionment identified by orthopedic agreed medical examiner, concluded that evidence established applicant had total loss of earning capacity and was not amenable to vocational rehabilitation due to his industrially-related orthopedic, neurological and psychiatric impairments, and WCAB agreed evidence was sufficient to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587.

**Hoda Khammash, Applicant v. State of California Department of Transportation, legally uninsured, State Compensation Insurance Fund, Adjusting Agency, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 307. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, after granting reconsideration, affirmed WCJ’s award of permanent total disability to applicant senior engineer who suffered industrial injury to multiple body parts on 4/22/2009, 1/19/2010, 3/23/2010, and during period 12/1/2007 to 4/22/2009, and determined that WCJ properly added applicant’s psychiatric impairment to her non-psychiatric impairments in calculating permanent disability based on opinion of psychiatric agreed medical examiner (AME), when WCAB found that psychiatric AME did not confine his analysis simply to assertion of “synergy” as defendant contended, and that he adequately explained rationale for why applicant’s significant and persistent psychiatric disability should be added to non-psychiatric disabilities, and how psychiatric injuries affected applicant’s functional capacity differently than non-psychiatric injuries.

**Roberta Hernandez, Applicant v. Ventura Post Acute, Starstone National Insurance Company, Administered By Cannon Cochran Management Services, Inc., Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 298. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration in split panel opinion, affirmed its prior decision [see *Hernandez v. Ventura Post Acute*, 2023 Cal. Wrk. Comp. P.D. LEXIS 123 (Appeals Board noteworthy panel decision)] that reporting of applicant’s vocational expert was sufficient, pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587, to rebut 45 percent scheduled permanent disability rating awarded by WCJ, and support finding that applicant, while employed as medical records director, suffered 100 percent permanent disability as result of 8/21/2019 industrial back injury, when applicant’s vocational expert opined that very restrictive work preclusions (including no bending, stooping or twisting) imposed by orthopedic qualified medical evaluator (QME) rendered applicant unemployable and not amenable to vocational rehabilitation, and WCAB panel majority found that applicant’s vocational expert was more persuasive than defendant’s vocational expert, who did not contradict determination that applicant was unemployable but rather apportioned part of applicant’s disability to nonindustrial factors without substantial medical evidence to support such apportionment, and WCAB further found that opinion of applicant’s vocational expert that applicant’s chronic pain could make her less employable, which was basis for WCJ’s rejection of vocational expert’s opinion, was irrelevant since expert ultimately based his finding of unemployability solely on applicant’s medical work preclusions; Commissioner Razo, dissenting, would have granted reconsideration and reinstated WCJ’s original permanent disability award based on his finding that applicant’s vocational expert took unreasonably restrictive view of applicant’s work preclusions, and that medical evidence did not support finding of permanent total disability, where QME’s report stated that applicant could do sedentary work for four hours per day, with some walking and standing, and did not include any pain add-on or mention any use of opiates.

**James Gunderson, Applicant v. County of Kern, PSI, Defendant,** 2023 Cal. Wrk. Comp. P.D. LEXIS 260. Permanent Disability—Rating—Occupational Group Numbers—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant’s occupation as senior information systems specialist fell under occupational group number 470 for purposes of rating permanent disability caused by his 3/14/2014 industrial spine, shoulder and head injuries, when WCAB reasoned that occupational group number is determined by job duties at time of injury, not by job title, that applicant’s job duties, which included heavy lifting and other arduous activities, justified placement in occupational group number 470, and that use of occupational group number 320, as suggested by defendant, would have reduced applicant’s level of permanent disability from 70 percent to 64 percent.

**Sean Fisher, Applicant v. Enloe Drilling and Pumps, Inc., Midwest Employers Casualty Company, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 213. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, after granting reconsideration, affirmed WCJ’s finding that opinion of applicant’s vocational expert was substantial evidence to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and support finding that industrial injuries incurred by applicant on 5/2/2017 while working as core drill operator when object fell from drilling rig and knocked him off platform, resulted in 100 percent permanent disability, when medical evidence indicated that due to industrial injury, applicant suffered from debilitating headaches on average of four to five times per week, and vocational expert concluded that applicant could not benefit from vocational rehabilitation services because his frequent and debilitating headaches rendered him unable to hold either part-time or full-time job, and WCAB found that vocational expert’s opinion was consistent with applicant’s credible testimony and with medical opinions of agreed medical examiner.

**Benjamin Nkwonta, Applicant v. County of Kern, PSI, Defendant,** 2023 Cal. Wrk. Comp. P.D. LEXIS 226. Permanent Disability—Rating—Substantial Evidence—AMA *Guides*—WCAB, denying reconsideration, affirmed WCJ’s findings that applicant, while employed as attorney, sustained 78 percent permanent disability as result of 9/16/2015 specific injury to his shoulder and in form of cardiac arrest, and 26 percent permanent disability as result of cumulative injury to his heart from 3/10/2003 through 9/16/2015, when WCAB, observing that applicant’s specific and cumulative injury cases were consolidated and that documentary evidence received in one case was part of record in both cases, found that (1) opinion of internal medicine panel qualified medical evaluator (PQME) who reported in cumulative injury case, was substantial evidence under *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), supporting award of 78 percent permanent disability in applicant’s specific injury case, (2) WCJ correctly rated applicant’s cardiomyopathy based on testimony of internal medicine PQME, (3) WCJ appropriately included grip loss in permanent disability rating based on orthopedic PQME’s opinion that grip loss rating was justified where applicant’s loss of grip strength was not due to shoulder stiffness, but rather resulted from shoulder pain and loss of wrist dorsiflexion, and that applicant’s loss of strength was not adequately considered by other methods in AMA *Guides*, thereby justifying separate rating, (4) WCJ properly attributed 9 percent permanent disability for coronary artery disease to applicant’s specific injury based on internal medicine PQME’s opinion that applicant’s subsequent heart damage resulted from 9/16/2015 cardiac arrest, and (5) WCJ appropriately relied on internal medicine PQME’s opinion to find that applicant’s cumulative injury produced 26 percent permanent disability, after apportionment.

**Omar Rascon, Applicant v. Bay Cities Paving and Grading, Gallagher Bassett Rancho Cucamonga, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 222. Permanent Disability—Rating—Occupational Group Numbers—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant’s occupation as laborer foreman fell under occupational group number 481 for purposes of rating permanent disability caused by his 7/3/2014 industrial injuries, when WCAB reasoned that occupational group number is determined by job duties, not by job title, and where employee’s duties encompass duties of two different occupations, employee is entitled to higher occupational group, and WCAB determined that applicant here fell under occupational code 481, rather than lower occupational code based on his job title, because applicant’s job duties included significant amounts of climbing and arm usage.

**Omar Rascon, Applicant v. Bay Cities Paving and Grading, Gallagher Bassett Rancho Cucamonga, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 222. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s award of 100 percent permanent disability for industrial injuries incurred by applicant on 7/3//2014 while employed as laborer foreman, and found that in calculating applicant’s permanent disability, WCJ properly added cervical and lumbar spine impairments, pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining them using Combined Values Chart, based on agreed medical examiners’ opinions that adding impairments more accurately reflected extent of applicant’s disability.

**Kim Thompson, Applicant v. County of Los Angeles, PSI, administered by Sedgwick CMS, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 217. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration, rescinded WCJ’s finding that applicant deputy sheriff who filed claims for industrial injuries incurred on 4/17/96 and during period 5/15/96 to 5/15/97, failed to rebut scheduled permanent disability rating with vocational expert evidence and, therefore, did not establish permanent total disability, when WCAB found that while vocational evidence may be offered to rebut scheduled rating, presumptive scheduled rating of permanent disability necessarily must be established *prior to* determination as to whether applicant rebutted scheduled rating, and that WCJ here deferred her determination regarding nature and extent of applicant’s injuries, body parts injured, permanent disability rating, and apportionment pending further development of record on these issues, making her determination as to whether applicant rebutted scheduled rating premature; however, WCAB noted that applicant raised colorable issue of whether she is, in fact, 100 percent permanently disabled based on her limitation to sheltered or protected employment, noting that, per *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587, injured workers may be found permanently totally disabled even if they are able to perform some limited work in sheltered and protected work environment, and WCAB returned matter to trial level for further development of record with medical-legal and vocational expert opinions.

**Debra Ellis, Applicant v. University of California Santa Cruz, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 233. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s award of 100 percent permanent disability for industrial injuries incurred by applicant on 10/1/2011 to her head, eyes, hearing, psyche, neurologic system, and right shoulder, arm and hip, while employed as residential education coordinator, and found that in calculating applicant’s permanent disability, WCJ properly added her impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining them using Combined Values Chart (CVC), based on substantial medical evidence that adding factors of applicant’s disability resulted in more accurate rating than combining factors using CVC, and WCAB further found that WCJ correctly applied apportionment to applicant’s impairments prior to adding them.

**Timothy Breen, Applicant v. State of California, Legally Uninsured, Defendant,** 2023 Cal. Wrk. Comp. P.D. LEXIS 156. Permanent Disability—Rating—AMA *Guides*—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant, while employed as correctional counselor on 4/8/2016, sustained specific injury to his left knee, causing 23 percent permanent disability based on AMA *Guides* impairment rating of applicant’s primary treating physician, when treating physician assigned 1 percent whole person impairment (WPI) per Table 17-33 of AMA *Guides* for partial medial meniscectomy and additional 8 percent WPI per Table 17-31 of AMA Guides, addressing arthritic impairment, based on estimated two-millimeter left knee cartilage interval he observed during arthroscopic surgery, and WCAB found that treating physician’s impairment findings were more persuasive than those of qualified medical evaluator, who assigned only 1 percent impairment for partial medial meniscectomy but assigned no impairment for cartilage interval because cartilage interval was not confirmed by x-ray, where WCAB reasoned that although Section 17.2h of AMA *Guides* does state that “properly taken x-rays are a well-established, widely used and objective method of estimating cartilage intervals in evaluating arthritic impairment in the lower extremities for most people most of the time,” Section 17.2h does not state that x-rays are required or are only acceptable method of estimating cartilage intervals, and, therefore, treating physician was not required to rely on x-rays but rather could rely on what he saw during surgery to estimate cartilage interval, which physician stated was more reliable than x-ray or MRI.

**Perry Morefield, Applicant v. County of Ventura, PSI, Defendant,** 2023 Cal. Wrk. Comp. P.D. LEXIS 164. Permanent Disability—Rating—Correction of Clerical Error—WCAB, after remand from Court of Appeal, amended its prior decision [see *Morefield v. County of Ventura*, 2022 Cal. Wrk. Comp. P.D. LEXIS 233 (Appeals Board noteworthy panel decision)], which had been annulled by Court of Appeal at WCAB’s request, to reflect correct permanent disability rating of 47 percent, and to issue new award of permanent disability indemnity and attorney’s fees consistent with finding of 47 percent permanent disability.

**Roberta Hernandez, Applicant v. Ventura Post Acute, Starstone National Insurance Company, Administered By Cannon Cochran Management Services, Inc., Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 123. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration and amending WCJ’s decision in split panel opinion, held that reporting of applicant’s vocational expert was sufficient, pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587, to rebut 45 percent scheduled permanent disability rating awarded by WCJ, and support finding that applicant, while employed as medical records director, suffered 100 percent permanent disability as result of 8/21/2019 industrial back injury, when applicant’s vocational expert opined that very restrictive work preclusions (including no bending, stooping or twisting) imposed by orthopedic qualified medical evaluator (QME) rendered applicant unemployable and not amenable to vocational rehabilitation, and WCAB panel majority found that applicant’s vocational expert was more persuasive than defendant’s vocational expert, who did not contradict determination that applicant was unemployable but rather apportioned part of applicant’s disability to nonindustrial factors without substantial medical evidence to support such apportionment, and WCAB further found that opinion of applicant’s vocational expert that applicant’s chronic pain could make her less employable, which was basis for WCJ’s rejection of vocational expert’s opinion, was irrelevant since expert ultimately based his finding of unemployability solely on applicant’s medical work preclusions; Commissioner Razo, dissenting, would affirm WCJ’s permanent disability award based on his finding that applicant’s vocational expert took unreasonably restrictive view of applicant’s work preclusions, and that medical evidence did not support finding of permanent total disability, where QME’s report stated that applicant could do sedentary work for four hours per day, with some walking and standing, and did not include any pain add-on or mention any use of opiates.

**Sean Pratt, Applicant v. Kern County Sheriff’s Office, County of Kern, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 120. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, after granting reconsideration, affirmed WCJ’s decision that applicant’s industrial injuries resulted in 76 percent permanent disability, which was based on addition of bilateral upper extremity disabilities per *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), followed by combination of orthopedic disability with that of hearing loss, tinnitus and hypertension, and WCAB found that in adding applicant’s bilateral wrist/hand disabilities, WCJ appropriately relied on independent medical examiner’s (IME) opinion that disabilities should be added, where IME provided individualized assessment based on applicant’s symptomatology and detailed how bilateral compromise of applicant’s upper extremity-related activities of daily living resulted in greater disability than to either side individually, and that addition of disabilities was most accurate way to assess applicant’s actual permanent disability.

**Brad Sanders, Applicant v. Chico Immediate Care, Employers Compensation Insurance Company, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 125. Permanent Disability—Rating—Presumption of Permanent Total Disability—WCAB, after granting reconsideration, affirmed WCJ’s finding that record required further development with respect to whether applicant suffered 100 percent permanent disability in accordance with Labor Code § 4662(a)(4) from industrial brain injury sustained while he was employed as medical assistant on 5/18/2009, when WCAB found that current record did not support finding of permanent total disability based on mental incapacity, where applicant was able to participate in post-injury educational pursuits, maintain valid driver’s license, live independently with support, and participate in WCAB proceedings, indicating that his level of disability did not rise to that contemplated by Labor Code § 4662(a)(4), but WCAB agreed that record required further development with respect to applicant’s mental disability because agreed medical examiner in neuropsychology did not review parties’ respective vocational expert reports and, therefore, his opinion did not constitute substantial evidence to support finding on issue of permanent disability, and, additionally, vocational experts did not yet adequately address issue of applicant’s feasibility for vocational retraining.

**Cheneene R. Clark, William B. Clark (Deceased), Applicant v. City of Vallejo, PSI, administered by LWP Claims Solutions, Inc., Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 144. Permanent Disability—Rating—Permanent Total Disability—WCAB, after granting reconsideration, held that reports of qualified medical evaluator constituted substantial evidence and were appropriate basis for WCJ’s finding that although decedent did not reach maximum medical improvement prior to his death on 9/18/2021, decedent was permanently totally disabled throughout course of his cancer treatment and was entitled to permanent total disability indemnity benefits until date of his death; however, WCAB found that there was insufficient evidence in record to determine appropriate start date for payment of permanent total disability indemnity and returned matter to WCJ for further development of record on that issue.

**Shane Perry, Applicant v. MasTec, Inc., ACE American Insurance, Administered by ESIS, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 143. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, after granting reconsideration, affirmed WCJ’s finding that combined effects of applicant alarm installer’s three 2015 industrial injuries resulted in permanent total disability, based on opinions of qualified medical evaluators (QMEs) and on reporting of applicant’s vocational expert, which WCAB found was substantial evidence to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587, when WCAB reasoned that vocational expert adequately considered opinions of QMEs as well as various vocational factors to conclude that applicant was not employable in open labor market and was not amenable to vocational training due to his three industrial injuries, that contrary to defendant’s assertion, WCJ’s finding of permanent total disability was not predicated on incorrect diminished future earnings capacity analysis but rather on correct standard for rebuttal of scheduled rating, *i.e.*, non-feasibility of vocational re-training and total loss of access to labor market, and that WCJ was permitted to rely on vocational expert evidence for post-1/1/2013 injuries even following adoption of Labor Code § 4660.1, as described in *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and to find permanent total disability pursuant to Labor Code § 4662(b).

**Robert Jelenic, Applicant v. Los Angeles Department of Water and Power, PSI, Defendant,** 2023 Cal. Wrk. Comp. P.D. LEXIS 103. Permanent Disability—Rating and Apportionment—Rebuttal of Scheduled Rating—WCAB, granting reconsideration in split panel opinion, affirmed WCJ’s finding that applicant who suffered industrial injury to his back, neck, head, and psyche in motor vehicle accident on 6/10/97 was permanently totally disabled due to cognitive impairment caused by injury, without basis for apportionment under Labor Code § 4663, when WCAB panel majority found that medical evidence coupled with opinion of applicant’s vocational expert indicating that applicant was not amenable to vocational rehabilitation and could not return to labor market was sufficient to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587, that WCAB may properly base finding of permanent total disability on *combination* of substantial medical and vocational evidence, as WCJ did in this case, and that apportionment opinion of agreed medical examiner (AME) was not substantial evidence under *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), where AME apportioned applicant’s disability to brain injury sustained in 1992 non-industrial motor vehicle accident based on pathology, even though there was no indication pathology was causing disability at time of evaluation, and AME’s apportionment was speculative because he did not detail exact nature of applicant’s apportionable disability under 1997 Schedule for Rating Permanent Disabilities, as required by *Escobedo*; Commissioner Razo, dissenting, believed WCJ erred in concluding combination of medical evidence and opinion of applicant’s vocational expert justified finding permanent total disability, and further opined that WCJ erred by failing to address finding of defendant’s vocational expert that applicant retained 95 percent of his intellectual capacity.

**Michael Dowling, Applicant v. ManpowerGroup, New Hampshire Insurance Company, administered by Gallagher Bassett Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 86. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s decision that applicant suffered 83 percent permanent disability from 9/14/2012 industrial injuries to his left knee, lumbar spine, nervous system, psyche, excretory system, digestive system, and in form of sexual dysfunction while employed as analyst/auditor, and found that applicant’s orthopedic and psychiatric impairments should be added per *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combined using Combined Values Chart, when WCAB reasoned that there was substantial medical evidence that applicant’s psychiatric and orthopedic impairments did not overlap, and that there was synergistic effect between psychiatric condition and orthopedic condition with respect to applicant’s activities of daily living, and that based on medical evidence, adding applicant’s impairments produced most accurate reflection of his actual permanent disability.

**Terri Glasgow, Applicant v. Massie Diagnostic Imaging, State Compensation Insurance Fund, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 92. Permanent Disability—Rating—Pyramiding—WCAB, granting reconsideration, rescinded WCJ’s finding that applicant who suffered industrial injury to multiple body parts while employed as ultrasound technician from 12/23/2001 through 12/23/2002 incurred 97 percent permanent disability, after apportionment, and WCAB returned matter to trial level for further proceedings on issue of permanent disability, when WCAB found that WCJ incorrectly rated applicant’s bladder disability by folding bladder impairment into impairment assigned to lumbar spine, which WCJ explained was to avoid pyramiding, but WCAB noted that pyramiding formula of adding greatest disability to half lesser disability is for objective disabilities that involves single extremity, and that applicant’s lumbar and bladder restrictions were not objective disabilities (defined as loss of motion or amputation), nor did restrictions involve single extremity; WCAB further found that WCJ must consider opinions of vocational experts in addition to those of medical experts in determining apportionment.

**Douglas Herb, Applicant v. County of Los Angeles, PSI, administered by Sedgwick Claims Management Services, Incorporated, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 114. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration, held that opinion of agreed medical examiner was substantial evidence to support finding that most accurate way to rate impairment caused by applicant’s stress-related headaches was by analogy to impairment for trigeminal neuralgia, AMA *Guides*, Chapter 13, based on analysis consistent with principles set forth in *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837.

**William Garrison, Applicant v. County of Los Angeles, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 51. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant was entitled to unapportioned award of 100 percent permanent disability for industrial injury to multiple body parts on 10/17/2017 and during period 9/20/99 through 10/18/2017, when WCAB found that applicant successfully rebutted scheduled permanent disability rating based on diminished future earning capacity as described in *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 666 P.2d 989, 48 Cal. Comp. Cases 587, with evidence from applicant’s vocational expert indicating that applicant was not amenable to vocational rehabilitation and was unable to engage in gainful employment based on sequelae from his industrial ulcerative colitis condition alone, standing apart from applicant’s orthopedic and other injuries, that analysis of defendant’s vocational expert that applicant was amendable to vocational rehabilitation and could be retrained for jobs available in open labor market was not substantial evidence because analysis was confined to applicant’s orthopedic limitations and did not account for his non-orthopedic work restrictions, and that there was no substantial medical evidence to justify apportionment of applicant’s permanent total disability to non-industrial risk factor of rheumatoid arthritis.

**Ryan Gaskins, Applicant v. Wet Dirt Inc., National Fire and Liability Insurance Company as administered by Gallagher Bassett, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 60. Permanent Disability—Rating—Presumption of Permanent Total Disability—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant suffered 100 percent permanent disability in accordance with Labor Code § 4662(a)(4) from industrial brain injury sustained while he was employed as truck driver on 10/23/2017, when Labor Code § 4662(a)(4) creates presumption of permanent total disability in cases of permanent mental incapacity, and WCAB found that although reporting doctors did not actually use phrase “permanent mental incapacity” in their reports, presumption was satisfied based on medical evidence that applicant, due to his brain injury, required 24-hour daily care, may ultimately require complete care facility and was unable to perform any kind of work.

**Karim Elaneh, Applicant v. EZ Lube, CIGA for CastlePoint National Insurance, in liquidation, administered by Sedgwick Claims Management Services, Inc., Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 84. Permanent Disability—Rating—Vocational Expert Evidence—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant was entitled to unapportioned award of 100 percent permanent disability for 6/6/2011 industrial injury caused by incident of workplace violence, when applicant suffered permanent disability to 16 separate body parts/systems as result of incident, applicant’s vocational expert found that applicant was not amenable to vocational rehabilitation due to his industrial injury, and WCAB determined that although vocational expert’s opinion on apportionment was unreliable due to her failure to review agreed medical examiner’s psychiatric report, impact of any apportionment on applicant’s permanent total disability was minimal given that applicant suffered permanent disability to numerous body parts, and based on totality of circumstances, including substantial medical evidence indicating applicant was not able to work due to catastrophic nature of his physical and psychiatric injuries, vocational expert’s opinion on apportionment was not determinative.

**Karen Miller, Applicant v. State of California, Ventura Youth Correctional Facility, legally uninsured, adjusted by, State Compensation Insurance Fund/State Contract Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 73. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration, affirmed WCJ’s finding that permanent disability applicant suffered to cervical spine and lumbar spine from industrial injuries sustained while working as substitute teacher on 1/6/2012 and during period 6/10/2010 through 1/6/2012, was properly rated using AMA *Guides’* Range of Motion (ROM) method, rather than Diagnosis-Related Estimate method, based on agreed medical examiner’s (AME) opinion that ROM method best described applicant’s actual spine impairment, and WCAB found that AME’s opinion was sufficient to rebut scheduled rating pursuant to analysis in *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, which states that strict AMA *Guides* rating is rebutted by showing that such impairment rating would not accurately reflect extent of employee’s permanent disability.

**Karen Miller, Applicant v. State of California, Ventura Youth Correctional Facility, legally uninsured, adjusted by, State Compensation Insurance Fund/State Contract Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 73. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant’s sleep impairment and orthopedic impairment should be added rather than combined using Combined Values Chart (CVC) to determine applicant’s permanent disability, based on opinion of panel qualified medical evaluator (PQME) that applicant’s sleep disorder acted synergistically with pain from her orthopedic condition to result in greater permanent disability than that calculated using CVC, and that fact that PQME was not sleep expert did not render his opinion regarding adding of disabilities unreliable, because PQME’s analysis was based on effects of sleep deprivation itself.

**Michelle Richmond, Applicant v. Santa Rosa Tile Supply, insured by ProCentury Insurance, administered by Illinois Midwest, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 27. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 77 percent permanent disability as result of industrial injury to her elbows, arms, thumbs, wrists, and right shoulder while working as stocker/cashier during cumulative period ending on 5/19/2014, when panel qualified medical evaluator (PQME) departed from strict AMA *Guides* rating and, based on application of *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, rated injury to applicant’s shoulder and upper extremities by analogy using AMA *Guides*, Table 13-17, for systemic issues originating in brain, due to applicant’s limitations on activities of daily living and difficulty with self-care activities, and WCAB concluded that PQME’s *Almaraz/Guzman* analysis sufficiently rebutted scheduled AMA *Guides* rating.

**Renee Bracy, Applicant v. County of Los Angeles Department of Public Health, PSI, administered by Sedgwick, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 26. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s decision that applicant suffered 82 percent permanent disability from industrial injuries to her spine, hands, wrists, left ankle, and in form of fibromyalgia on 7/20/2018 while working as assistant health program coordinator, and, based on recommendation of agreed medical examiner (AME) in rheumatology, that applicant’s orthopedic disability should be added rather than combined with her cognitive dysfunction and sleep/arousal disability per *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), when AME recommended adding disabilities to produce most accurate impairment rating because disability due to fibromyalgia and disability from orthopedic injury involved separate physiological systems, and because there was synergistic effect between applicant’s fatigue/sleep problems and her cognitive function, and WCAB reasoned that AME’s opinion with respect to most accurate method for rating applicant’s impairment should ordinarily be followed if AME provides reasonably articulated medical basis for opinion, absent good reason to find opinion unpersuasive.

**Dennis Teichera, Applicant v. County of Alameda, PSI, administered by York Risk Services Group, Inc., Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 42. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant was entitled to award of 100 percent permanent disability for industrial injury in form of prostate cancer while employed as deputy sheriff during period 2/7/2018 to 2/8/2019, when WCAB found that applicant successfully rebutted scheduled rating of 83 percent permanent disability with medical and vocational expert evidence indicating that he was not amenable to vocational rehabilitation and was not capable of returning to open labor market, primarily based on urinary incontinence caused by his prostate cancer, and that applicant’s work in sheltered environment obtained through his friend did not preclude finding of permanent total disability.

**Wendy Collie, Applicant v. State of California, Employment Development Department, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 3. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant employment program representative was permanently totally disabled by chronic pain syndrome resulting from 3/15/2002 industrial injury to multiple body parts, when WCAB found substantial evidence in record, including medical reporting and vocational expert opinion, indicating that applicant was unable to compete in open labor market and was not amendable to vocational rehabilitation due to her industrial injury, that evidence was sufficient to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and to support WCJ’s finding of 100 percent permanent disability, and that defendant did not meet burden of proving apportionment of permanent disability to other factors where medical reporting defendant relied upon did not constitute substantial evidence on issue of apportionment.

**Arleen Keteles, Applicant v. County of Alameda, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2023 Cal. Wrk. Comp. P.D. LEXIS 21. Permanent Disability—Rating—Formal Rating—WCAB, denying reconsideration, affirmed WCJ’s decision that applicant, while working as sheriff technician, suffered 70 percent permanent disability as result of industrial orthopedic injury, based on recommended rating issued by Disability Evaluation Unit (DEU) rater per WCJ’s formal rating instructions and qualified medical evaluator’s (QME) opinion, and found that WCJ did not err by declining to adopt reduced rating formulated by defendant’s private rater, when WCAB reasoned that DEU expert raters are experts in application of rating schedule and make formal rating recommendations solely based on information provided by WCJ, without consideration of other factors, and cannot substitute their own lay opinion in place of medical evidence, that party’s private impairment rater must be held to same standard as DEU experts, and that opinion of defendant’s private rater in this case was not sufficient to support reduced rating, because private rater had no medical training and, like DEU expert rater, was not permitted to substitute her own lay opinions in place of QME’s medical opinions regarding extent of applicant’s permanent disability.

**Oyuki Morales, Applicant v. Pennant Foods Corporation dba Wendy’s Old-Fashioned Hamburgers, Zurich American Insurance Company, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 379. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant was entitled to award of 100 percent permanent disability for industrial injuries to her neck, right shoulder, neurological system (complex regional pain syndrome), psyche, and in form of gastritis while employed as assistant manager during period 3/30/2005 to 3/30/2006, based on reporting of applicant’s vocational expert indicating that applicant was not amenable to vocational rehabilitation, which WCAB found sufficient to rebut scheduled permanent disability rating per *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Cherrice Morris-Gaines, Applicant v. Alameda Contra Costa Transit District, PSI, administered by York Risk Services Group, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 359. Permanent Disability—Rating—Permanent Total Disability—WCAB, after granting reconsideration, affirmed WCJ’s award of 21 percent permanent disability for injuries to applicant bus driver’s low back and knees during period 5/30/2007 through 4/1/2011, and 8 percent permanent disability for specific injuries to same body parts on 5/30/2007, and WCAB rejected applicant’s assertion that injuries rendered her 100 percent permanently disabled based on opinion of orthopedic agreed medical examiner (AME) and decision in *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB found that AME’s opinion did not warrant finding of permanent total disability because opinion was based, in part, on applicant’s reported psychological symptoms which psychology qualified medical evaluator determined were exaggerated, and WCAB further found that reporting of defendant’s vocational expert, which indicated applicant was able to engage in gainful employment as evidenced by her post-injury completion of college degree, was more persuasive than opinion of applicant’s vocational expert, who did not accurately assess applicant’s ability to work.

**Irene Perry, Applicant v. Vineyard National Bank, California Insurance Guarantee Association for California Compensation Insurance Company, in liquidation, administered by Intercare Holdings Insurance Services Inc, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 364. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant assistant vice president/bank manager who suffered industrial injury to multiple body parts on 6/30/98 and from 6/93 to 10/1/98, was permanently totally disabled by injury pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, when WCAB concluded that totality of medical evidence, applicant’s testimony and opinion of vocational expert supported finding that applicant was not amenable to vocational rehabilitation, and that, therefore, scheduled permanent disability rating was rebutted.

**Joshua Kave, Applicant v. State of California, Department of Corrections and Rehabilitation/Correctional Training Facility Soledad, legally uninsured, administered by State Compensation Insurance Fund/State Contract Services, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 317. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 54 percent permanent disability as result of industrial injury to his bilateral calves/gastrocnemius muscles while employed as correctional officer on 2/10/2016, based on qualified medical evaluator’s (QME) assignment of 15 percent whole person impairment for each of applicant’s lower extremities pursuant to *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when WCAB reasoned that because AMA *Guides* contain no impairment rating for applicant’s injury, QME appropriately rated impairment based on *Almaraz/Guzman* analysis, where QME explained that applicant’s actual impairment due to injury was analogous to Table 17.5 of AMA *Guides*, Lower Extremity Impairment Due to Gait Derangement, Category [d] (Mild), as applicant required use of compression braces for both calves to ambulate, and WCAB further found that QME’s opinion regarding synergistic effects of one calf injury on opposite calf supported calculation of applicant’s permanent disability utilizing addition method per *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining impairments using Combined Values Chart.

**Alex Carter, Applicant v. State of California, Department of Corrections, Legally Uninsured, State Compensation Insurance Fund, State Contract Services, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 314. Permanent Disability—Rating—Heart Injury—Combining Multiple Disabilities—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant was permanently totally disabled by industrial heart injuries in forms of cardiac arrhythmia and hypertensive heart disease incurred while working as correctional counselor from 2/19/90 to 7/22/2014, when panel qualified medical evaluator (PQME) upon whose opinion WCJ properly relied found that applicant’s cardiac arrhythmia caused 35 percent whole person impairment (WPI) under Table 3-11, Class 3 of AMA *Guides* and his hypertensive heart disease resulted in 65 percent WPI, and that adding applicant’s disabilities from two separate heart injuries was most accurate method of evaluating disability given injuries’ synergistic effect, and WCAB concluded that PQME’s opinion, which was based on his own expertise and judgment, was substantial evidence to support addition of applicant’s impairments pursuant to *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), and rejected defendant’s claim that applicant’s normal EKG following heart ablation procedure established that applicant’s cardiac arrythmia was “cured” and, therefore, resulted in no permanent disability.

**Olga Picazo, Applicant v. Peninou French Laundry and Technology Insurance Company administered by AmTrust, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 309. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 34 percent permanent disability as result of industrial low back injury, based primarily on medical expert’s analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when medical expert opined that strict rating using lumbar Diagnosis-Related Estimate section of AMA *Guides* did not accurately reflect applicant’s actual disability, and that using Range of Motion (ROM) method produced more accurate impairment rating, and WCAB found that expert adequately explained why strict rating did not accurately represent applicant’s impairment and properly provided alternative rating within four corners of AMA *Guides* based on ROM, consistent with *Almaraz/Guzman* analysis.

**Victor Valdez, Applicant v. Los Angeles County Probation Department, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 283. Permanent Disability—Rating—Permanent Total Disability—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant was 100 percent permanently disabled by orthopedic, psychiatric and internal injuries, including aggravation of preexisting hypertension and diabetes, sustained while employed as group supervisor on 7/6/2011, based on medical evidence indicating that applicant’s industrial injuries rendered him unable to work, and WCAB found that vocational expert’s conclusion that applicant could engage in work activity on full-time basis only by initially working part-time and building up his work tolerance did not defeat WCJ’s finding of permanent total disability, because ability to work part-time does not mean worker is able to compete in open labor market, and WCAB rejected defendant’s argument that medical treatment provided by applicant’s private insurance resulted in increased permanent disability, where WCAB found that applicant was permitted to treat for his industrial injury with his own physician at his own cost and *Hikida v. W.C.A.B.* (2017) 12 Cal. App. 5th 1249, 219 Cal. Rptr. 3d 654, 82 Cal. Comp. Cases 679, applied to that medical treatment.

**Julie Wilson, Applicant v. Tailored Brands, Inc., Safety National Casualty Corporation, administered by Gallagher Bassett, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 291. Permanent Disability—Rating—Occupational Group Numbers—WCAB, denying reconsideration, affirmed WCJ’s finding that occupational group number 360 for merchandiser should be used to calculate permanent disability rating in connection with applicant’s 10/15/2014 industrial injury because duties required for merchandizing, which included lifting up to 60 pounds, dressing mannequins, and climbing ladders, were integral part of applicant’s job as men’s clothing store manager.

**Julie Wilson, Applicant v. Tailored Brands, Inc., Safety National Casualty Corporation, administered by Gallagher Bassett, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 291. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s award of 64 percent permanent disability for industrial orthopedic injuries incurred by applicant on 10/15/2014 while employed as men’s clothing store manager, and found that in calculating applicant’s permanent disability, WCJ properly added impairments for applicant’s bilateral upper extremity and her low back pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining them using Combined Values Chart, based on agreed medical examiner’s opinion that adding impairments more accurately reflected extent of applicant’s disability.

**Megan Hosmer-Cooley, Applicant v. Clippenger Investment Properties, insured by Sequoia Insurance Company, adjusted by AmTrust North America, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 300. Permanent Disability—Rating—Vocational Evidence—WCAB, denying reconsideration and affirming WCJ’s decision, held that WCJ properly relied on reporting of applicant’s vocational expert over that of defendant’s expert to determine that applicant was not amenable to vocational rehabilitation and, therefore, sustained permanent total disability as result of injury to her spine and psyche from attack that occurred while she was working as property manager on 1/9/2013, pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB found that reporting of applicant’s vocational expert better reflected applicant’s credible trial testimony regarding mental and physical problems resulting from her injury and appropriately synthesized applicant’s work restrictions as reflected in medical record, along with applicant’s medical history and vocational testing, to determine that applicant was not feasible for vocational retraining and was unable to work.

**Mohamed Madow, Applicant v. Hertz Corporation and ACE American Insurance Company administered by Sedgwick Claims Management Services, Inc., Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 253. Permanent Disability—Rating—Permanent Total Disability—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant auto dealer suffered 100 percent permanent disability as result of 7/2/2006 left elbow injury and its consequences, when WCAB found that applicant’s testimony regarding his pain and medications, medical evidence and reports of applicant’s vocational expert supported finding that applicant lost 100 percent of his earning capacity due to his industrial injury, that reports of defendant’s vocational expert minimized applicant’s “severe limitations,” and facts that applicant’s vocational expert conducted remote rather than in-person interview and that there was no Somali interpreter present did not render his reporting insufficient.

**Fred Broyles, Applicant v. Atlas Van Lines, Arch Insurance, administered by Gallagher Bassett Services, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 256**.** Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 29 percent permanent disability as result of industrial injury to his low back and right leg while working as driver on 10/9/2019, when WCAB found that applicant successfully rebutted strict AMA *Guides* impairment rating pursuant to analysis in *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, based on qualified medical evaluator’s opinion that strict rating of applicant’s impairment did not accurately reflect impact of his injury on his activities of daily living (ADLs) and work capacity, and that impairment was most accurately rated by analogy to hernia under Table 6-9, class II, of AMA *Guides*, reflecting impairment applicant sustained due to frequent discomfort precluding heavy lifting that interfered with ADLs.

**Franklin Oliver, Applicant v. Tampa Bay Buccaneers, ESIS, et al., Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 251. Permanent Disability—Rating—Permanent Total Disability—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant suffered 98 percent permanent disability as result of injuries to his head, neck and back while employed as professional football player, but did not establish he was permanently totally disabled from brain injury under either Labor Code § 4662(a)(4), which creates conclusive presumption of permanent total disability for brain injury resulting in permanent mental incapacity, or Labor Code § 4662(b), which states that permanent total disability shall be determined “in accordance with the fact,” when WCAB concluded that medical reporting did not establish applicant’s neurological disability was of sufficient severity to invoke conclusive presumption under Labor Code § 4662(a)(4), that under *Dept. of Corrections & Rehabilitation v. W.C.A.B.* (*Fitzpatrick*) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, there was no basis for concluding that Labor Code § 4662(b) provides independent path to permanent total disability finding separate from Labor Code § 4660, and that there was no vocational expert evidence in record to rebut scheduled permanent disability rating of 98 percent found by WCJ.

**Douglas Schaan, Applicant v. Jerry Thompson & Sons, Liberty Mutual, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 264. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 74 percent permanent disability as result of orthopedic injuries incurred while he was employed as painter during period through 1/8/2015, and agreed with WCJ’s determination that there was insufficient medical and vocational evidence to rebut scheduled permanent disability rating and support rating of 100 percent pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when no reporting physician in this matter concluded that applicant was completely unable to return to work due to his industrial injury, and applicant’s vocational expert evidence was not sufficient to rebut scheduled permanent disability rating because expert improperly considered applicant’s compensable consequence psychiatric injury (which did not provide basis for increased permanent disability because injury was not “catastrophic”) in determining his amenability to vocational rehabilitation, partially premised his conclusions on applicant’s limited education and erroneously adopted work restrictions related to applicant’s GERD and use of opiates that were not supplied by medical experts.

**Michael Sefick, Applicant v. Valley Pacific Petroleum Services, Inc., HDI Global Insurance Company, adjusted by York Risk Services Group, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 273. Permanent Disability—Rating—Vocational Evidence—WCAB, granting reconsideration, affirmed WCJ’s finding that vocational evidence offered by applicant who sustained industrial orthopedic injuries while employed as inventory control specialist on 8/9/2012 and through 6/20/2013 was insufficient to establish permanent total disability pursuant to *Acme Steel v W.C.A.B.* (*Borman*) (2013) 218 Cal. App. 4th 1137, 160 Cal. Rptr. 3d 712, 78 Cal. Comp. Cases 751, and *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that applicant’s vocational expert limited his analysis of applicant’s transferable job skills to those jobs applicant had previously performed, without considering what transferrable skills he could bring to other jobs within his limitations, that his opinions were based on speculation, conjecture and guess, and that because conclusions reached by vocational expert rested on nonindustrial body parts and work restrictions not identified in medical record, resulting report was not substantial evidence.

**Virginia Antunez, Applicant v. Fontana Unified School District, PSI, Defendant,** 2022 Cal. Wrk. Comp. P.D. LEXIS 241. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, after granting reconsideration, affirmed WCJ’s finding that applicant who suffered multiple industrial injuries while working as child care provider between 2007 and 2009 did not establish she was permanently totally disabled by her injuries, when there was no medical evidence in record indicating applicant suffered 100 percent permanent disability, and vocational expert report applicant offered was not substantial evidence to rebut scheduled rating in that it lacked sufficient analysis to support finding of permanent total disability.

**Virginia Antunez, Applicant v. Fontana Unified School District, PSI, Defendant,** 2022 Cal. Wrk. Comp. P.D. LEXIS 241. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, after granting reconsideration, affirmed WCJ’s finding that record did not support addition of applicant’s multiple impairments stemming from orthopedic and internal injuries incurred during her employment as child care provider between 2007 and 2009, when WCAB reasoned that under *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), impairments may be added instead of combined using Combined Values Chart (CVC) if substantial medical evidence supports physician’s opinion that adding them will result in more accurate rating, and in this case there was no medical evidence offered to support finding that adding applicant’s impairments was more accurate than combining them using CVC.

**Danny Green, Applicant v. A-Para Transit Corp., Cypress Insurance Company, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 224. Permanent Disability—Rating—Successive Injuries—WCAB, denying reconsideration, affirmed WCJ’s decision that applicant, while working as bus route supervisor, was permanently totally disabled by 1/19/2013 injuries to his neck, back, and upper extremity, based on opinion of applicant’s vocational expert that applicant could not return to labor market and was unable to participate in vocational rehabilitation due to these injuries, and that applicant, after undergoing total knee replacement, was entitled to separate award of 40 percent permanent disability for 7/8/2014 left knee injury, when applicant’s 2013 and 2014 injuries involved different body regions per Labor Code § 4664(c)(1) and there was no evidence of overlapping disability between applicant’s dates of injury.

**Perry Morefield, Applicant v. County of Ventura, PSI, Defendant,** 2022 Cal. Wrk. Comp. P.D. LEXIS 233. Permanent Disability—Rating—WCAB, granting reconsideration, amended WCJ’s decision to reflect that applicant who sustained cumulative injury in form of carpal tunnel syndrome while employed as mental health associate from 9/22/2014 to 7/25/2018 suffered 48 percent permanent disability, not 50 percent permanent disability as determined by WCJ, when WCJ, in rating applicant’s permanent disability, included impairment for loss of motion which was not recommended by orthopedic qualified medical evaluator (QME), and WCAB explained that, as described in *Blackledge v. Bank of America* (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), it is physician’s role to assess injured worker’s whole person impairment (WPI), that WCJ acted improperly by including impairment ratings not found to be appropriate by QME, and that proper rating of applicant’s permanent disability was 48 percent based on QME’s determination that applicant’s injury caused peripheral nerve sensory and motor WPI of 15 percent for left upper extremity and 16 percent WPI for right upper extremity.

**Katherine Ann Burton, Applicant v. Motel 6, Liberty Mutual Insurance Company, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 246. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, granting reconsideration, amended WCJ’s decision to reflect that applicant who sustained industrial injury to her spine, left wrist/hand, gastrointestinal system, and in forms of xerostomia and opioid-induced endocrinopathy while working as housekeeper on 4/15/2013 suffered 78 percent permanent disability from her injury, rather than 80 percent as determined by WCJ, but WCAB affirmed WCJ’s decision to combine applicant’s orthopedic, internal medicine and dental permanent disabilities using Combined Values Chart (CVC) instead of adding those disabilities pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), when WCAB reasoned that in *Kite*, medical evaluator explained why disparate impairments were not actually disparate, and impairments in question were all under physician’s expertise, whereas in applicant’s case evaluating physicians suggested adding impairments found by them in their own specialty to impairments in completely different body systems found by different specialists without providing any compelling reasons why impairments should be added, and WCAB found that questions beyond applicant’s impairment in specialists’ specific fields, including applicant’s overall impairment or operation of CVC, were beyond specialists’ expertise.

**Transito Prieto, Applicant v. Sylmar Health & Rehabilitation Center, insured by California Healthcare Industry Program, administered by Intercare Holdings Insurance Services, Inc., Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 238. Permanent Disability—Rating—Occupational Group Numbers—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant certified nursing assistant suffered injury AOE/COE on 9/8/2018 while performing tasks consistent with occupational group number 460, when WCAB found that although parties stipulated as to applicant’s job title, occupational group number was disputed issue at trial, that evidence in this case indicated applicant actually performed duties required of more arduous occupation, and that applicant’s uncontroverted testimony that he was required to assist in physical restraint of combative patients supported WCJ’s finding that applicant performed physical duties of orderly, consistent with occupational group number 460.

**Ruben Gilbert, Applicant v. Southern California Reception Center, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 202. Permanent Disability—Rating—WCAB, following grant of reconsideration, affirmed WCJ’s finding that applicant security supervisor’s 1/2/2004 industrial injury caused 56 percent permanent disability, and that WCJ properly rated applicant’s disability using 2005, rather than 1997, Permanent Disability Rating Schedule, pursuant to Labor Code § 4660(d), when there was no evidence in medical record that applicant had permanent disability prior to 2005, and WCAB found that permanent disability could not be inferred merely based on fact that applicant underwent arthroscopic surgeries before 2005, without evidence that surgeries resulted in permanent disability.

**Ruben Gilbert, Applicant v. Southern California Reception Center, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 202. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, following grant of reconsideration, affirmed WCJ’s finding that applicant security supervisor’s 1/2/2004 industrial injury caused 56 percent permanent disability, and determined that factors of disability were properly combined using Combined Values Chart (CVC) rather than by adding factors, when WCAB reasoned that disability values of multiple impairments may be added instead of combined using CVC only if record contains substantial medical evidence that adding injured worker’s impairments will result in more accurate rating of worker’s disability than use of CVC, and that qualified medical evaluator’s (QME) opinions in this case did not constitute substantial evidence that applicant’s factors of disability should be added, because QME did not explain how applicant’s lumbar spine impairment, lower extremity impairment and right hip impairment were non-overlapping.

**Kevin Boss, Applicant v. Oakland Raiders, ACE American Insurance c/o Tristar Risk Management, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 211. Permanent Disability—Rating—WCAB, granting reconsideration, amended WCJ’s decision to reflect that applicant’s traumatic brain injury incurred while playing professional football during period 8/6/2011 to 1/1/2012 resulted in 30 percent permanent disability, not 42 percent permanent disability as determined by WCJ, when WCJ determined permanent disability by combining ratings derived from whole person impairments (WPI) assigned by two different medical evaluators, and WCAB found that WCJ’s method was contrary to goal of formulating valid impairment rating under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, which is to approximate rating that accurately reflects injured employee’s actual impairment and may or may not be highest rating, depending on facts of particular case, that in this case, agreed medical evaluator’s (AME) evaluation of impairment, placing applicant in Class 2 under Table 13-6 (Criteria for Rating Impairment Related to Mental Status) of AMA *Guides* and giving rating of 20 percent WPI within that class most accurately reflected applicant’s actual impairment, that there was no good reason to reject AME’s opinion, as AME’s opinion is ordinarily followed given that AME has been chosen by parties for physician’s expertise and neutrality, and that relevant and considered opinion of one physician may constitute substantial evidence.

**Ladylyn Cordero, Applicant v. Dollar Thrifty Automotive Group (Hertz Corporation), ACE American Insurance Company, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 172. Permanent Disability—Rating—Permanent Total Disability—WCAB, granting reconsideration, amended WCJ’s decision to correct typographical error but affirmed WCJ’s finding that applicant who sustained industrial injury to her right upper extremity/arm and in form of migraines while working as sales representative on 5/12/2016 was permanently and totally disabled based on substantial medical evidence, when WCAB found that although qualified medical evaluators had some disagreement regarding whether applicant suffered from complex regional pain syndrome or frozen shoulder syndrome, they agreed that severity of applicant’s functional limitations across range of medical specialties rendered applicant 100 percent permanently disabled based on AMA *Guides* rating, and that defendant failed to demonstrate applicant’s level of permanent disability was attributable to unreasonable failure to fully participate in physical therapy.

**Vincent Helper, Applicant v. County of Sonoma/Health Services Dept., PSI, administered by Intercare Holdings Insurance Services, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 179. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of 7/22/2010 industrial injury to his right foot and ankle, based on opinions of applicant’s vocational expert, when vocational expert, after evaluating applicant, concluded that applicant was not amenable to vocational rehabilitation and was precluded from employment based on medical work restrictions, and WCAB found that vocational expert’s opinion was substantial evidence to rebut strict AMA *Guides* rating of 54 percent permanent disability pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and was more persuasive than opinion of defendant’s vocational expert, and WCAB rejected defendant’s assertion that finding of 100 percent permanent disability was inappropriate given agreed medical examiner’s 15 percent apportionment of permanent disability to non-industrial factors, because vocational expert determined that applicant was permanently totally disabled and unable to work in labor market *solely* due industrial injury.

**Luis Garcia (deceased), Marlene Garcia, Applicant v. Los Angeles County Probation Department, PSI, administered by Sedgwick Claims Management Services, Inc., Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 147. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration of its prior decision [see *Garcia v. Los Angeles County Probation Department*, 2022 Cal. Wrk. Comp. P.D. LEXIS 55], affirmed that permanent disability caused by applicant’s multiple internal injuries and his psychiatric injury was properly determined by adding applicant’s multiple internal injury impairments and then combining that impairment with psychiatric impairment using Combined Values Chart, resulting in 95 percent permanent disability, when medical evidence indicated that adding internal injury impairments more accurately reflected extent of applicant’s disability, thereby supporting addition of internal injury impairments, but there was no substantial medical evidence to support addition of psychiatric disability to other factors.

**Jorge German Benavides, Applicant v. Wagner Ryan, individually, AGS Tile and Stone, Wesco Insurance Company, administered by AmTrust North America, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 146. Permanent Disability—Rating—Substantial Evidence—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant tile setter suffered 38 percent permanent disability as result of 10/18/2017 industrial low back injury, based on opinion of qualified medical evaluator (QME) using analysis outlined in *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to account for most accurate measure of applicant’s disability, when WCAB found that QME’s opinion was more persuasive than opinion of applicant’s vocational expert who found 100 percent permanent disability but did not provide sufficient reasoning for his assessment and failed to address applicant’s lack of attempt or effort to re-enter workforce or obtain retraining.

**Robert Gonzales, Applicant v. Northrop Grumman Systems Corporation, AIG, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 159. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration, affirmed WCJ’s finding that applicant suffered 100 percent permanent disability, after apportionment, as result of industrial injuries to his shoulders, knees, cervical spine, lumbar spine, and in form of heart disease/hypertension, when WCAB found that opinion of applicant’s vocational expert that applicant was unable to participate in open labor market due to his industrial injuries and was not amenable to vocational rehabilitation was sufficient to rebut scheduled permanent disability rating under standards outlined in *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Lillian Fitzgibbons, Applicant v. Tesla, Inc., and American Zurich Insurance Company, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 119. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant rebutted scheduled permanent disability rating and established that she suffered 100 percent permanent disability as result of 11/28/2016 lumbar spine injury sustained while working for defendant as production associate, when WCAB found that opinions of applicant’s primary treating physician and those of agreed medical examiner analogizing applicant’s impairment to altered gait disorder due to her limitations to activities of daily living, full-time use of cane, and unusual subjective symptoms were sufficient to rebut scheduled AMA *Guides* rating based on analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and that there was also sufficient evidence to rebut scheduled rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, based on medical evidence and vocational evidence that applicant was not amenable to vocational rehabilitation, lost 100 percent of her future earning capacity and was unable to compete in open labor market due to debilitating effects of her industrial injury.

**Natalia Garcia Cano, Applicant v. Ramco Enterprises, PSI, administered by Intercare Holdings Insurance Services, Inc., Defendants**, 2022 Cal. Wrk. Comp. P.D. LEXIS 110. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, granting reconsideration in split panel decision, rescinded WCJ’s award of 52 percent permanent disability and held that applicant’s 6/14/2018 industrial injuries to her low back, left knee, and left ankle resulted in 59 percent permanent disability, when WCAB found that opinion of qualified medical evaluator (QME) constituted substantial evidence to support adding applicant’s combined ankle and knee impairments to her lumbar spine impairment pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining impairments using Combined Values Chart as WCJ had done, where QME stated that limitations on applicant’s activities of daily living caused by lumbar spine injury were “very different” than those caused by lower extremity injuries, and that adding lower extremity impairments to lumbar impairment would provide most accurate impairment rating, and WCAB determined that QME provided sufficiently detailed explanation regarding why adding impairments would produce most accurate rating to support use of addition method; Commissioner Razo, dissenting, believed QME’s opinion was not substantial evidence to support addition of impairments given overlap of impairments described by QME and QME’s failure to describe type of synergistic effect that would support addition.

**Robert Junge, Applicant v. City of San Jose, PSI, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 375. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying defendant’s Petition for Reconsideration, held that applicant was 100 percent permanently totally disabled by psychiatric injury he suffered during his employment as 911 operator from 7/20/2003 through 10/19/2015, when WCAB found that medical reports coupled with report of applicant’s vocational expert indicating that applicant could not compete in open labor market given his significant limitations and medication reactions, constituted substantial evidence to rebut scheduled AMA *Guides* rating of applicant’s permanent disability and supported finding of 100 percent permanent disability.

**Lo Ching Ziegler, Applicant v. CalPERS, State Compensation Insurance Fund, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 88. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB, denying reconsideration, affirmed WCJ’s finding that industrial injuries incurred by applicant planning assistant on 2/18/2015 and during cumulative period 2/19/2014 through 2/18/2015, which included fibromyalgia and compensable consequence digestive, heart and cognitive disorders, resulted in 100 percent permanent disability, when applicant’s vocational expert concluded applicant was permanently totally disabled and unable to compete in open labor market due to pain, fatigue, cognitive problems, bowel problems, and sleep disturbance, severely limiting use of his prior education and work skills, and WCAB found that opinion of applicant’s vocational expert was more persuasive than opinion of defendant’s expert, was substantial evidence, and, in conjunction with substantial medical evidence reflecting applicant’s total loss of earning capacity, was sufficient to rebut scheduled AMA *Guides* rating of applicant’s impairments, per *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624.

**William Valdez, Applicant v. Orange County Fire Authority, PSI, Defendant,** 2022 Cal. Wrk. Comp. P.D. LEXIS 100. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s award of 89 percent permanent disability for injuries to applicant’s hands/thumbs, shoulders, feet/toes, upper digestive tract/hiatal hernia, and in forms of hypertension and coronary artery disease, and found that WCJ correctly combined applicant’s orthopedic disability with his internal medicine disability using Combined Values Chart (CVC) rather than adding them as recommended by orthopedic physician, when WCAB found that orthopedic physician’s opinion was not substantial medical evidence sufficient to rebut use of CVC pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), because physician did not provide any compelling reason why orthopedic and internal medicine impairments should be added other than to state that disabilities did not overlap, which WCAB found was not pertinent to whether disabilities should be combined or added, and questions beyond applicant’s orthopedic impairment, including applicant’s overall impairment or operation of CVC, were beyond orthopedic physician’s expertise.

**Herman O’Berry, Applicant v. Saint Louis Rams, World League of American Football, NFL Europe/Amsterdam Admirals and Fairmont Premier Insurance Company, administered by Zenith Insurance Company, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 75. Permanent Disability—Rating—Medical Evidence—WCAB, granting reconsideration, affirmed WCJ’s permanent disability rating with respect to factors other than applicant professional football player’s bilateral knee injury, but returned matter to WCJ for further proceedings regarding applicant’s knee disability, when WCAB determined that medical reporting relied upon by WCJ to rate permanent disability related to applicant’s knees was not substantial evidence to support strict AMA *Guides* rating or alternative rating under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and that medical record required further development pursuant to *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion).

**Mauricio Garcia, Applicant v. City and County of San Francisco, PSI, administered by Intercare, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 77. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s decision that vocational expert’s reporting was not substantial evidence to rebut scheduled permanent disability rating of 15 percent for applicant’s industrial orthopedic injury pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when vocational expert improperly attempted to rebut permanent disability rating schedule by substituting percentage of scheduled permanent disability with applicant’s percentage of reduced access to labor market, and WCAB found that scheduled permanent disability rating cannot be rebutted based on reduced access to labor market; WCAB further determined that vocational expert’s opinions were insufficient because they were primarily based on temporary work restrictions imposed two years before applicant’s condition became permanent and stationary.

**Christopher Kozak, Applicant v. City of Torrance, PSI, Defendant,** 2022 Cal. Wrk. Comp. P.D. LEXIS 103. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s award of 74 percent permanent disability to applicant who, while employed as police officer during period 4/4/2012 through 4/4/2013, sustained industrial injury to his low back and hips, and WCAB found that WCJ correctly calculated applicant’s overall permanent disability by adding his bilateral hip impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining them using Combined Values Chart, when panel qualified medical evaluator (PQME) opined that hip impairments should be added due to synergistic effect of bilateral lower extremity condition, and that adding these impairments most accurately reflected applicant’s disability, and WCAB concluded that PQME’s reporting was substantial evidence, and that decisions in *Kite* and *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, support alternative methods of rating if they more accurately reflect level of impairment than that reflected by strict AMA *Guides* rating.

**Debra Anderson, Applicant v. Heritage Provider Network, Travelers Property Casualty Company of America, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 52. Permanent Disability—Rating and Apportionment—Presumption of Total Disability—WCAB, denying reconsideration, affirmed WCJ’s award of 55 percent permanent disability after apportionment and held that applicant, who suffered admitted orthopedic injuries while employed as outpatient nurse case manager during period 8/20/2011 through 8/20/2012, failed to prove that conclusive presumption of permanent total disability applied under Labor Code § 4662(a)(2) based on “loss of both hands or the use thereof,” where applicant’s own testimony indicated she still had use of her hands, including some fine motor capabilities, and WCAB further determined that reports of applicant’s vocational expert were not sufficient to support finding of 100 percent permanent disability based on rebuttal of scheduled rating.

**Efrain Chavarria, Applicant v. State of California, Cal Fire, State Compensation Insurance Fund, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 46. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB denied defendant’s Petition for Reconsideration and affirmed its prior decision [see *Chavarria v. State of California*, 2021 Cal. Wrk. Comp. P.D. LEXIS 345 (Appeals Board noteworthy panel decision)], finding that agreed medical examiner’s (AME) opinion was sufficient to rebut strict application of AMA *Guides* rating for applicant’s testicular cancer per *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and supported finding of 71 percent permanent disability, rather than 65 permanent disability awarded by WCJ based on scheduled AMA *Guides* rating, when defendant did not indicate why AMA *Guides* “strict rating” of impairment resulting from applicant’s testicular injury most accurately reflected his actual impairment, made allegations in Petition for Reconsideration that were not supported by medical evidence, and did not rebut AME’s opinion that alternative rating of applicant’s permanent disability pursuant to *Almaraz/Guzman* more accurately reflected extent of applicant’s disability from testicular cancer.

**Luis Garcia (deceased), Marlene Garcia, Applicant v. Los Angeles County Probation Department, PSI, administered by Sedgwick Claims Management Services, Inc., Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 55. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, granting reconsideration, rescinded WCJ’s finding that applicant’s multiple impairments should be combined using Combined Values Chart (CVC) rather than added due to lack of evidence establishing synergistic effect between impairments, resulting in award of 65 percent permanent disability, and WCAB found, instead, that opinion of agreed medical examiner (AME) constituted substantial evidence to support addition of impairment caused by applicant’s renal insufficiency and impairment caused by his hypertension pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), resulting in 95 percent permanent disability when combined with psychiatric impairment, when WCAB reasoned that existence of “synergistic effect” is not prerequisite to using additive rating method, provided that substantial medical evidence supports physician’s opinion that adding employee’s impairments will result in more accurate rating of employee’s disability than use of CVC, that overlap of impairments is factor to consider in determining whether disability of different body parts should be combined or added, that AME in this case found no overlap in impairments caused by applicant’s renal insufficiency and his hypertension, and that AME’s opinions were unrebutted and should be followed.

**Peter Martinez, Applicant v. Sousa Tire Service, State Compensation Insurance Fund, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 70. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, granting reconsideration, rescinded WCJ’s finding that applicant suffered 100 percent permanent disability as result of orthopedic and psychiatric injuries incurred during his employment as mechanic, and deferred issue of permanent disability so that applicant’s disability may be re-rated using Combined Values Chart (CVC), when WCAB found that WCJ erred by adding applicant’s psychiatric impairment to his combined orthopedic impairments to rate permanent disability, because report of treating psychologist upon which WCJ relied was not substantial evidence to rebut use of CVC, as psychologist did not explain why applicant’s separate impairments should be added, except to state that impairments did not overlap, which WCAB noted was not pertinent to issue of whether permanent disabilities should be combined or added, psychologist made disability determinations outside her own specialty, and psychologist did not discuss synergistic effect of applicant’s multiple impairments or how adding impairments better reflected applicant’s disability, per *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied).

**Gary Bradley, Applicant v. State of California, Legally Uninsured, Defendant,** 2022 Cal. Wrk. Comp. P.D. LEXIS 26. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, granting reconsideration, affirmed WCJ’s use of Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule (2005 Schedule) to combine applicant correctional officer’s orthopedic and hearing loss disabilities resulting from cumulative injury ending on 10/28/2016, rather than adding disabilities pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), when WCAB reasoned that under *Kite*, adding impairments rather than combining them under CVC is justified where substantial medical evidence supports finding that two impairments effectively combine to cause impairment greater than sum of each impairment separately, that evaluator in *Kite* explained why disparate impairments, which were all within evaluator’s area of medical expertise, should be added, that in contrast, orthopedic agreed medical evaluator in this case found no synergistic effect causing increased disability between applicant’s orthopedic and hearing issues, that to extent qualified medical evaluator (QME) in otolaryngology recommended hearing loss impairment be added to orthopedic impairment, his opinion was not substantial evidence because orthopedic impairment was outside QME’s area of expertise, and that applicants assertions regarding overlap of impairments were not relevant under 2005 Schedule.

**Israel Reyes, Applicant v. City of Guadalupe Police Dept., PSI, administered by Sedgwick Claims Management Services, Defendants,** 2022 Cal. Wrk. Comp. P.D. LEXIS 4. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant’s permanent disability from industrial injury to his heart, cardiovascular system and respiratory system while employed as police officer during period 4/1/2005 through 2/16/2019, was more accurately determined by adding his multiple disabilities pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining them using Combined Values Chart, based on opinion of agreed medical examiner (AME), and that, when added, applicant’s permanent disability was 100 percent, when WCAB, citing *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom. Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, explained that AMA *Guides* provide guidelines for exercise of professional skill and clinical judgment which may, in some cases, result in ratings that depart from AMA *Guides*, that AME here reported that applicant’s heart was impacted with multiple severe conditions that had additive effect, that heart condition was materially worse than it would be with only one of these conditions, and that applicant’s disability was more accurately reflected by adding multiple factors rather than combining them, and WCAB found AME’s opinion constituted substantial evidence to support WCJ’s permanent total disability rating based on addition of disabilities.

**Stephen Waggoner, Applicant v. City of Torrance, PSI, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 379. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed decision in which WCJ determined that there was substantial medical and vocational expert evidence in record to support finding that applicant suffered 100 percent permanent disability as result of industrial injuries to multiple body parts/systems while employed as firefighter on 9/2/2011 and during period 3/11/85 through 11/15/2011, when WCAB reasoned that only way to rebut findings of medical evaluators for purposes of either lowering or increasing scheduled permanent disability rating is through vocational expert evidence, that after parties in this matter were unable to agree on vocational expert to evaluate applicant’s disability, WCJ, pursuant to Labor Code §§ 4660 and 5701, appropriately appointed vocational expert Enrique Vega to further develop record regarding extent of applicant’s disability based on his diminished earning capacity, as described in *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, that Mr. Vega’s report and trial testimony, permitted under Labor Code § 5703(j), indicated applicant was not amenable to vocational rehabilitation and had total loss of earning capacity entirely caused by his industrial injuries, with no basis for apportionment, and that Mr. Vega’s opinion, coupled with opinions of orthopedic agreed medical examiner and qualified medical evaluators in different specialties, who evaluated applicant using AMA *Guides* criteria, was substantial evidence under *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), to rebut scheduled permanent disability rating and support finding of permanent total disability.

**Eugene Clancy, Applicant v. Save Mart, PSI, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 321. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration, affirmed WCJ’s finding that applicant was permanently totally disabled as result of admitted 8/29/2011 industrial injury to his low back, psyche, sleep, bladder, and in forms of irritable bowel syndrome and sexual dysfunction, while employed as stocker, when vocational expert evidence relied upon by WCJ indicated that applicant was not amenable to vocational rehabilitation and that agreed medical examiner’s medical work restrictions precluded applicant from returning to gainful employment, and WCAB found that vocational evidence met requirements of *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, to rebut ratings derived from application of Permanent Disability Rating Schedule.

**Anthony Gomes, Applicant v. City and County of San Francisco, PSI, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 334. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, found that applicant was permanently totally disabled by industrial injuries he suffered while working as police officer during period 10/26/2017 through 10/26/2018, when WCAB found that (1) applicant’s impairments for thyroid disease, loss of skin in his neck, and difficulties with speech and swallowing/deglutition should be added rather than combined using Combined Values Chart, based on agreed medical examiner’s (AME) testimony that when applicant’s thyroid was removed, it led to impaired swallowing and saliva function, which in turn led to impaired nutrition and made his overall recovery more difficult, and when impairments were added they exceeded 100 percent even before combining orthopedic and vision impairments, and (2) opinions of AME and vocational expert established applicant’s inability to participate in vocational rehabilitation and return to gainful employment.

**Sheryl Wilson, Applicant v. Kohls Department Store, New Hampshire Insurance Company, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 322. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Diminished Future Earning Capacity—WCAB, granting reconsideration, awarded applicant 87 percent permanent disability based on scheduled AMA *Guides* rating, and affirmed WCJ’s finding that applicant, who sustained 9/20/2016 industrial injury to her lumbar spine, left ankle and in form of chronic regional pain syndrome while working as retail salesclerk, did not establish that she suffered permanent total disability as result of her injury or that she was entitled to increased permanent partial disability beyond that reflected in scheduled rating based on diminished future earning capacity (DFEC), when WCAB reasoned that given clear language in Labor Code § 4660.1, coupled with statute’s legislative history and other provisions enacted as part of SB 863, for dates of injury on or after 1/1/2013 injured worker cannot rebut permanent partial disability schedule using DFEC analysis as set forth in *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624 [Labor Code § 4660.1(a)], that although injured worker may continue to rebut permanent disability rating schedule to show permanent total disability “in accordance with the fact” [Labor Code §§ 4660.1(g), 4662(b)] based on complete loss of earning capacity, and is permitted to obtain vocational expert evidence as rebuttal evidence [Labor Code § 5703(j)], applicant here did not provide substantial medical or vocational evidence to rebut scheduled rating where agreed medical examiner (AME) imposed only limited work restrictions, which vocational expert did not believe precluded applicant from gainful employment, and AME’s opinion that applicant was precluded from work due to restrictions he imposed was insufficient because he did not have expertise to opine regarding applicant’s vocational feasibility, but rather vocational expert evidence was required on this issue.

**Efrain Chavarria, Applicant v. State of California, Cal Fire, State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 345. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, granting reconsideration, rescinded WCJ’s award of 65 percent permanent disability based on scheduled whole person impairment ratings, and held that agreed medical examiner’s (AME) opinion was sufficient to rebut strict application of AMA *Guides* rating for applicant’s testicular cancer per *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and supported finding that applicant, who incurred industrial injury to his abdomen, groin, heart, and in form of testicular cancer while employed as fire apparatus engineer during cumulative period ending on 12/11/2014, suffered 71 percent permanent disability, when AME testified that strict application of AMA *Guides* for applicant’s reproductive condition was inaccurate because of his loss of reproductive activity at relatively young age of 40 due to inability to produce testosterone, and added 8 percent to applicant’s impairment for reproductive problems, plus 1 percent because applicant was required to take testosterone replacement by skin application, and WCAB concluded that in applying add-ons to strict impairment rating, AME appropriately addressed considerations unique to applicant’s injury using his skill and expertise, and provided most accurate assessment of applicant’s actual impairment resulting from testicular cancer.

**Ricardo Gonzalez, Applicant v. Advanced Construction, Old Republic General Insurance Corp., adjusted by Gallagher Bassett, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 336. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant suffered 88 percent permanent disability as result of severe injuries to multiple body parts incurred on 10/16/2015 when he fell from second story beam onto concrete below while working on construction site, when WCJ properly added applicant’s multiple impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining percentages using Combined Values Chart, based on opinions of agreed medical examiner and qualified medical evaluator that it was appropriate to add impairments given synergistic effect between applicant’s loss of vision, orthopedic injuries, pain, post-traumatic stress disorder, and mild cognitive injury.

**Craig Minniefield, Applicant v. State of California—Department of Corrections Inmate Claims, legally uninsured, administered by State Compensation Insurance Fund/State Contract Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 347. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant, while employed as inmate laborer by defendant on 12/28/2014, suffered industrial injury to his left shoulder, resulting in 33 percent permanent disability based on strict AMA *Guides* impairment rating, and concluded that opinion of orthopedic qualified medical evaluator (QME) was not substantial evidence to support finding of 44 percent permanent disability, because QME improperly assigned impairment based on loss of strength *and* reduced range of motion, which was inconsistent with “strict” interpretation of AMA *Guides*, and QME’s reporting was insufficient to rebut strict AMA *Guides* impairment rating under analysis in *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, as QME did not provide strict rating per AMA *Guides*, failed to explain why strict rating would not accurately describe applicant’s disability, and did not explain why her alternative rating more accurately identified applicant’s level of disability.

**Maria Estrella, Applicant v. State of California, Legally Uninsured, Administered By State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 316. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, denying reconsideration in split panel opinion, affirmed WCJ’s finding that applicant, while working as correctional officer during period ending on 5/17/2017, suffered industrial injury to her right shoulder and spine, resulting in 58 percent permanent disability based on strict AMA *Guides* impairment rating as provided by panel qualified medical evaluator (PQME), and concluded that WCJ correctly rejected PQME’s alternative impairment analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when WCAB panel majority found that PQME did not adequately describe why standard ratings in AMA *Guides* failed to reflect applicant’s lumbar spine and shoulder impairments, and that by combining loss of strength with range of motion impairment, resulting in 15 percent add-on split between lumbar and shoulder impairment, PQME did not stay within four corners of AMA *Guides*; Chair Zalewski, dissenting, agreed that PQME’s add-on for lumbar spine impairment was not warranted, but would have incorporated add-on for right shoulder impairment, when Chair Zalewski reasoned that PQME explained that he chose impairment rating most reflective of applicant’s difficulty performing activities of daily living, and that while upper extremity loss of strength and range of motion impairments are generally not to be combined under AMA *Guides*, *Almaraz/Guzman* allows departure from this guideline when reporting physician clearly indicates that impairment is not accurately measured by only one rating.

**George Hamilton, Applicant v. City of San Jose, administered by Intercare, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 285. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant, while employed as police officer over period ending 1/19/2017, suffered permanent total disability as result of industrially-related bladder cancer, when WCJ’s determination was based, in part, upon her finding that applicant was credible witness, which WCAB found supported urology agreed medical examiner’s (AME) reliance on applicant’s subjective complaints in forming his opinion regarding applicant’s vocational incapacity, and WCAB disagreed with defendant’s assertion that AME in urology was unqualified to offer opinion on applicant’s ability to work in open labor market, where AME’s assessment was based upon his medical expertise in evaluating real-life impact of impairments caused by applicant’s bladder cancer, and his opinion, considered with vocational evidence WCJ relied upon to find applicant rebutted scheduled rating, provided additional substantial evidence of applicant’s lack of vocational feasibility.

**Arvin Manvelian, Applicant v. Edris Plastics Manufacturing, Security National Insurance Company, administered by AmTrust, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 298. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration and affirming WCJ’s decision, held that applicant who suffered industrial injury to his right hand, right wrist and psyche while employed as machine operator on 9/26/2014 was entitled to award of 100 percent permanent disability, without apportionment, when vocational evidence established that due to effects of his catastrophic industrial injury, applicant was precluded from returning to gainful employment in open labor market and was unable to benefit from vocational rehabilitation, and WCAB found that vocational evidence was sufficient to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Jose Mendez, Applicant v. Sun and Sands Enterprises, LLC, and Insurance Company of the West, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 240. Permanent Disability—Rating—*Almaraz/Guzman* Analysis—WCAB, granting reconsideration, affirmed WCJ’s finding that opinion of qualified medical evaluator was substantial evidence, based on analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to support WCJ’s finding of permanent disability associated with applicant irrigator’s 12/30/2016 blunt trauma chest injury, when AMA *Guides* did not address chest wall pain resulting from applicant’s injury, and consistent with *Almaraz/Guzman*, qualified medical evaluator provided alternate rating within four corners of AMA *Guides* by analogizing applicant’s chest injury with guidelines pertaining to respiratory system, and WCAB determined that qualified medical evaluator adequately explained why applicant’s symptoms were consistent with criteria he applied, and exercised his professional skill and judgment in determining most accurate impairment rating, and WCAB also pointed out that lack of objective abnormalities did not preclude rating by analogy under *Almaraz/Guzman* based solely on applicant’s complaints of pain.

**Maria Carmen Jimenez, Applicant v. State of California/In-Home Supportive Services, legally uninsured, administered by York Risk Services Group, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 232. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration and amending WCJ’s decision, held that applicant caregiver’s 12/22/2008 low back injury caused 39 percent permanent disability (rather than 14 percent as found by WCJ), when orthopedic agreed medical examiner provided strict application of AMA *Guides* using diagnosis-related estimate method of rating applicant’s lumbar spine impairment and then, consistent with *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, explained why that method was not accurate rating of applicant’s actual impairment and stated that applicant had lost approximately 30 percent of her lumbar spine pre-injury capacity, which equated to 27 percent lumbar spine whole person impairment based on Figure 15-19 of AMA *Guides*, and WCAB found that agreed medical examiner’s conclusions were substantial evidence, and that after apportionment applicant’s permanent disability adjusted to 39 percent; WCAB deferred issue of whether applicant’s sleep disorder caused permanent disability after determining that internal medicine agreed medical examiner’s conclusion that applicant had 5 percent whole person impairment for sleep was not substantial evidence because he did not explain why Epworth Sleepiness Scale, alone, would be appropriate measure of applicant’s sleep impairment nor did he provide reasoning or analysis for his opinion, and WCAB concluded that further development of medical record pursuant to *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), was necessary on issue of sleep impairment.

**Kimberly Kidd, Applicant v. Alameda Contra Costa Transit District, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 223. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, denying reconsideration, affirmed WCJ’s finding that applicant bus driver’s 8/6/2013 industrial injury to her head, neck, back, shoulders, and psyche caused 92 percent permanent disability, and concluded that WCJ correctly rated permanent disability by adding percentages of permanent disability caused by orthopedic and psychiatric conditions pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than by combining percentages using Combined Values Chart (CVC), when WCAB reasoned that disability values of multiple impairments may be added instead of combined using CVC if adding impairments provides more accurate rating of injured worker’s disability, particularly when there is no overlap and when synergistic or additive effect of multiple disabilities support adding them, and WCAB concluded that opinion of psychiatric agreed medical examiner in this matter constituted substantial evidence to support addition of applicant’s multiple impairments, where doctor explained that applicant’s physical and psychiatric disabilities should be added because applicant’s pain and limitations caused by orthopedic injuries resulted in diminished motivation to engage in activities, withdrawal, diminished life enjoyment, and anxiety about her future, that, in turn, psychiatric symptoms reduced effectiveness of applicant’s medical treatment and contributed to her self-limiting pain behavior, that ratings of injured body parts were distinct, and that psychiatric rating was independent of rating for applicant’s pain and physical limitations.

**Vilma Angeles, Applicant v. Alameda Healthcare & Wellness Center, Ullico Casualty Company, in liquidation, administered by Intercare Insurance, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 243. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, granting reconsideration, rescinded WCJ’s finding that applicant suffered 74 percent permanent disability as result of admitted cumulative trauma to her neck, upper extremities, nervous system, and other body systems during period 10/22/88 through 5/1/2020 while employed as medical records supervisor, and instead found applicant successfully rebutted permanent disability rating schedule to prove she was 100 percent permanently disabled by her injuries, when substantial medical and vocational evidence established that applicant lost all of her labor market access and was not amenable to vocational rehabilitation due solely to effects of industrial orthopedic and psychiatric injuries per *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and there was no substantial medical evidence in record to support apportionment of permanent disability.

**Justo Gomez, Applicant v. McDonald’s Warmel Company, administered by Broadspire, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 233. Permanent Disability—Rating—Sufficiency of Vocational Evidence—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to his neck, shoulders, elbows, wrists, thumbs, and knees while employed as maintenance technician over period 5/24/2009 through 9/8/2020 was entitled to 24 percent permanent disability after apportionment to non-industrial factors, based on opinion of agreed medical examiner, and WCAB agreed with WCJ’s determination that report of applicant’s vocational expert was insufficient to rebut AMA *Guides* permanent disability rating, when vocational expert’s analysis was premised on incomplete history of applicant’s employment, and, moreover, failed to adequately address non-industrial factors which agreed medical examiner determined caused some of applicant’s current level of disability, and without sufficient explanation regarding how applicant’s non-industrial limitations factored into his ability to participate in vocational rehabilitation and return to work in open labor market, vocational expert’s report was not substantial evidence.

**Oliver Winston, Applicant v. CDCR-Wasco State Prison, legally uninsured, State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 239. Permanent Disability—Rating—Substantial Evidence—WCAB, granting reconsideration, rescinded WCJ’s decision finding applicant suffered 72 percent permanent disability after apportionment, as result of admitted industrial injury to his upper extremities, hands and wrists while employed as correctional officer during period 10/85 through 12/22/2002, and WCAB deferred issue of permanent disability and returned matter to trial level for further proceedings, when report of orthopedic agreed medical examiner relied upon by WCJ was not substantial evidence, as doctor did not provide any reasoning regarding impairment or apportionment, specifically failing to address restriction on ratable impairment for applicant’s decreased range of motion and impairment for compression neuropathies as well as impairment related to his other diagnoses, and additionally, WCJ’s rating instructions did not comply with *Blackledge v. Bank of America* (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), because WCJ did not list all of applicant’s impairments in instructions to Disability Evaluation Unit (DEU) but instead improperly directed DEU rater to read medical report to locate physician’s impairment ratings.

**Tracy Lee, Applicant v. Xchanging, Granite State Insurance Company, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 200. Permanent Disability—Rating and Apportionment—Range of Evidence—WCAB affirmed WCJ’s finding that applicant who sustained industrial orthopedic and psychiatric injury suffered 84 percent permanent disability based on range of evidence, including applicant’s testimony, vocational evidence, formal disability ratings, and conflicting opinions of different reporting physicians, and WCAB rejected defendant’s assertion that applicant’s prior award of 84 percent permanent disability should be subtracted from present award (which would result in zero permanent disability) under Labor Code § 4664(b), when applicant’s prior permanent disability award was calculated under 1997 Schedule for Rating Permanent Disabilities whereas current award was based on 2005 Schedule, and therefore WCJ correctly applied apportionment as determined by examining physicians rather than by subtracting prior award.

**Anastacio Lamas, Applicant v. Allen Construction, Penn Manufacturing Insurance Company administered by American Claims Management, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 195. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant construction laborer suffered 100 percent permanent disability as result of 9/14/2010 industrial injury to his right shoulder, right leg, upper extremities, right lower extremity, lumbar spine, right elbow, right hip, right knee, psyche, and internal system (gastritis and constipation), and found that opinion of applicant’s vocational expert that applicant could not return to open labor market and was not amenable to vocational rehabilitation due to his industrial injury was substantial evidence pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut scheduled permanent disability rating, and that under *Dept. of Corrections & Rehabilitation v. W.C.A.B.* (*Fitzpatrick*) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, vocational expert opinion may be relied upon to establish that injured worker has greater loss of future earning capacity than provided by permanent disability rating schedule.

**Ellen Strauss, Applicant v. Barrett Business Services, ACE American Insurance Company, adjusted by Corvel, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 202. Permanent Disability—Rating—Vocational Evidence—WCAB, affirming WCJ’s decision, held that applicant suffered 100 percent permanent disability as result of cumulative injury to her shoulders, wrists and in form of station/gait disorder while employed as office manager on 12/15/2015, and found that defendant was not entitled to obtain new qualified medical evaluator to consider defendant’s vocational rehabilitation report where original qualified medical evaluator died before defendant obtained vocational evidence to rebut evaluator’s finding of permanent total disability, when WCAB concluded that defendant’s vocational evidence, which identified sedentary clerical positions as potential occupational matches for applicant, would not likely have altered qualified medical evaluator’s finding of 100 percent permanent disability, which was based in part on results of Functional Capacity Evaluation (FCE) that indicated applicant was unable to perform sedentary work, and WCAB further concluded that defendant’s vocational report was not substantial evidence because it was not based on applicant’s actual work limitations as reflected in FCE or limitations identified by qualified medical evaluator.

**Mayra Apac, Applicant v. Deutsch Metal Company, Travelers Insurance, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 210. Permanent Disability—Rating—Substantial Medical Evidence—WCAB affirmed WCJ’s decision that applicant suffered 47 percent permanent disability as result of 8/19/2004 industrial injury to multiple body parts while employed as machine operator, when parties stipulated that if independent vocational expert’s report was found to be substantial evidence, applicant’s permanent disability rating would be 47 percent after apportionment for injury to her cervical spine, lumbar spine, psyche, and irritable bowel syndrome due to fibromyalgia, and WCAB found independent vocational expert’s report constituted substantial evidence, where expert relied on agreed medical examiner’s work restrictions and preclusions designed to avoid aggravation and exacerbation of applicant’s industrial fibromyalgia symptoms and found that applicant was not precluded from all gainful employment, and contrary to applicant’s assertion, expert did in fact comment on her vocational feasibility, specifically designating work restrictions and preclusions necessary to accommodate her return to workforce.

**Laurie Escobedo, Applicant v. San Luis Coastal Unified School District, AmTrust, administered by Sedgwick Claims Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 213. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant cafeteria worker suffered 60 percent permanent disability as result of 3/19/2014 industrial injury to her lumbar spine, thoracic spine, left knee, and feet, and returned matter to WCJ for new award of 100 percent permanent disability, when WCAB found that there was substantial medical and vocational evidence in record to rebut scheduled rating under *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, where evidence established that applicant was not amenable to vocational rehabilitation and was precluded from returning to open labor market, and WCAB found that applicant’s attempted but unsuccessful participation in vocational rehabilitation program was not evidence she was amenable to vocational retraining or that her ability to benefit from program was only “impaired,” and that applicant’s limited ability to work at home, at her own pace, for up to four hours per day, was akin to sheltered workplace, and not open labor market.

**Alex Solis, Applicant v. County of Los Angeles, PSI, administered by Sedgwick Claims Management, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 209. Permanent Disability—Rating—Medical Evidence—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of industrially-related parotid gland tumor that developed due to his exposure to carcinogens while employed as firefighter during period 8/2/85 to 2/28/2019, when independent medical examiner opined that strict impairment rating did not adequately capture actual impairment caused by extensive neck dissection to remove applicant’s parotid tumor, which included loss of smell, bilateral extremity neuropathy and dysphagia, and WCAB found that independent medical examiner properly applied analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to rate impairment by analogy utilizing Table 6-4 (colonic and rectal disorders) of AMA *Guides* to find 75 percent whole person impairment, which resulted in 100 percent permanent disability rating after adjustment.

**Scott Wiest, Applicant v. California Department of Corrections and Rehabilitation, Centinela State Prison, adjusted by State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 162. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant plumber was permanently totally disabled, without apportionment, by 5/19/2015 industrial injuries to his right foot and ankle, both legs resulting in bilateral below-knee amputations, lumbar spine, vascular system, sleep, and psyche, and held that to find permanent disability, WCJ properly added applicant’s multiple impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than using Combined Values Chart to combine them, when qualified medical evaluator opined that adding disabilities provided more accurate description of applicant’s severe impairment, and WCAB found that qualified medical evaluator’s opinion was supported by evidence that applicant lost both of his legs and suffers phantom pain in his stumps, that he has antalgic gait and requires cane for stabilization as he uses protheses for ambulation and also uses wheelchair, that applicant’s back pain adds additional impairment, that synergistic effect of losing two legs below knee is greater and more limiting than losing one leg, and that there was no overlap of impairment between applicant’s body parts.

**Marion Agro, Applicant v. Macy’s Inc., PSI, administered by Sedgwick Claims Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 181. Permanent Disability—Rating—Medical Evidence—WCAB affirmed WCJ’s finding that applicant retail sales clerk suffered 70 percent permanent disability from 11/1/2016 industrial injury to multiple body parts, including his brain and vision, and found that opinions of neurologist qualified medical evaluator and optometrist agreed medical examiner were substantial evidence under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to support WCJ’s finding of 15 percent whole person impairment for effects of Post-Traumatic Visual Syndrome (PTVS) caused by applicant’s cranial nerve injury, and that further development of record was unnecessary, when AMA *Guides* do not address impairment of cranial nerves affecting eyes or eye perception and therefore doctors were required to rate PTVS by analogy using visual acuity chapters, and WCAB noted that physicians may depart from strict application of AMA *Guides* as long as they explain why departure was necessary and how impairment rating was derived, that overarching goal of rating permanent disability is to achieve accurate impairment rating, and that medical evaluators in this case provided adequate explanation to support their impairment findings under Class II, Table 12-4 of AMA *Guides*, rather than Class I, even though applicant had near normal visual acuity and qualified medical evaluator indicated applicant would fall under Class I if she had corrective lenses with prisms, but applicant did not receive prism glasses and it would be speculative to assume they would have worked.

**Eric Alvarez, Applicant v. Microsoft Corporation, National Union Fire Insurance Company of Pittsburgh, PA, administered by Gallagher Bassett Services, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 180. Permanent Disability—Rating and Apportionment—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of industrial stress-related psychiatric injury pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, based on substantial vocational and medical evidence indicating that applicant was unable to return to labor market due to his industrial injury and was not amenable to vocational rehabilitation, and WCAB found that panel qualified medical evaluator’s apportionment opinion was not substantial evidence under *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), to support apportionment of applicant’s permanent disability to non-industrial hallucinations, where evidence in record established that applicant’s psychiatric injury caused him to experience auditory, visual and tactile hallucinations ever since 2013 on industrial basis and panel qualified medical evaluator did not explain relationship between these industrially-related hallucinations, which worsened from 2013 through 2017, and hallucinations applicant supposedly experienced as result of radiation treatment for non-industrial cancer in 2017, and did not explain how and why non-industrial hallucinations were responsible for percentage of disability he assigned to them.

**Ronald Ferrel, Applicant v. North Kern State Prison, administered by State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 169. Permanent Disability—Rating—AMA *Guides*—WCAB, denying reconsideration, affirmed its prior decision [see *Ferrel v. North Kern State Prison*, 2021 Cal. Wrk. Comp. P.D. LEXIS 112 (Appeals Board noteworthy panel decision)] returning matter to trial level for WCJ to issue new final award of permanent disability based on qualified medical evaluator’s 75 percent whole permission impairment finding, and also affirmed WCJ’s subsequent award of 100 percent permanent disability.

**Brian Hodson, Applicant v. Vacasa, LLC, AmGUARD Insurance Company, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 170. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant suffered 51 percent permanent disability as result of industrial injury to his back, neck, arms/hands, left knee, and head while employed as property manager on 3/6/2018, and held that to find permanent disability, WCJ properly added applicant’s cognitive and psychiatric impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than using Combined Values Chart to combine them, when qualified medical evaluator opined that there was synergistic effect between applicant’s injuries such that his cognitive symptoms (attention, concentration, and memory deficits) caused his emotional symptoms (worry, fear, helplessness, and sadness) to become more intense and, in turn, emotional symptoms caused greater difficulty in accessing and using cognitive functional abilities, that both injuries combined caused more disability than each would by itself, that there was no overlap between disability caused by organic brain injury and disability caused by emotional reaction to impairment caused by brain injury, and that given synergistic effect between cognitive and emotional disabilities, adding impairments produced most accurate reflection of applicant’s overall permanent disability.

**Debra Fleurat, Applicant v. BioBanc, USA, ACE American Insurance Company, administered by ESIS, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 185. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of 7/10/2008 industrial injury to her cervical spine, shoulders, knees, psyche, and in form of vertigo/gait imbalance, and found that vocational evidence WCJ relied upon constituted substantial evidence to support finding that applicant was permanently totally disabled due to her inability to participate in vocational rehabilitation or to return to full-time employment in labor market, pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and that applicant’s disability was solely due to effects of industrial injury, and not to any non-industrial factors.

**Alma Ramirez, Applicant v. Star Insurance Company, insurer for Jaguar Farm Labor Contracting, Inc., administered by Meadowbrook, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 187. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant farm laborer suffered 19 percent permanent disability as result of 7/5/2016 left wrist injury and held that applicant failed to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that vocational expert’s opinions were not substantial evidence to rebut scheduled rating because expert relied on impermissible factors such as pre-injury skills and age and utilized incorrect legal theories to conclude that applicant was not amenable to vocational rehabilitation, and, as explained in *Dept. of Corrections & Rehabilitation v. W.C.A.B.* (*Fitzpatrick*) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, there was no “alternative path” under Labor Code § 4662(b) to rebut permanent disability findings outside of Labor Code § 4660.

**Vincent Watts, Applicant v. Mendocino Forest Products, XL Specialty Insurance, administered by Sedgwick, CMS, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 186. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of 3/24/2014 industrial injury to his shoulders, elbows, wrists, hands, and left middle finger while employed as forklift operator, and found that vocational expert evidence was admissible for purposes of rebutting AMA *Guides* impairment rating for applicant’s post-1/1/2013 date of injury, that opinion of applicant’s vocational expert that applicant was not amenable to vocational rehabilitation and had lost 100 percent of his ability to compete in open labor market was substantial evidence to rebut 62 percent scheduled rating in this case, that defendant’s assertion that vocational expert’s assessment of applicant’s physical capacity exceeded medical restrictions placed by qualified medical evaluator did not address evidence of significant deterioration of applicant’s condition beyond that identified by qualified medical evaluator in 2019, and that orthopedic qualified medical evaluator’s apportionment of applicant’s right shoulder impairment did not preclude finding of permanent total disability, where applicant’s inability to participate in vocational rehabilitation and preclusion from gainful employment was due to applicant’s loss of use of his hands, unrelated to limited range of motion in his right shoulder, and additionally, qualified medical evaluator did not explain how and why applicant’s current level of disability in his right shoulder was causally related to his prior surgeries, as required by *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), and medical evaluator’s apportionment opinion was therefore not substantial evidence.

**Dennis Norwood, Applicant v. Blu Homes, Inc., Cypress Insurance Company, administered by Berkshire Hathaway Homestate Companies, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 153. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant’s industrial injury to his back, left knee, psyche, and reproductive system while employed as general contractor on 2/22/2012 caused 100 percent permanent disability based on opinions of qualified medical evaluator and applicant’s vocational expert, when WCAB noted that measuring psychological impairments are inherently subjective and distinctive from other AMA *Guides* procedures as there are no precise measures of impairment in mental disorders, and WCAB found that functional limitations imposed by qualified medical evaluator, standing alone, were sufficient to document applicant’s diminished work capacity that greatly outweighed ratable impairments within AMA *Guides*, even before considering vocational evidence, and WCAB further found that vocational expert’s opinion that applicant was unemployable, had total loss of earning capacity, and was not amenable to retraining, was sufficient to rebut scheduled permanent disability rating of 75 percent.

**Jeffrey Russell, Applicant v. County of Los Angeles, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 152. Permanent Disability—Rating—Successive Injury to Same Body Region—Lifetime Cap on Award—WCAB affirmed WCJ’s award of 66 percent permanent disability for applicant battalion chief’s cumulative injury in form of colon cancer over period 6/16/1980 through 2/19/2019, after 34 percent apportionment to prior award per Labor Code § 4664(c)(1), when WCAB found that defendant, by submitting prior stipulated awards, established existence of prior awards of permanent disability which affected same body region as applicant’s current injury, that because defendant established that applicant received prior awards for injuries to same “region of the body” as defined in Labor Code § 4664(c)(1)(G), totaling 34 percent permanent disability, most permanent disability applicant could receive in his lifetime for subsequent injuries to same “region of the body” was 66 percent, that 100 percent cap on awards for any one region of body applies even if there is no overlap between permanent disability caused by current injury and permanent disability underlying prior permanent disability awards, and that applicant provided no controlling authority precluding application of Labor Code § 4664(c)(1)(G) to award of permanent disability which was based on rebuttal of strict scheduled rating.

**Christopher Savoie, Applicant v. State of California, Legally Uninsured, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 147. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying reconsideration and affirming its prior decision [see *Savoie v. State of California*, 2021 Cal. Wrk. Comp. P.D. LEXIS 41 (Appeals Board noteworthy panel decision)], found that applicant, while employed as correctional officer during period ending on 2/22/2019, sustained injury in form of hypertensive cardiovascular disease, causing 49 percent permanent disability based on whole person impairment of 30 percent, which was lowest possible impairment allowed in Class 3 of Hypertensive Cardiovascular Disease Table of AMA *Guides*, when WCAB found that applicant minimally met criteria for Class 3 of 30 to 49 percent whole person impairment, that opinion of physician upon which WCJ relied to find lower permanent disability of 32 percent was insufficient to support departure from strict AMA *Guides* rating because physician did not explain why applicant’s disability was lower than that reflected in strict AMA *Guides* rating, and that even if it were permissible to *reduce* scheduled impairment rating based on *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, simply stating that alternative rating is more accurate as physician did here, without any further explanation, does not meet standard of substantial evidence, nor standard to rebut scheduled AMA *Guides* rating.

**Carmen Torres, Applicant v. Santa Barbara Community College District, administered by Keenan & Associates, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 145. Permanent Disability—Rating and Apportionment—Rebuttal of Scheduled Rating—WCAB, amending WCJ’s award, held that applicant suffered 58 percent permanent disability without apportionment as result of 6/8/2011 industrial injury to her neck, back, shoulders, psyche, and gastrointestinal system while employed as teacher, and found that record was insufficient to rebut scheduled rating and support finding that applicant was permanently totally disabled by her injury, when WCAB reasoned that (1) to rebut scheduled permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, applicant was required to establish that her future earning capacity was actually less than that anticipated by scheduled rating based on inability to participate in vocational rehabilitation, and in this case defendant’s vocational expert evidence, which WCAB found was substantial evidence and more persuasive than applicant’s vocational evidence, established that applicant’s medical work restrictions did not preclude her from participating in vocational rehabilitation and returning to full time employment, (2) applicant did not establish medical basis for rating her impairments, other than her shoulder disabilities, using additive method recognized in *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than using Combined Values Chart (CVC), where there were no medical reports concluding that use of CVC to combine applicant’s other impairments would not accurately reflect applicant’s overall disability, and WCJ was not permitted make determination to add impairments absent physician’s opinion that adding them would result in more accurate rating of disability, and (3) contrary to WCJ’s finding, panel qualified medical evaluator’s opinion apportioning 50 percent of applicant’s right shoulder disability to preexisting rotator cuff tear was not substantial evidence to support apportionment under Labor Code § 4663 and *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), because doctor’s analysis did not adequately address how and why applicant’s current level of impairment was caused by prior injury.

**Lawrence Saldana, Applicant v. CA Department of Corrections and Rehabilitation, legally uninsured, adjusted by State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 155. Permanent Disability—Rating—WCAB, affirming WCJ’s decision, found that applicant who sustained industrial injury to multiple body parts on 11/11/2004 and during period 11/11/2003 through 1/7/2005 while employed as parole agent suffered 20 percent whole person impairment for fibromyalgia, and determined that agreed medical examiner appropriately rated impairment for fibromyalgia by analogy to sleep impairment, when WCAB reasoned that fibromyalgia is not directly addressed in AMA *Guides* and therefore evaluating physician was permitted to use his clinical judgment to find analogous impairment from within AMA *Guides*, especially given that fibromyalgia is not well understood and manifests subjective symptoms, that agreed medical examiner adequately explained basis for his rating by analogy to sleep disorder, and that applicant had extensive history of medical-legal examinations with findings of pervasive sleep disturbance, including sleep apnea, across many specialties, and WCAB rejected defendant’s assertion that lack of sleep study precluded rating by analogy to sleep impairment.

**Dennis Orr, Applicant v. Hayward Unified School District, PSI, administered by Schools Insurance Authority, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 117. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, affirming WCJ’s decision, rejected applicant’s assertion that reporting of vocational expert rebutted scheduled permanent disability rating and supported award of 100 percent permanent disability pursuant to *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB found that vocational expert’s determination that there was no apportionment of permanent disability to preexisting factors or to prior injury was not substantial evidence because it was based on incorrect assumptions that applicant’s preexisting condition and prior work injury did not affect applicant’s ability to work, but evidence indicated that applicant never recovered from preexisting back problems or prior injury and therefore apportionment was justified.

**Diane Peters, Applicant v. Bank of America, ACE American Insurance, administered by Sedgwick Claims Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 122. Permanent Disability—Rating and Apportionment—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to various body parts on 4/2/2012 successfully rebutted permanent disability rating schedule, establishing entitlement to award of 100 percent permanent disability without apportionment to nonindustrial causes or to cumulative trauma, when WCAB determined that reporting of applicant’s vocational expert concluding that applicant was precluded from labor market due to her industrial injury and was not amenable to vocational rehabilitation was consistent with medical evidence of applicant’s impairments as well as with applicant’s testimony and constituted substantial evidence, along with medical reporting, to rebut scheduled rating, that agreed medical examiner was unable to apportion applicant’s disability between specific and cumulative injuries, such that case fell within exception to *Benson v. W.C.A.B.* (2009) 170 Cal. App. 4th 1535, 89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases 113, that although agreed medical examiner apportioned disability in applicant’s knees to nonindustrial degenerative changes, those changes were addressed by knee replacement and knee repair surgery and consequently apportionment was not supported, and that while qualified medical evaluator in psychiatry apportioned 10 percent of applicant’s permanent disability to her marijuana use, apportionment was not warranted where evidence indicated that applicant’s marijuana use was due to effects of her industrial injury and there was no evidence that applicant was using marijuana immediately prior to injury.

**Sara Alvarez, Applicant v. Kaweah Delta District Hospital, PSI, Administered By Intercare Holdings Insurance Services, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 133. Permanent Disability—Rating—Gait Derangement—WCAB rescinded WCJ’s finding that applicant’s industrial lumbar spine injury caused 14 percent permanent disability after apportionment, and found instead that injury caused 31 percent permanent disability after apportionment, when WCAB found that WCJ incorrectly based impairment finding on Lumbar Class II Diagnosis Related Estimate (DRE) method rather than rating applicant’s gait derangement as described by panel qualified medical evaluator, and WCAB explained that although AMA *Guides* state that gait derangement rating method should not be utilized when it is possible to use more specific method to determine impairment, panel qualified medical evaluator sufficiently explained why DRE method did not adequately encompass full impairment caused by applicant’s injury, and contrary to WCJ’s finding, evaluator adequately explained applicant’s gait derangement, noting that it was supported by pathologic findings, namely MRI, that while panel qualified medical evaluator ably described gait derangement, he erroneously combined gait derangement method with lumbar DRE method to assign impairment, where AMA *Guides* clearly state that gait derangement is alternative rating method and should never be combined with other impairment methods, and that because gait derangement method produced higher impairment rating than DRE method, gait derangement alone should be utilized to rate applicant’s permanent disability.

**Elena Campos, Applicant v. Hazel Hawkins Memorial Hospital, PSI, administered by Athens Administrators, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 130. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that opinions of qualified medical evaluator constituted substantial evidence to support finding that applicant suffered 38 percent permanent disability as result of 7/12/2018 industrial left shoulder injury while working as certified nursing assistant, when qualified medical evaluator reasonably concluded that strict AMA *Guides* rating was not most accurate measurement of applicant’s impairment, and applied alternative approach to rating based on Table 13-16 of AMA *Guides* pursuant to *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and WCAB found that qualified medical evaluator adequately described why strict rating did not accurately describe applicant’s disability, and explained why, based on limitations of applicant’s activities of daily living, alternative rating more accurately described disability.

**Gilbert Lopez, Applicant v. Hartnell Packing, Inc., Clarendon National Insurance Company, Liberty Mutual Insurance Company, Wausau Underwriters Insurance Company, California Insurance Guarantee Association (CIGA), by Tristar Risk Management, Inc., for Cal Comp, in liquidation, State Compensation Insurance Fund (SCIF), California Indemnity Insurance Company, and Subsequent Injuries Benefits Trust Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 85. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who suffered five industrial injuries, specific and cumulative, to his shoulders, back, heart/cardiovascular system, internal system, psyche, and sleep, while employed as dock supervisor between 1996 and 2005, was entitled to award of 100 percent permanent disability for his injuries, based on opinion of applicant’s vocational expert who concluded that applicant was unable to return to labor market and was not amenable to rehabilitation due to combination of his industrial impairments, when vocational expert reviewed extensive medical records and found that although there were limited jobs applicant could perform with his orthopedic restrictions, he was not feasible for any jobs based on his internal injuries, and injuries were too inextricably intertwined to apportion between them, and WCAB concluded that opinion of applicant’s vocational expert was substantial evidence under *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, to rebut scheduled permanent disability rating, and was more persuasive than opinion of defendant’s vocational expert who identified jobs applicant could perform that were inconsistent with his work restrictions.

**Arturo Diaz, Applicant v. E&F Demolition and Benchmark Insurance Company, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 82. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB found that record in this case was not sufficient to support WCJ’s award of 50 percent permanent disability for applicant’s 1/17/2018 injury to his right foot and toes, and instead awarded 21 percent permanent disability based on agreed medical examiner’s reporting, when WCAB found that opinion of vocational expert relied upon by WCJ was insufficient to rebut scheduled permanent disability rating under *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, because evidence established that applicant was amenable to vocational rehabilitation to enable him to return to labor market, and that contrary to applicant’s assertion, vocational reporting did not provide sufficient evidence to successfully rebut scheduled rating based on alternate method in *Ogilvie*, under which scheduled rating may be rebutted when employee demonstrates that nature or severity of injury is not captured within sampling of disabled workers that was used to compute adjustment factor, and fact that applicant had injury to his right foot and toes leading to amputation of his second toe, did not establish that scheduled rating failed to account for severity of applicant’s injury.

**Michael Thomas, Applicant v. Peter Kiewit Sons’, Inc., PSI, adjusted by, Sedgwick Claims Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 90. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant, while employed as boilermaker, sustained admitted cumulative injury to his lumbar spine, knees and skin during period 10/11/93 through 12/19/2012, resulting in permanent total disability, when WCAB determined that applicant successfully rebutted scheduled permanent disability rating, consistent with *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, based on medical reporting of qualified medical evaluator regarding synergistic effect of applicant’s various impairments, and on opinion of vocational expert indicating that applicant was unable to return to labor market due to his chronic pain and functional limitations and was not amenable to vocational rehabilitation, and WCAB rejected defendant’s assertion that vocational expert improperly attributed applicant’s vocational impairment to nonindustrial factors, noting that vocational expert relied upon factors identified by qualified medical evaluator, including factor that combination of applicant’s knee and low back impairments caused greater loss of function than they would individually, and WCAB also rejected defendant’s assertion that it was denied due process by WCJ’s refusal to continue trial to allow defendant to obtain vocational expert report, where defendant had ample time prior to trial to obtain such report but failed to do so.

**Patrick Walsh, Applicant v. Skyline Steel Erectors, Zurich, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 84. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB amended WCJ’s decision to reflect that applicant suffered 91 percent permanent disability as result of 12/15/2014 industrial injury to multiple body parts while employed as ironworker, based on scheduled impairment rating, when WCAB found that WCJ’s award of permanent total disability was based on misapplication of apportionment law and reliance upon report of vocational expert that was not substantial evidence to rebut scheduled rating of 91 percent permanent disability, and WCAB explained that vocational expert’s opinion that applicant was unemployable and not amenable to vocational rehabilitation was insufficient because it failed to account for agreed medical examiner’s apportionment of 25 percent permanent disability to applicant’s nonindustrial, degenerative spondylolisthesis, as mandated by *Acme Steel v W.C.A.B.* (*Borman*) (2013) 218 Cal. App. 4th 1137, 160 Cal. Rptr. 3d 712, 78 Cal. Comp. Cases 751, that WCJ’s failure to consider agreed medical examiner’s apportionment based on her finding that there was no evidence applicant’s preexisting disability was labor-disabling was contrary to principles in Labor Code § 4663, which require apportionment to pathology and asymptomatic conditions, and that even in cases where there is substantial vocational evidence that applicant has 100 percent loss of earning capacity and is permanently totally disabled, per *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, substantial medical evidence of apportionment must be considered and applied by vocational experts and WCJ.

**James Fraser, Applicant v. Geil Enterprises, Inc., U.S. Fire Insurance Company, administered by Crum & Forster, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 98. Permanent Disability—Rating—Combining Multiple Disabilities—Rebuttal of Scheduled Rating—WCAB, affirming WCJ’s decision, held that applicant’s 12/29/2010 industrial injury to multiple body parts, including head and brain, resulted in 100 percent permanent disability, and that WCJ correctly calculated applicant’s overall permanent disability by adding his multiple impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than using Combined Values Chart to combine them, when WCAB found that strict application of AMA *Guides* may be rebutted, consistent with *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to assess employee’s level of impairment most accurately, and that in this case reporting doctor’s opinion that applicant’s impairments were synergistic given their severe nature and should be added, supported WCJ’s use of addition method to find permanent disability.

**Ronald Ferrel, Applicant v. North Kern State Prison, administered by State Compensation Insurance Fund, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 112. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant suffered 96 percent permanent disability as result of cumulative trauma to his heart over period 6/1/96 through 10/28/2016, and returned matter to trial level for new final award based on qualified medical evaluator’s 75 percent whole person impairment rating, which provided adjusted 100 percent permanent disability rating, when WCAB concurred with qualified medical evaluator’s determination that 75 percent whole person impairment based on Class 4, Table 3-6a in Chapter 3 of AMA *Guides*, best described level of severity of applicant’s coronary heart disease in presence of hypertension.

**Margaret Nelligan, Applicant v. Grocery One, Inc., and Samsung Fire and Marine Insurance, administered by Broadspire, Inc., Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 110. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Medical Evidence—WCAB rescinded WCJ’s finding that applicant suffered 28 percent permanent disability as result of cumulative injury through 7/14/2014 to her right shoulder and elbows, based on agreed medical examiner’s analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and returned matter to trial level for further development of medical record, when WCAB concluded that agreed medical examiner’s opinion was not substantial evidence upon which to base finding of permanent disability because although doctor provided strict AMA *Guides* rating of applicant’s right shoulder impairment in addition to alternative rating, he did not explain why strict rating was not accurate nor why alternative rating more accurately reflected applicant’s level of disability.

**Steven Portoles, Applicant v. Frontier Communications, Insured by American Zurich Insurance Company, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 109. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Medical Evidence—WCAB, affirming WCJ’s decision, held that opinion of panel qualified medical evaluator was substantial evidence to support finding that right shoulder and right arm injuries applicant sustained on 5/30/2018 in work-related motor vehicle accident caused 19 percent permanent disability, based on analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when WCAB found that panel qualified medical evaluator’s reports met requirements of *Almaraz/Guzman*, as he reviewed treating physician’s report and provided clear and reasonable explanation for his rating of applicant’s impairment by analogy within upper extremity chapter of AMA *Guides*, and his opinions were more persuasive than reporting of primary treating physician who failed to review qualified medical evaluator’s report prior to rendering his opinion.

**Michael Tiscareno, Applicant v. City of Richmond, PSI, adjusted by AIMS, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 113. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant firefighter’s industrial injury to his neck, back, shoulders, knees, and elbows caused 100 percent permanent disability, and held that to find permanent disability, WCJ properly added applicant’s multiple impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than using Combined Values Chart to combine them, based on opinion of agreed medical examiner (which constituted substantial evidence) that impairments acted synergistically to create higher level of disability than each impairment would cause individually, and that adding them was medically appropriate.

**Angela Dominguez, Applicant v. Cecilia Wilkinson, USAA, administered by Liberty/Helmsman Management Services, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 49. Permanent Disability—Rating—Sufficiency of Vocational Evidence—WCAB affirmed WCJ’s finding that applicant sustained 70 percent permanent disability as result of injury to her right upper extremity, cervical spine, psyche, gastrointestinal system, temporomandibular joint, and in forms of headaches and dental problems while working as housekeeper on 7/10/2003, and determined that report of vocational expert indicating that applicant was not amenable to vocational rehabilitation was not substantial evidence to establish that applicant was permanently totally disabled, when WCAB found that vocational expert’s conclusion that applicant was unable to participate in vocational rehabilitation was based on numerous subjective factors that were not reflected in medical record, including applicant’s pain complaints, which agreed medical evaluator found to be exaggerated, and to limitations on standing and walking that no physician stated were caused by applicant’s injury, and that although applicant admitted her lack of education and limited use of English impaired her ability to find jobs, vocational expert did not discuss how she segregated these nonindustrial factors from her analysis of applicant’s amenability to vocational rehabilitation.

**Jeronimo Heredia, Applicant v. Treasury Wine Estates Corporation, insured by Sentry, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 46. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Sufficiency of Vocational Evidence—WCAB, affirming WCJ’s decision, held that applicant sustained 100 percent permanent disability as result of industrial injury to his mid-back, neck, left wrist, left shoulder, left elbow, groin, and low back, with radiculopathy to left leg and foot, on 4/2/2016 while employed as field/agriculture worker, based on report of applicant’s vocational expert which WCAB found was substantial evidence to rebut scheduled permanent disability rating under *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, when (1) WCAB rejected defendant’s attempt to analogize this case to *Dahl* (where applicant failed to rebut scheduled rating), noting that unlike in *Dahl*, applicant’s vocational expert expressly performed individualized vocational evaluation of applicant and determined that applicant was not amenable to vocational rehabilitation, and treating physician provided formal work restrictions which were consistent with vocational expert’s findings, and that unlike in *Dahl*, there was ample evidence in this case that applicant’s industrial injuries rendered him incapable of rehabilitation and unemployable, and (2) WCAB found that opinion of defendant’s vocational expert was not substantial evidence, because expert’s reporting was replete with assumptions contradicted by evidentiary record, and it ignored functional limitations set forth by applicant’s treating physician, and was speculative in its conclusion that applicant was unmotivated to secure gainful employment based on nonindustrial factors.

**Raquel Montejano, Applicant v. Los Angeles County Probation, PSI, Administered by Sedgwick CMS, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 60. Permanent Disability—Rating—Combining Multiple Impairments—WCAB, affirming WCJ’s decision, held that applicant’s cumulative injury to her cervical spine, lumbar spine, right shoulder, left hip, psyche, gastrointestinal system/IBS, and sleep while employed as contract program auditor from 9/15/2010 through 9/15/2011 resulted in 100 percent permanent disability, and found that WCJ properly rated applicant’s permanent disability by adding her various impairments rather than combining them using Combined Values Chart, when agreed medical evaluator concluded that applicant’s impairment to multiple body parts should be added based on their synergistic effect on one another and that adding impairments would produce most accurate rating, and WCAB found that agreed medical examiner’s opinion was substantial evidence and should be followed, and that apportionment of applicant’s permanent disability to nonindustrial causes did not preclude finding of permanent total disability because, utilizing addition method, applicant’s permanent disability totaled more than 100 percent regardless of apportionment.

**Javier Mondragon, Applicant v. Allied Waste Systems, Inc./Republic Services, ACE American Insurance Company, adjusted by Cannon Cochran, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 24. Permanent Disability—Rating—Functional Capacity Evaluation—WCAB rescinded WCJ’s award of 49 percent permanent disability to applicant who suffered admitted industrial injury to his right hip and lumbar spine while employed as truck driver on 4/11/2016, and returned matter to trial level for parties to obtain new Functional Capacity Evaluation (FCE) and provide it to agreed medical examiner for his consideration, when agreed medical examiner found that first FCE was “minimally helpful” as it was clear that applicant did not utilize maximum effort in FCE and, therefore, applicant’s true physical limitations were unclear, and WCAB found that second FCE in which applicant fully participates is necessary for agreed medical examiner to form adequate opinion regarding extent of applicant’s actual functional limitations, and that parties should provide agreed medical examiner with new FCE rather than question which of doctor’s various work restrictions set forth in his reports best describes functional limitations.

**Maxamillion Hillenbrand, Applicant v. Cal Cabinets and Store Fixtures, Endurance Assurance Corporation, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 25. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Diminished Future Earning Capacity—WCAB, amending WCJ’s decision, held that applicant who suffered industrial injury to his right knee and psyche while employed as cabinet maker on 10/13/2009 was entitled to unapportioned award of 100 percent permanent disability, when WCAB found that based on opinions of orthopedic qualified medical evaluator, independent medical examiner, agreed medical evaluator in psychology, and applicant’s vocational expert, applicant successfully rebutted scheduled 84 percent permanent disability rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, where medical and vocational expert opinions established that applicant suffered total loss of earning capacity and was not amenable to vocational rehabilitation solely due to industrial injury, and there was no substantial evidence to support defendant’s assertion that applicant’s psychiatric disability was apportionable to preexisting marital problems.

**Michael Strauss, Applicant v. State of California, Department of Corrections and Rehabilitation, Lawfully Uninsured, and State Compensation Insurance Fund (Third Party Claims Administrator), Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 33. Permanent Disability—Rating—Substantial Medical Evidence—WCAB rescinded decision in which WCJ found that applicant licensed vocational nurse suffered industrial left knee and psyche injuries on 8/1/2012, resulting in 29 percent permanent disability, and “catastrophic” injury to his head, brain and psyche on 12/3/2014, causing 68 percent permanent disability, and returned matter to trial level for further development of record and new decision, when WCAB determined that conclusions of agreed medical examiner in neurology were not substantial evidence to support WCJ’s findings on causation or permanent disability, where doctor’s conclusions regarding applicant’s knee impairments were contrary to only expert orthopedic medical evidence in record, and her opinion that applicant developed post-traumatic stress disorder as direct result of 12/3/2014 prison riot was not factually supported by applicant’s deposition testimony nor by statements applicant made directly to doctor, and while WCAB did not render final decision on remaining issues raised on reconsideration since matter was remanded for new decision, WCAB tentatively found that (1) applicant’s brain injury, while serious, was not sufficiently severe to rise to level of “permanent mental incapacity” so as to justify application of conclusive presumption of permanent total disability under Labor Code § 4662(a)(4), (2) applicant’s head/brain injury *was*, however, “catastrophic” within meaning of Labor Code § 4660.1(c)(2)(B), warranting increased impairment rating for compensable consequence psychiatric injury based on analysis of factors in *Wilson v. State of CA Cal Fire* (2019) 84 Cal. Comp. Cases 393 (Appeals Board en banc opinion), where applicant’s head injury caused significant cognitive deficits which ended his nursing career and also significantly impacted his activities of daily living, and (3) although absence of “diminished future earning capacity” language in Labor Code § 4660.1(b) does not preclude use of vocational evidence to rebut scheduled permanent disability rating for injury sustained on or after 1/1/2013, there were significant questions in this case as to whether applicant’s 12/3/2014 injury alone was responsible for his inability to benefit from vocational rehabilitation, and regarding whether it was possible to apportion applicant’s lack of amenability to vocational rehabilitation between his two injuries.

**Elvisteen Davis, Applicant v. AC Transit, PSI, administered by Sedgwick, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 35. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, affirming WCJ’s decision, held that WCJ properly found that applicant suffered permanent total disability as result of admitted injury to her back, neck, shoulders, left knee, and psyche while employed as bus driver on 7/22/2008, based on permanent work restrictions imposed by agreed medical examiner amounting to determination that applicant was unable to return to labor market and not amenable to vocational rehabilitation due to her industrial injury, and on opinion of applicant’s vocational expert, who reviewed agreed medical examiner’s work restrictions and concurred that they would, in fact, preclude applicant from working, and WCAB found that reporting of defendant’s vocational expert was not substantial evidence because she failed to address work restrictions imposed by agreed medical evaluator.

**Christopher Savoie, Applicant v. State of California, Legally Uninsured, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 41. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, amending WCJ’s decision, held that applicant suffered 49 percent permanent disability from cardiovascular injury suffered while employed as correctional officer through 2/22/2019, based on strict AMA *Guides* rating, and found that WCJ erred in straying from strict AMA *Guides* rating in this case and awarding 32 percent permanent disability, when WCAB found that applicant met criteria for Class 3 hypertensive cardiovascular disease based on lowest possible whole person impairment within Class 3 of 30 percent, that scheduled impairment rating was not sufficiently rebutted, and that even if it were permissible to *reduce* scheduled impairment rating based on *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, which WCAB found questionable, physician’s analysis of permanent disability relied upon by WCJ to find lower impairment rating was insufficient.

**Peter Scatena, Applicant v. Tower of Hillsborough, PSI, and the Cities Group, Defendants,** 2021 Cal. Wrk. Comp. P.D. LEXIS 42. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Complex Regional Pain Syndrome—WCAB, affirming WCJ’s decision, held that there was substantial medical evidence in record to support WCJ’s findings that applicant developed complex regional pain syndrome (CRPS) as result of admitted right arm injury while employed as police officer, and that applicant’s injury resulted in 73 percent permanent disability based on principles in *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when qualified medical evaluator testified that 45 percent whole person impairment (which yielded 73 percent permanent disability rating) was most accurate representation of applicant’s actual level of impairment, having considered and ruled out at least two other rating approaches during his deposition, and WCAB concluded that qualified medical evaluator persuasively rebutted only other possible impairment value in record (range of motion) as less accurate than CRPS approach he used, and that based on qualified medical evaluator’s opinion, WCJ appropriately applied *Almaraz/Guzman* principles to CRPS rating even without explicit expert opinion invoking “alternative rating” methodology.

**Sherry Brazil, Applicant v. San Mateo County Transit District, PSI, Defendant,** 2020 Cal. Wrk. Comp. P.D. LEXIS 400. Permanent Disability—Rating—Permanent Total Disability—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability from 9/11/2008 industrial injury to her back, right knee and psyche while employed as bus operator, when WCAB determined that reporting of applicant’s vocational expert was substantial evidence to rebut strict permanent disability rating under AMA *Guides* based on diminished future earning capacity as described in *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, where vocational expert reported that applicant had total loss of all future earning capacity, and was unable to participate in vocational rehabilitation due to synergistic effect of pain from her industrial back and knee injuries, dependence on cane for walking and standing, sleep loss, medication side effects, and depression, and vocational expert’s reports complied with requirements in 8 Cal. Code Reg. § 10685(b), and, additionally, WCAB determined that opinion of defendant’s vocational expert was not substantial evidence because he did not address issue of apportionment nor did he consider applicant’s failed surgeries or impact of medication on her mental functioning.

**Steve Bosrock, Applicant v. Ben R. Wadsworth, Inc., dba Valley Glass Company, Security National Insurance Company, administered by AmTrust North America, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 387. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s finding that applicant suffered 93 percent permanent disability, after 7 percent apportionment to preexisting factors, as result of admitted 2/19/2013 industrial injury to his right elbow, right upper extremity, neck, back, psyche, sleep, and in form of sexual dysfunction while employed as glazier, and returned matter to trial level to provide orthopedic qualified medical evaluator upon whose opinion WCJ relied to determine AMA *Guides* permanent disability rating opportunity to review and comment upon vocational evidence obtained subsequent to his evaluation of applicant, when WCAB concluded that where there was substantial vocational evidence relevant to issue of applicant’s ability to return to labor market and his amenability to vocational rehabilitation which WCJ relied on to determine that applicant rebutted AMA *Guides* rating, medical evaluator upon whom WCJ relied to determine AMA *Guides* rating should be provided opportunity to review vocational evidence to see how it impacts his own opinion, that upon review of vocational evidence, qualified medical evaluator may indicate whether he concurs in vocational findings that applicant is precluded from returning to open labor market and is not amenable to vocational rehabilitation, and that such evaluation would provide substantial medical evidence to inform WCJ’s findings on extent of applicant’s permanent disability.

**Jacquelyn Ott, Applicant v. County of Ventura—Health Care Agency, PSI, administered by Sedgwick Claims Management Services, Inc., Defendants, Defendant,** 2020 Cal. Wrk. Comp. P.D. LEXIS 399. Permanent Disability—Rating—Loss of Grip Strength—WCAB rescinded WCJ’s finding that applicant occupational therapist suffered 31 percent permanent disability as result of 6/25/2015 left wrist injury, and returned matter to trial level for further development of medical record and new decision regarding applicant’s permanent disability, when WCAB found that qualified medical evaluator’s opinion upon which WCJ relied to determine permanent disability was not substantial evidence, where applicant’s chief complaint was wrist pain yet medical evaluator, without explanation, used decreased grip strength to assess her impairment, and WCAB reasoned that while Section 16.8a, page 508, of AMA *Guides*, permits impairment finding based on loss of strength in rare cases, and physician may, under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, stray from strict application of AMA *Guides* and rate impairment by analogy to produce most accurate rating, physician must provide adequate explanation for using alternative rating, which qualified medical evaluator in this case did not do.

**Kevin Torres, Applicant v. Arctic Mechanical, Travelers Property Casualty Company of America, administered by Sedgwick, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 402. Permanent Disability—Rating—Increased Permanent Disability—Sleep Impairment—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to his head, cervical spine and sleep on 5/28/2015 while working as HVAC technician, was not barred by Labor Code § 4660.1(c)(1) from receiving separate impairment rating for his sleep dysfunction, when there was substantial medical evidence that applicant’s sleep impairment was directly caused by his industrial injury, and WCAB found that Labor Code § 4660.1(c)(1) only precludes increased impairment rating for sleep dysfunction, sexual dysfunction, or psychiatric disorder arising as compensable consequence of physical injury but does not bar increased impairment directly caused by industrial injury, and WCAB also noted in its decision that exceptions to Labor Code § 4660.1(c)(1) outlined in Labor Code § 4660.1(c)(2) only apply to increased impairment for psychiatric disorders, but not to sleep dysfunction or sexual dysfunction.

**Stella Avila, Applicant v. Sutter Santa Cruz, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 413. Permanent Disability—Rating—Substantial Evidence—WCAB affirmed WCJ’s finding that applicant suffered 89 percent permanent disability as result of industrial injury to her spine, psyche and upper extremities while employed as receptionist during period 10/2002 to 11/2002, based on findings of agreed medical evaluators and range of evidence.

**Janet Ramirez, Applicant v. County of Los Angeles, PSI, Defendant,** 2021 Cal. Wrk. Comp. P.D. LEXIS 7. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to multiple body parts while employed as deputy sheriff on 1/3/2009, 10/21/2009, 8/22/2011, and over period 3/6/2010 through 3/6/2011, was entitled to award of 100 percent permanent disability under AMA *Guides*, and found that WCJ did not err by using addition method, rather than Combined Values Chart (CVC), to combine applicant’s multiple orthopedic impairments pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), when WCAB found that while 2005 Permanent Disability Rating Schedule recognized that CVC is generally used, it does not require that CVC be used as exclusive method for combining impairments in calculating permanent disability, that under *Kite*, impairments may be added if substantial medical evidence supports physician’s opinion that adding impairments will result in more accurate rating of applicant’s level of disability than rating that results from use of CVC, and that agreed medical evaluator in this case provided substantial justification for finding that rating of applicant’s orthopedic impairments would be most accurate if added rather than combined using CVC based on synergistic effect of applicant’s bilateral impairments involving spine.

**Bruce Lund, Applicant v. Ryko Solutions Inc., Sentry Insurance A Mutual Company, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 373. Permanent Disability—Rating—Permanent Total Disability—Combining Multiple Impairments—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability from 7/8/2014 admitted industrial injury to his lumbar spine and psyche while employed as technician, and found that although language in Labor Code § 4662(b) indicating that permanent total disability is to be determined “in accordance with the fact” does not provide independent method for determining permanent disability rating separate from method provided in Labor Code § 4660, consistent with holding in *Dept. of Corrections & Rehabilitation v. W.C.A.B.* (*Fitzpatrick*) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, WCJ provided valid alternative bases for reaching his determination by finding that (1) applicant was entitled to separate impairment rating for injury to his psyche based on “catastrophic” nature of his injury as provided in Labor Code § 4660.1(c)(2)(B), (2) opinions of agreed medical evaluators supported use of addition rather than Combined Values Chart (CVC) to combine applicant’s multiple impairments to reach most accurate rating, and there was substantial medical evidence that reliance on CVC would not result in most accurate permanent disability rating due to “minimal overlap” between applicant’s orthopedic and psychiatric impairments, (4) in accordance with *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and *LeBoeuf v. W.C.A.B.* (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, scheduled rating was rebutted by opinion of applicant’s vocational expert, who concluded that applicant had total loss of earning capacity and was not amenable to vocational rehabilitation due to synergistic effect of his orthopedic and psychiatric impairments, and that permanent total disability was entirely caused by industrial injury, such that apportionment did not apply.

**Barbara McGinnis, Applicant v. Coalinga-Huron School District, Legally Uninsured, administered by Intercare Insurance Services, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 372. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s determination that applicant who suffered industrial injury to multiple body parts while employed as teacher on 3/29/2011 and over period ending on 12/12/2011 was entitled to joint award of 100 percent permanent disability for both injuries, when WCAB found that (1) AMA *Guides* rating of applicant’s impairments, adding her fibromyalgia impairments with her other impairments, reached 100 percent permanent disability, and, additionally, medical and vocational evidence was substantial evidence to support finding of permanent total disability based on analysis under *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B.* (*Guzman*) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and on applicant’s total loss of earning capacity, (2) opinion of qualified medical evaluator in rheumatology was substantial evidence to support adding applicant’s multiple disabilities pursuant to *Athens Administrators v. W.C.A.B.* (*Kite*) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combining them using Combined Values Chart, where doctor believed that adding impairments was appropriate given total effect of symptomatology related to applicant’s fibromyalgia, psychiatric condition and orthopedic impairments, and WCJ found that doctor was best situated among medical experts to understand relationship between applicant’s chronic pain syndrome and her other conditions with which it interacted, and (3) issue of apportionment raised by defendant was moot because adding applicant’s impairment would equal 100 percent even if evaluators’ apportionment determinations were included in rating, as apportionment must be applied before disabilities are combined and would not act to reduce applicant’s 100 percent permanent disability award.

**Mohammad Noory, Applicant v. Pepper Tree, Inc., dba Jiffy Lube, The Hartford, administered by Athens Administrators, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 370. Permanent Disability—Rating—Permanent Total Disability—Combining Multiple Impairments—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability from 7/16/2012 industrial injury to his spine, shoulders, lower extremities, head, brain, gastrointestinal tract, sleep, psyche, and in form of hypertension while working as general manager for defendant, and found that although language in Labor Code § 4662(b) indicating that permanent total disability is to be determined “in accordance with the fact” does not provide independent method for determining permanent disability rating separate from method provided in Labor Code § 4660, consistent with holding in *Dept. of Corrections & Rehabilitation v. W.C.A.B.* (*Fitzpatrick*) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, WCJ provided valid alternative bases for reaching his determination by finding that (1) there was substantial medical evidence that applicant’s psychiatric disability should be added to his other disabilities, resulting in permanent total disability rating, and (2) vocational evidence was substantial evidence to rebut scheduled rating pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and establish that applicant was precluded from returning to open labor market and that injury impaired applicant’s ability to engage in vocational rehabilitation.

**Elke Balgeman, Applicant v. Get A Mattress, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 326. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 24 percent permanent disability as result of 6/21/2013 industrial injury to her left foot, left hip, spine, and psyche while employed as sales associate at mattress store, and found that applicant did not rebut scheduled permanent disability rating based on sedentary work restrictions, when WCAB rejected applicant’s assertion that she was entitled to higher permanent disability rating based on vocational evidence that she sustained greater loss of earning capacity than that reflected by scheduled rating, even though vocational evidence established that she was amenable to vocational rehabilitation, and WCAB noted that pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *Contra Costa County v. W.C.A.B.* (*Dahl*) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, rebuttal of scheduled permanent disability requires showing of greater loss of future earnings than reflected in scheduled rating due to industrial injury *and* showing that employee is not amenable to vocational rehabilitation, that applicant in this case did not show inability to benefit from vocational rehabilitation, that, in fact, evidence indicated applicant’s future earning capacity could be increased by participation in vocational rehabilitation program, and that having failed to establish lack of amenability to vocational rehabilitation, applicant did not rebut scheduled rating.

**Linda Diane Skains, Applicant v. G6 Hospitality LLC dba Motel 6 and Liberty Mutual Insurance, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 320. Permanent Disability—Rating—Occupational Group Numbers—WCAB dismissed applicant’s untimely Petition for Reconsideration of WCAB’s decision [see *Skains v. G6 Hospitality LLC dba Motel 6*, 2020 Cal. Wrk. Comp. P.D. LEXIS 260 (Appeals Board noteworthy panel decision)], in which WCAB found that applicant’s permanent disability must be rated using single occupational group number, and had Petition not been dismissed as untimely, WCAB would have denied Petition on its merits, when WCAB found that disability caused by single injury, such as applicant’s, must be rated applying same occupational group number to each of injured body parts, and where employee performs duties of multiple occupations, rating should be for occupation carrying highest percentage.

**Cathleen Stanley, Applicant v. Sulphur Springs School District, PSI, administered by Keenan & Associates, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 319. Permanent Disability—Rating—Gait Derangement Impairments—WCAB, affirming WCJ’s decision, held that applicant suffered industrial injury to her right ankle on 10/21/2013 while working as school district supervisor, causing 15 percent whole person impairment and 24 percent permanent disability based on gait derangement, and WCAB rejected applicant’s attempt to rebut scheduled rating by combining gate derangement with muscle weakness to produce higher permanent disability rating based on panel qualified medical evaluator’s reporting, when AMA *Guides* specifically prohibit combining gait derangement impairments with other impairment evaluation methods, and panel qualified medical evaluator provided no explanation as to why he believed combining impairments would be more accurate than determining impairment based on strict application of AMA *Guides*.

**June Harvey, Applicant v. Baker Places, Inc., Cypress Insurance Company, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 279. Permanent Disability—Rating and Apportionment—WCAB rescinded WCJ’s finding that applicant who suffered industrial injury to her knees, left ankle and left knee while employed as residential counselor on 8/20/2012, incurred 100 percent permanent disability without apportionment, and returned matter to trial level for further proceedings and new decision on issues of permanent disability and apportionment, when WCAB found that neither medical evidence nor vocational expert evidence relied upon by WCJ supported finding that applicant was permanently totally disabled based on inability to re-enter labor market and lack of amenability to vocational rehabilitation, and further found that WCJ’s reliance on Hikida v. W.C.A.B. (2017) 12 Cal. App. 5th 1249, 219 Cal. Rptr. 3d 654, 82 Cal. Comp. Cases 679, to conclude that apportionment was precluded despite qualified medical evaluator’s opinion that disability was apportionable to nonindustrial factors, was erroneous because medical evidence did not establish that applicant’s left knee disability directly resulted from failed left knee surgery so as to justify application of *Hikida* principle, and that remand was necessary to allow WCJ opportunity to consider apportionment in light of County of Santa Clara v. W.C.A.B. (Justice) (2020) 49 Cal. App. 5th 605, 262 Cal. Rptr. 3d 876, 85 Cal. Comp. Cases 467, which was decided after WCJ issued his decision in this case.

**Phillip Conrad, Applicant v. Scandia Family Fun Center, Cypress Insurance Company, adjusted by Berkshire Hathaway Homestate Company, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 288. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as result of industrial injuries to his head, neck, back, shoulders, hips, psyche, sleep, and in forms of hernia and headaches, while employed as mechanic on 8/30/2011, when WCAB found that WCJ correctly rated applicant’s permanent disability by adding psyche impairment from his post-traumatic stress disorder (PTSD) to impairment for his physical injuries, rather than combining impairments using Combined Values Chart, based on qualified medical evaluator’s opinion that impairments should be added rather than combined due to absence of overlap (injuries were separately ratable, as PTSD was direct result of accident and not compensable consequence of orthopedic injury), and because it was most accurate method for determining applicant’s actual disability, and WCAB further found that finding of 100 percent permanent disability was consistent with vocational evidence indicating that applicant lost ability to return to gainful employment and was not amenable to vocational rehabilitation due to his industrial injury.

**Gary Leiterman, Applicant v. Barrett Business Services, Inc., ACE American Insurance, adjusted by Corvel Corporation, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 287. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB, amending WCJ’s decision, found that applicant who suffered admitted industrial injury to his left leg and left knee while employed as truck driver/loader unloader on 3/27/2015 was entitled to award of 69 percent permanent disability and not to 71 percent permanent disability as awarded by WCJ or to 100 percent permanent disability as requested by applicant, when WCAB found that (1) WCJ erred in awarding higher permanent disability where rating expert correctly applied impairment ratings of qualified medical evaluators in orthopedics and dermatology and adjusted their separate impairment ratings for age and occupation before combining them, to equal 69 percent permanent disability, (2) methodology utilized by WCJ, applying 40 percent whole person impairment for lower extremity maximum value based on amputation, was applied incorrectly since rating schedule mandated lower 69 percent rating be followed, and (3) vocational expert evidence did not rebut scheduled rating to support finding of permanent total disability, where reporting of defendant’s vocational expert, which WCJ found more persuasive than reporting of applicant’s expert, indicated that applicant could benefit from vocational rehabilitation.

**Miguel Pena, Applicant v. Aqua Systems, Athens Administrators Concord, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 313. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability pursuant to *Ogilvie v. W.C.A.B.* (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, without basis for apportionment, as result of industrial injuries to his head, neck, back, shoulders, circulatory system, and psyche on 10/5/2015, while employed as purchasing agent/laborer, when applicant’s treating physician and qualified medical evaluator in psychology concluded that applicant’s brain injury rendered him incapable of returning to work, and WCAB found that their conclusion was supported by applicant’s testimony as well as report of applicant’s vocational expert indicating that applicant lost 100 percent of his earning potential due to his psychological symptoms, and that contrary to defendant’s assertions, neither reports of qualified medical evaluator in psychology nor reports of internal medicine qualified medical evaluator constituted substantial evidence to support apportionment of applicant’s permanent disability.

**Jason Lesansky, Applicant v. AXA Equitable Life Insurance Company, formerly known as The Equitable Life Assurance Society of the United States, Zurich American Insurance Company, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 248. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of 10/15/2001 industrial injury to his cervical spine, lumbar spine, abdominal wall (hernia), bladder (urinary incontinence), neurological system (headaches), psychiatric system, and central nervous system (complex regional pain syndrome), while employed as network administrator for insurance company, when WCAB found that opinions of orthopedic agreed medical examiner and reporting of applicant’s vocational expert, upon whom WCJ relied, constituted substantial evidence to rebut scheduled permanent disability rating pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and supported finding of 100 percent permanent disability based on applicant’s inability to participate in vocational rehabilitation due entirely to his industrial injury, and WCAB further found that applicant’s desire to work reflected by his posting of resume on LinkedIn, which resulted in no job interviews, was not evidence of actual ability to compete in open labor market, and that apportionment of permanent disability to applicant’s post-injury arrests for drunk driving and marijuana possession, his chronic use of marijuana and his psychiatric problems was not justified as these were all found to be elements of his industrial disability.

**Roberta Moore, Applicant v. City of Los Angeles, PSI, Tristar Risk Management, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 236. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed its prior decision [see *Moore v. City of Los Angeles*, 2020 Cal. Wrk. Comp. P.D. LEXIS 204 (Appeals Board noteworthy panel decision)] upholding WCJ’s finding that applicant suffered 92 percent permanent disability as result of industrial injuries to multiple body parts and in form of fibromyalgia incurred while she was employed as police officer during period ending on 11/19/2007, and that medical evidence did not support finding that applicant was permanently totally disabled, irrespective of issue of apportionment of her fibromyalgia.

**Jose Luis Urena, Applicant v. State Center AG Services, Inc., Imperium Insurance Company, administered by Athens Claims Administration, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 237. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Expert Evidence—WCAB, in split panel opinion, affirmed WCJ’s award of 81 percent permanent disability for admitted 1/14/2009 industrial injury to his left arm, left hand, psyche, sleep, and in form of chronic pain while employed as farm laborer, based on impairments ratings of three agreed medical examiners, when WCAB panel majority agreed with WCJ that opinion of vocational expert was not substantial evidence to rebut presumptively correct ratings based on medical evidence, because vocational expert relied on incorrect factual information and did not establish that vocational limitations on applicant’s earning capacity and his ability to return to work were based solely on industrial factors; Commissioner Snellings, dissenting, opined that vocational expert’s reporting established that applicant could not return to open labor market and was not amenable to vocational rehabilitation based solely on industrial factors such that applicant was permanently totally disabled and entitled to award of 100 percent permanent disability.

**Ann Rhodes, Applicant v. State of California, Department of State Hospitals Atascadero, Legally Uninsured, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 275. Permanent Disability Rating—Rebuttal of Scheduled Rating—Permanent Total Disability—Medical Evidence—WCAB, affirming WCJ’s decision, held that WCJ properly relied on opinion of qualified medical evaluator in psychiatry to conclude that applicant, while employed by state hospital as registered nurse, was permanently totally disabled from admitted industrial injury to her nervous system in form of post-traumatic stress disorder and depression incurred on 5/21/2017 when she witnessed co-worker being assaulted by inmate, when WCAB determined that (1) while qualified medical evaluator initially assigned applicant 18 percent impairment based on GAF score of 58, he changed his opinion after considering vocational expert’s assessment of applicant’s disability, which was based on qualified medical evaluator’s medically-imposed work restrictions, and ultimately agreed with vocational expert that applicant lost capacity to return to open labor market due solely to his industrial injury and could benefit from vocational rehabilitation, (2) cases relied upon by defendant to argue that scheduled rating cannot be rebutted solely by medical evidence were distinguishable from applicant’s case, because in those cases, unlike here, no vocational expert reports were offered into evidence to establish whether injured worker was amenable to vocational rehabilitation or unable to compete in labor market, and (3) although rating of applicant’s permanent disability under AMA *Guides* based on qualified medical evaluator’s GAF score did not reach 100 percent, qualified medical evaluator’s subsequent reporting constituted substantial evidence to rebut scheduled rating and support WCJ’s finding of 100 percent permanent disability.

**Linda Diane Skains, Applicant v. G6 Hospitality LLC dba Motel 6 and Liberty Mutual Insurance, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 260. Permanent Disability—Rating—Occupational Group Numbers—WCAB, granting reconsideration, deferred issue of permanent disability resulting from applicant manager’s 1/26/2016 industrial injury to her eyes, right shoulder, left hip, and psyche, when WCJ improperly rated applicant’s permanent disability using three different occupational group numbers, and WCAB found that disability caused by single injury, such as applicant’s, must be rated applying same occupational group number to each injured body part, and returned matter to WCJ to determine which one of proposed occupational group numbers most accurately described physical demands of applicant’s employment and resulted in highest disability rating when applied to applicant’s injured body parts, and to use that occupational group number in rating applicant’s permanent disability.

**James McClendon, Applicant v. Home Pest Defense (Rollins Inc.), National Union Fire Insurance Company, adjusted by Sedgwick Claims Management Services, Inc., Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 220. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of industrial injuries incurred to his back, psyche, and neck on 6/12/2012 and 9/27/2012, and to his left lower extremity on 9/27/2012 while employed as outside sales representative, when agreed medical evaluator assigned impairment ratings under AMA *Guides*, but ultimately concluded that applicant lacked capacity to return to labor market based on his dependency on pain medications as well as chronic pain, and WCAB found that in addition to medical evidence supporting finding of permanent total disability, vocational evidence indicating applicant was not amenable to vocational rehabilitation and that his future earning capacity was less than that reflected in scheduled rating based on effects of his industrial injuries, without consideration of impermissible non-industrial factors, successfully rebutted scheduled rating pursuant to principles in Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Leonicio Istan, Applicant v. Aramark and ACE American Insurance Company, adjusted by Sedgwick Claims Management Services, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 229. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB rescinded WCJ’s award of 85 percent permanent disability based on range of evidence, and found instead that applicant was permanently totally disabled by injuries to his head, neck and back while employed as laundry worker on 1/23/2014, and was entitled to award of 100 percent permanent disability, when WCAB concluded that WCJ’s reliance on GAF score of 50 assigned by panel qualified medical evaluator in psychology/neuropsychology based solely on psychiatric factors failed to reflect panel qualified medical evaluator’s determination that applicant was precluded from returning to work in open labor market due to severity of his brain injury with subsequent neurocognitive, neurobehavioral and psychological sequelae, and WCAB found that medical and vocational evidence rebutted scheduled combined rating of applicant’s impairment pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and supported award of 100 percent permanent disability, where panel qualified medical evaluator’s reports established that applicant was not amenable to vocational rehabilitation and could not return to full time employment, and both vocational evaluators in this case found that impairments described by panel qualified medical evaluator were sufficiently severe to preclude applicant from participating in vocational rehabilitation and from returning to labor market, without consideration of nonindustrial factors specific to applicant, his limited education, illiteracy, and absence of English proficiency.

**Sumudu Jayasuriya, Applicant v. San Francisco Bay Area Rapid Transit District, PSI, administered by Athens Administrators, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 191. Permanent Disability—Rating—Grip Strength—WCAB rescinded WCJ’s finding that applicant suffered 32 percent permanent disability as result of industrial injury to his left upper extremity on 12/9/2015 while employed by defendant as transit control electronics technician, when WCAB determined that qualified medical evaluator’s report upon which permanent disability rating was based, which assigned 6 percent upper extremity impairment for applicant’s reduced range of motion and 20 percent for grip strength loss, did not constitute substantial evidence because AMA *Guides* prohibits rating of decreased strength if there is reduced motion *unless* it results from “unrelated etiologic or pathomechanical causes,” and here there was no evidence indicating that applicant’s restricted left wrist range of motion and his loss of grip strength were result of unrelated etiologic or pathomechanical causes, and, additionally, qualified medical evaluator’s report was insufficient to rebut scheduled AMA *Guides* rating pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, as medical evaluator failed to explain why strict rating of applicant’s impairment did not accurately reflect his disability or why combining range of motion impairment with grip strength impairment was more accurate measure of applicant’s disability.

**Pamela Ortega, Applicant v. Quality Home Care of Santa Cruz, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 195. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s finding that applicant caregiver suffered 80 percent permanent disability as result of 6/9/2014 industrial injury to her neck, psyche, and in forms of headaches and hypertension, and found that applicant was permitted to rebut scheduled rating based on vocational evidence establishing that scheduled rating failed to account for impact of applicant’s ability to participate in vocational rehabilitation pursuant to LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Roberta Moore, Applicant v. City of Los Angeles, PSI, Tristar Risk Management, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 204. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 92 percent permanent disability as result of industrial injuries to multiple body parts and in form of fibromyalgia incurred while she was employed as police officer during period ending on 11/19/2007, when WCAB found that 30 percent of applicant’s fibromyalgia/rheumatological disability was caused by pre-existing, nonindustrial connective tissue disease based on opinion of agreed medical examiner in rheumatology, that medical evidence in record did not support finding of permanent total disability under AMA *Guides*, that WCJ correctly rejected applicant’s contention that she rebutted scheduled rating under AMA *Guides*, finding that opinion of agreed medical examiner, in conjunction with vocational evidence, did not constitute substantial evidence to rebut scheduled permanent disability rating under Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and there was no analysis provided under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and that pursuant to Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, Labor Code § 4662(b) could not be used as alternative method of rebutting scheduled rating.

**Jose Arias, Applicant v. County of Los Angeles, PSI, Defendant,** 2020 Cal. Wrk. Comp. P.D. LEXIS 210. Permanent Disability—WCAB’s Reservation of Jurisdiction—Progressive Insidious Diseases—WCAB, amending WCJ’s decision, held that WCJ erred by reserving jurisdiction over permanent disability stemming from hepatitis C virus contracted by applicant on 6/14/2015 while employed as deputy sheriff, when applicant’s hepatitis C had cleared and agreed medical examiner stated that condition could not spontaneously recur, and WCAB reasoned that not all manifestations of hepatitis C constitute progressive diseases as matter of law, and that under circumstances in this case, where applicant’s hepatitis C had resolved, there was no progressive insidious disease for purposes of reserving jurisdiction over permanent disability, and WCAB entered new finding to reflect that applicant’s injury caused no permanent disability or need for further medical treatment.

**Amanda Culver, Applicant v. Initiative Foods, insured by United States Fire Insurance Company, adjusted by Crum and Forster, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 147. Permanent Disability—Rating—Vocational Expert Evidence—WCAB, affirming WCJ’s decision, held that opinion of independent vocational evaluator who concluded that applicant was not amenable to vocational rehabilitation and had lost her earning capacity was substantial evidence pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut scheduled permanent disability rating and support WCJ’s finding that applicant was permanently totally disabled by industrial orthopedic and psychiatric injuries sustained while she was employed as quality control inspector on 12/8/2010, and WCAB further determined that independent vocational evaluator did, in fact, review medical apportionment found by agreed medical examiners in considering whether applicant’s vocational capacity was impaired, and concluded that applicant’s diminished ability to compete in labor market was directly attributable to her work injury and that pre-existing non-industrial factors did not contribute to vocational impairment.

**Saul Garcia, Applicant v. Van Can Seafood Company, Crum & Forster, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 158. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant steelworker/coater operator’s 6/12/2010 industrial injury to multiple body parts resulted in 71 percent permanent disability under permanent disability rating schedule, and that record did not support award of permanent total disability pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, which requires employee to demonstrate lack of amenability to vocational rehabilitation to rebut presumptively correct scheduled rating, when agreed medical examiner and applicant’s treating psychiatrist agreed that applicant was candidate for vocational retraining, and opinion of applicant’s vocational expert that applicant was precluded from vocational retraining or meaningful re-entry into labor market due to combined effect of his various injuries was insufficient to rebut scheduled rating, as she did not discuss how newly reviewed medical reporting affected her feasibility analysis, and relied on applicant’s sleep disorder as rationale in assessment of non-feasibility for retraining even though applicant’s sleep impairment was pre-existing and did not cause any functional limitations according to evaluating sleep specialist.

**Edward Holgersen, Applicant v. State of California Department of Transportation, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 138. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant’s injury to multiple body parts on 10/31/2013 while employed as bridge maintenance crew resulted in 100 percent permanent disability, based on reporting of agreed medical evaluator and vocational expert indicating that applicant was unable to work due to synergistic effect of his multiple impairments, and WCAB held that WCJ properly instructed rater to add impairments for certain body parts pursuant to Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), when orthopedic and neurological agreed medical evaluators opined that adding impairments would yield most accurate overall rating, and WCAB reasoned that, consistent with Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, physician may, as agreed medical examiners did in this case, conclude that adding employee’s impairment ratings from different body parts more accurately reflects employee’s permanent impairment.

**Katoria Jones, Applicant v. Thrift Recycling, Zurich American Insurance Company, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 156. Permanent Disability—Rating—Occupational Group Numbers—WCAB rescinded WCJ’s decision and deferred issue of permanent disability in connection with applicant’s 5/12/2016 industrial injury to multiple body parts, when WCAB determined that WCJ incorrectly found that applicant’s occupational group number was 230 rather than 360, where applicant testified that she worked in warehouse loading items into boxes, and WCAB reasoned that applicant’s duties more closely mirrored duties listed for occupational group 360 of lifting, carrying, and walking, that “warehouse worker” is expressly mentioned as typical occupation in group 360, that, by contrast, occupational group 230 contemplates workers who assemble items via precision work requiring use of hand tools, which applicant did not do, and that professions listed in occupational group 230 (machinist, office machine servicer, television and radio repairer) did not bear resemblance to applicant’s job as line loader, especially compared with professions listed in occupational group 360.

**Jose Murillo, Applicant v. Royal Paper Box Company, Liberty Mutual Insurance Company, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 155. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s finding that vocational evidence upon which WCJ relied was substantial evidence to rebut scheduled permanent disability rating and to support WCJ’s determination that applicant sustained permanent total disability as result of admitted cumulative trauma to his lumbar spine, left knee, psyche, sleep, upper gastrointestinal system, respiratory system, and in forms of sexual dysfunction, diabetes, and hypertension while working as machine operator from 3/9/2008 through 3/9/2009, when WCAB reasoned that vocational expert considered results of applicant’s vocational testing and concluded that applicant was unable to return to labor market, including semi-sedentary or sedentary positions, as result of his industrial injury, and was unable to participate in vocational rehabilitation due to his work preclusions, that vocational expert also considered medical apportionment of applicant’s disability and still concluded that applicant’s vocational issues were entirely related to his industrial injury and disability, and that after assessing requirements of individualized approach to vocational analysis in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, vocational expert concluded that only industrial factors, and no impermissible factors, were cause of applicant’s inability to return to labor market or benefit from vocational rehabilitation.

**Henry Dufrene, Applicant v. Cook Erectors, Inc., State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 180. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB rescinded decision in which WCJ applied Combined Values Chart (CVC) to calculate overall permanent disability sustained by applicant as consequence of cumulative injury to his back, neck, wrists, psyche, and in forms of dental injury, stroke, vision loss, and hearing loss while employed as welder/crane operator during period 1/1/66 through 6/18/2009, and returned matter to trial level for further development of medical record regarding whether applicant’s permanent disability was more accurately determined using CVC or by adding his multiple impairments pursuant to Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), when WCAB reasoned that under *Kite*, determination of whether to rate impairment using CVC or addition must hinge on producing most accurate rating, not merely whether there is synergistic relationship or absence of overlap between impaired body parts, that impairments may be added if substantial medical evidence supports physician’s opinion that adding them will result in more accurate rating of applicant’s level of disability than using CVC, that in this case qualified medical evaluators in psychology, neurology and dentistry concluded that applicant’s separate injuries related to these body parts should be added but did not articulate clear bases for finding that use of CVC was not accurate measure of applicant’s disability or why using additive method would more accurately reflect his impairment, and that on remand record should be developed to allow medical evaluators to provide further analysis of bases for their opinions that addition is preferred method for combining ratings of applicant’s industrial injuries, beyond claiming that absence of overlap between body parts is sufficient reason to support addition.

**Veronica Orozco, Applicant v. California Department of Corrections, Legally Uninsured, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 175. Permanent Disability—WCAB’s Reservation of Jurisdiction—Progressive Insidious Diseases—WCAB, affirming WCJ’s decision, held that opinion of agreed medical examiner was substantial evidence to support WCJ’s determination that applicant’s Valley Fever, incurred during her employment as correctional officer through period ending on 12/4/2008, constituted progressive insidious disease sufficient to warrant reservation of jurisdiction to award additional permanent disability if applicant’s disability ultimately increases or recurs, when WCAB reasoned that although agreed medical examiner stated that applicant’s risk of recurrence was less than 50 percent, he nonetheless concluded that risk was “real and significant,” and emphasized that applicant had greater risk of relapse or recurrence because she was unable to take all of her medications, her serology was still positive, and she developed systemic infection after disease was untreated for one to two years, and WCAB concluded that finding of progressive insidious disease was supported given that recurrence was possible according to agreed medical examiner whom parties presumably chose because of his expertise and neutrality.

**Frank Ancona, Applicant v. Moreno Valley Chevrolet, Moss Brothers, Public Mutual Insurance Company, administered by Corvel Corporation, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 134. Permanent Disability—Rating and Apportionment—Combining Multiple Disabilities—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 84 percent permanent disability as result of admitted cumulative trauma to his psyche, sleep, cervical spine, and in forms of asthma and hypertension from 12/6/2002 through 9/16/2010 while employed as service advisor by defendant Moreno Valley Chevrolet and, during last two months of cumulative trauma period, by defendant Moss Brothers Chevrolet, and WCAB determined that, in awarding 84 percent permanent disability, WCJ correctly apportioned 16 percent of applicant’s permanent total disability to prior 1997 industrial cardiovascular disease/heart attack under Labor Code § 4663 based on agreed medical examiner’s opinion, and correctly combined permanent disability for multiple body parts using Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule rather than adding applicant’s disabilities, when agreed medical evaluator did not provide sufficient rationale to support addition of disabilities, as he did not explain why using additive method would provide more accurate rating of applicant’s permanent disability than CVC; Commissioner Sweeney, dissenting, would amend WCJ’s decision to find that applicant was entitled to unapportioned award of 100 percent permanent disability, when Commissioner Sweeney found that agreed medical examiner’s opinion was not substantial evidence to support apportionment of applicant’s permanent disability to his prior coronary artery disease.

**Timothy McReynolds, Applicant v. Graniterock and American Contractors Insurance Group, administered by Tristar Risk Management, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 109. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, denying removal, affirmed WCJ’s order taking matter off trial calendar to allow applicant to obtain evaluation and report from vocational expert, when WCAB found that applicant had right to obtain vocational evidence pursuant to Labor Code § 5703(j) and 8 Cal. Code Reg. § 10606.5 (now 8 Cal. Code Reg. § 10685, operative 1/1/2020), and WCAB also rejected defendant’s assertion that applicant was not entitled to vocational evaluation based on SB 863 changes to Labor Code § 4660.1, removing language regarding consideration of future diminished earning capacity, and concluded that SB 863 did not eliminate adjustment factor in Labor Code § 4660.1 but rather standardized factor to multiple of 1.4, evidencing legislative intent to include loss of future earnings as component of permanent disability award, and, further, that vocational evidence is relevant to issues of employability and for potential rebuttal of scheduled permanent disability rating based on injured employee’s inability to benefit from vocational rehabilitation.

**Horace Williams, Applicant v. County of Alameda, adjusted by York Risk Services, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 114. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of 8/4/2015 industrial injury to his head and brain while employed as painter, pursuant to LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB found that, contrary to defendant’s assertion, Labor Code § 4660.1 does not preclude consideration of vocational evidence for purpose of rebutting scheduled permanent disability rating to establish permanent total disability based on inability to benefit from vocational rehabilitation, and WCAB concluded that reports of applicant’s vocational expert indicating that applicant could not return to work and was not amenable to vocational rehabilitation constituted substantial evidence to rebut scheduled rating.

**Suguey Moreno, Applicant v. Kern County Superintendent of Schools, PSI, administered by Self-Insured Schools of California, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 98. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant school site supervisor’s 3/13/2012 industrial injuries to her psyche, trunk, lower extremities, urinary/excretory system, gait, neck, and nervous system (spinal and peripheral), resulted in 100 percent permanent disability without basis for apportionment, when WCAB found that applicant established through her vocational expert evidence that she was unable to return to labor market, as medical evidence showed she lacked residual functional capacity to perform any work, and that she was not amenable to vocational rehabilitation pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Ronald Haney, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, Defendant,** 2020 Cal. Wrk. Comp. P.D. LEXIS 86. Permanent Disability—Rating—WCAB affirmed WCJ’s decision that applicant, employed as correctional officer, sustained injury to his circulatory system and left knee resulting in 66 percent permanent disability, when WCAB found that in assigning impairment WCJ properly relied on qualified medical evaluator’s opinion that applicant’s circulatory impairment should be rated at 30 percent under Table 4-2, Class 3 of AMA *Guides*, for left ventricular hypertrophy based on electrocardiogram, and WCAB rejected applicant’s assertion that circulatory impairment should have been assigned 50 percent whole person impairment, rather than 30 percent, based on Class 4 impairment rating, which includes, under subcategory 3, left ventricular hypertrophy, systolic dysfunction, *and/or* signs and symptoms of heart failure due to hypertension, where applicant relied on testimony of grammar expert to support his claim that term “and/or” in subcategory 3 could be taken together or in alternative and that minimum qualification is met by having only one of conditions listed, but WCAB found that this interpretation would create ambiguity in interpreting AMA *Guides* and would lead to conclusion that Class 3 and Class 4 of Table 4-2 were interchangeable.

**Thomas Hasson, Applicant v. Ann Taylor, Travelers Insurance, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 102. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as consequence of cumulative injuries to his back and hips while employed as stocker from 1/1/93 through 8/30/2011, when WCAB concluded that vocational expert evidence relied upon by WCJ constituted substantial evidence to establish that applicant was unable to benefit from vocational rehabilitation and was precluded by his industrial injury from returning to employment, and that, therefore, WCJ properly determined that applicant rebutted scheduled rating of his permanent disability pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Michael Karlis, Applicant v. City of Glendale, PSI, Defendant,** 2020 Cal. Wrk. Comp. P.D. LEXIS 90. Permanent Disability—Rating—WCAB, amending WCJ’s decision, found that applicant firefighter’s industrial injuries to his cervical spine, lumbar spine, skin, left shoulder, elbows, left ankle, upper gastrointestinal tract in form of GERD, heart/circulatory system in form of hypertension, and ears in form of hearing disorder, caused 87 percent permanent disability, rather than 88 percent permanent disability as determined by WCJ, when WCAB found that WCJ incorrectly used impairment number 08.05.00.00, for skin cancer, in rating applicant’s permanent disability, and that because applicant did not have skin cancer and his treating physician rated his skin impairment by analogy to contact dermatitis based on applicant’s need to avoid sunlight and its effect on his activities of daily living, correct impairment number to use was 08.03.00.00, for contact dermatitis, which produced rating of 13 percent permanent disability for applicant’s skin condition, and 87 percent permanent disability when skin disability was combined with disability caused by other injured body parts.

**Margarito Barajas, Applicant v. Lucas and Lucas General Contractor, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 79. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 100 percent permanent disability for industrial injuries incurred by applicant to his left hand, fingers, wrist, and arm while working as carpenter/laborer on 9/22/2015, based on opinion of agreed medical examiner, who provided 30 percent whole person impairment utilizing strict AMA *Guides* rating for applicant’s ulnar injury and added additional 29 percent whole person impairment to strict AMA *Guides* rating for pathological nerve damage/muscular injury pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and also based on report of applicant’s vocational expert, who concluded that applicant suffered total loss of earning capacity and was not amenable to vocational rehabilitation due to his industrial injury, when WCAB found that (1) contrary to defendant’s assertion, agreed medical examiner was permitted to add *Almaraz/Guzman* rating to strict AMA *Guides* rating to find increased permanent disability, where physician remained within four corners of AMA *Guides* and provided adequate justification for impairment determination, and (2) opinion of applicant’s vocational expert constituted substantial evidence to rebut strict AMA *Guides* rating and support finding of permanent total disability, whereas reporting of defendant’s vocational expert attributing applicant’s inability to participate in vocational rehabilitation to nonindustrial factors was speculative and could not be relied upon [Note: Defendant’s petition for writ of review was subsequently denied on February 26, 2020, *sub nom.* State Compensation Insurance Fund v. Workers’ Comp. Appeals Bd. (Barajas) (2020) 85 Cal. Comp. Cases 307].

**Anthony Trujillo, Applicant v. The Coca-Cola Company, PSI, adjusted by Sedgwick, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 66. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who sustained admitted left knee injury on 1/11/2013 while working as truck driver and cooler mover suffered 100 percent permanent disability as result of related complex regional pain syndrome (CRPS) that precluded him from gainful employment and rendered him unable to participate in vocational rehabilitation, when qualified medical evaluator found that applicant’s activities of daily living were severely limited due to his pain from CRPS, that applicant’s pain alone rendered him unable to work, and that strict permanent disability rating per AMA *Guides* did not adequately reflect extent of applicant’s permanent disability, and WCAB reasoned that finding of permanent total disability can be based on medical evidence, vocational evidence, or both, that in this case opinion of applicant’s vocational expert that applicant sustained total loss of earning capacity and was unable to participate in vocational retraining due to his industrial injury was supported by applicant’s credible testimony and medical evidence indicating that applicant’s CRPS caused severe, debilitating pain which impacted his activities of daily living, and that defendant’s Petition for Reconsideration asserting error in permanent disability award was not persuasive as Petition did not adequately address medical evidence in record.

**Charles Evans, Applicant v. Richards Appliances Services, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 44. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled from industrial injuries to his heart, peripheral vascular system, teeth, jaw, lumbar spine, cervical spine, shoulders, legs, upper digestive system, psyche, and kidneys while working as appliance technician during cumulative period ending on 7/20/2007, and found that WCJ properly relied on opinion of panel qualified medical evaluator in determining applicant’s permanent disability by adding impairments rather than combining them using Combined Values Chart (CVC), when panel qualified medical evaluator opined that impairment to applicant’s different body parts in different body systems should be added due to synergistic effect between different systems, and because CVC would not produce accurate disability rating, and WCAB rejected defendant’s assertion that applicant would not be entitled to 100 percent permanent disability award after apportionment, where WCAB found that even after apportionment of applicant’s permanent disability, use of addition method clearly resulted in 100 percent permanent disability.

**James P. Martinez, Applicant v. State of California, Department of Corrections, Legally Uninsured, State Compensation Insurance Fund, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 51. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, amending WCJ’s decision, held that applicant suffered 72 percent permanent disability as result of admitted cumulative trauma to his neck, low back, knees, shoulders, and in form of hypertension while employed as correctional officer, and found that there was no substantial medical evidence to support calculation of permanent disability by adding applicant’s multiple disabilities, as WCJ did, rather than using Combined Values Chart (CVC) to rate permanent disability, when WCAB reasoned that although medical evaluators are not required to use word “synergistic” to advocate for use of additive rating method over CVC, there must be substantial evidence to support physician’s opinion that adding impairments will result in more accurate rating of applicant’s level of disability than rating resulting from use of CVC, that qualified medical evaluator in this case did not offer adequate rationale for adding applicant’s hypertension and orthopedic disabilities beyond fact that these disabilities did not overlap, and that, without more, this did not constitute substantial medical evidence to establish primacy of additive method over use of CVC, otherwise CVC would become irrelevant in any case involving injury to multiple body parts.

**Karen Wright, Applicant v. First American Title Company, Hartford Insurance Company, administered by Sedgwick Claims Management Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 584. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant’s industrial injury to her head, neck, cervical spine, right upper extremity, and psyche while employed as escrow officer through period ending 2/6/2008 resulted in 55 percent permanent disability after apportionment, and did not cause permanent total disability or, alternatively, 82 percent permanent disability as alleged by applicant, when WCAB panel majority found that substantial medical evidence supported WCJ’s permanent disability finding based on analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and addition of applicant’s impairments, that opinion of psychiatric agreed medical examiner did not support finding of 100 percent permanent disability notwithstanding his conclusion that applicant was unable to compete in open labor market on psychiatric basis, because he attributed 49 percent of applicant’s disability to nonindustrial factors for which defendant was not liable, and that vocational expert’s opinion was not substantial evidence to rebut scheduled rating pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and was properly rejected by WCJ, where vocational expert used incorrect standard in determining applicant’s amenability to vocational rehabilitation and improperly disregarded medical apportionment, and vocational expert’s report was not reviewed by medical experts; Commissioner Sweeney, dissenting, would rescind WCJ’s decision and return matter to trial level for further development of record, based on her conclusion that rating found by WCJ did not adequately consider applicant’s severe cognitive impairment resulting from her injury and how it diminished her ability to compete in open labor market.

**Mario Calderon, Applicant v. Starwood Hotels and Resorts Worldwide, Inc., Zurich North America, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 580. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that industrial injuries to applicant’s lumbar spine with radiculopathy to lower extremities, cervical spine, and psyche over period 6/25/2009 through 6/25/2010 while employed as hotel service attendant/banquet server resulted in 43 percent permanent disability, after apportionment, and did not render applicant permanently totally disabled based on his current drug use as applicant claimed, when WCAB found that agreed medical examiner’s assessment of applicant’s pain and psychiatric complaints constituted substantial evidence to support finding of 43 percent permanent disability, after apportionment, and also supported finding that applicant would be able to resume work despite opioid addiction, which began with applicant’s nonindustrial stomach surgery and increased following two industrial back surgeries, that medical reports relied upon by applicant in support of his claim that he was 100 percent permanently disabled were not substantial evidence, that at time applicant testified at trial he did not appear to be so impaired that he was unable to function and he expressed interest in detoxifying from his narcotic use, and that despite applicant’s contrary assertion, finding of permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662(b) did not provide independent path to permanent total disability finding separate from Labor Code § 4660.

**Jerardo Gomez, Applicant v. County of Ventura, PSI, administered by York Risk Services Group, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 34. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as result of industrial injuries to his head, brain, neck, vision, hearing, neurological system, endocrine system, psyche, back, and in form of vertigo incurred on 11/28/2014 while employed as deputy sheriff, when there was substantial medical and vocational expert evidence indicating that applicant was unable to compete in open labor market, and WCAB found this evidence sufficient to rebut scheduled rating, and further determined that apportionment findings of agreed medical evaluator did not preclude finding of 100 percent permanent disability, where vocational expert concluded that applicant was not able to return to work solely due to industrial injury at issue in this case.

**Larry Johnson, Applicant v. City of Los Angeles, PSI, Defendant,** 2020 Cal. Wrk. Comp. P.D. LEXIS 28. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 74 percent permanent disability to applicant who suffered industrial injuries to his lumbar spine, psyche, and in forms of sleep disorder and bladder dysfunction while employed as police officer on 5/18/2005, when WCAB found that opinion of orthopedic agreed medical examiner who utilized Figure 15-19 in AMA *Guides* based on Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, was substantial evidence to rebut strict AMA *Guides* rating based on range of motion deficits, where agreed medical examiner demonstrated his knowledge of AMA *Guides* and provided reasoned explanation as to why strict application of AMA *Guides* would not produce accurate reflection of applicant’s impairment, explained how and why he applied Figure 15-19 to achieve more accurate rating and did not rely upon work restrictions or limitations which are excluded from measurement of impairment of activities of daily living under AMA *Guides*, made fair and accurate assessment of applicant’s whole person impairment within four corners of AMA *Guides*, and produced opinion that was not conclusory or designed to achieve particular result by applying work restriction analysis in assigning whole person impairment.

**David Lemay, Applicant v. JG Boswell Company (PSI) Administered by Sedgwick, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 36. Permanent Disability—Rating—Combining Multiple Disabilities—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled from industrial injuries to his spine, upper extremities, legs, and in form of headaches on 3/17/2006, 11/1/2010 and cumulatively through 11/1/2010, while working as heavy equipment foreman, when WCAB found that (1) agreed medical examiner’s use of Figure 15-19 to assign lumbar impairment was appropriate, and that agreed medical examiner properly applied Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to rebut strict AMA *Guides* rating of applicant’s lumbar impairment, (2) agreed medical examiner’s opinion that applicant’s impairments to different body parts should be added pursuant to Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than combined using Combined Values Chart was substantial evidence to support addition of impairments, where agreed medical evaluator explained that adding impairments more accurately reflected applicant’s actual disability due to synergy between function of applicant’s back, legs, neck, and arms, and WCAB reasoned that overlap in impact of disabilities to these body parts on applicant’s activities did not preclude addition of impairments given their synergistic effect, and (3) WCJ properly used range of motion method rather than Table 13-7 in AMA *Guides* to determine applicant’s upper extremity impairment, where more than one method of determining impairment was appropriate and range of motion method produced higher disability rating than utilizing Table 13-7.

**Jose Vasquez, Applicant v. Lansco Die Casting, Inc., State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 576. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant laborer/assembler’s industrial injuries to multiple body parts over period 6/1/2001 through 9/20/2002, and on 4/29/2002, 6/7/2002, and 8/2002, resulted in 88 percent permanent disability, when WCAB found that WCJ correctly calculated applicant’s permanent disability by combining factors of disability using Multiple Disability Table (MDT) in 1997 Schedule for Rating Permanent Disabilities, and rejected applicant’s assertion that WCJ should have added his factors of disability to find permanent total disability or, alternatively, awarded permanent total disability based on applicant’s inability to compete in labor market pursuant to LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, where there was no medical evidence offered by applicant indicating that his disabilities should be added rather than combined using MDT, and there was no substantial medical or vocational expert evidence to support finding of permanent total disability pursuant to *LeBoeuf*.

**Ufracina Cervantes, Applicant v. Strategic Restaurant Company II, LLC, New Hampshire Insurance Company, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 485. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, affirming WCJ’s decision in split panel opinion, held that applicant cook was entitled to award of 75 percent permanent disability for 4/10/2015 industrial injuries to her right upper extremity, psyche, and in form of complex regional pain syndrome, based on medical evidence and scheduled permanent disability rating, and that applicant did not meet her burden of proving entitlement to 100 percent permanent disability, when WCAB panel majority, adopting WCJ’s report, found that residual functional capacity forms applicant relied upon were inconsistent with medical record regarding applicant’s functional ability and did not rebut scheduled rating, and that pursuant to holding in Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, applicant could not rely on Labor Code § 4662(b) as sole basis for finding permanent total disability; Commissioner Sweeney, dissenting, agreed with panel majority’s finding that current medical record did not support finding of permanent total disability, but believed that medical evidence was not sufficiently developed and that further development of record was necessary in keeping with WCAB’s constitutional mandate to ensure “substantial justice in all cases.”

**Darnell Hope, Applicant v. Smart & Final, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 550. Permanent Disability—Rating—Occupational Group Numbers—WCAB, rescinding WCJ’s permanent disability findings, held that WCJ should have utilized occupational group number 460 instead of 350 to calculate permanent disability incurred by applicant as result of industrial injuries sustained on 9/12/2016 and during period 5/4/91 through 7/16/2018, while working as truck driver, when WCAB reasoned that WCJ must look beyond job title to actual physical demands of job in order to determine occupational group number that accurately describes injured worker’s employment at time of injury, and that permanent disability rating schedule states that truck driver (group 350) may include some loading of materials whereas work of loader/unloader (group 460) places strenuous demands on worker’s spine and legs as result of lifting and carrying heavy objects, and WCAB found that applicant’s unrebutted testimony regarding physical demands of his employment with defendant was more consistent with description of physical demands of occupational group number 460 (loader/unloader) than those of 350 (truck driver), and that occupational group number 460 produced permanent disability rating of 5 percent for applicant’s 9/12/2016 injury and 23 percent permanent disability for cumulative injury.

**Dustin Huber, Applicant v. Cast & Crew Entertainment Services, Inc., Zurich North America, Entertainment Partners, American Casualty Company of Reading, Pennsylvania, as administered by CNA, Warner Bros. Studios, PSI, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 540. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB rescinded WCJ’s unapportioned award of 100 percent permanent disability to applicant for 10/31/97 industrial injuries to his lumbar spine, cervical spine, internal system, upper digestive system, and psyche, and cumulative injuries to his neck, back, upper digestive system, psyche, and in form of high blood pressure during period 1996 to 6/26/2004, and returned matter to trial level for further proceedings regarding permanent disability, when WCAB found, among other things, that WCJ erred in determining applicant’s permanent disability by adding his individual impairments rather than combining them using Combined Values Chart (CVC) based on opinions of agreed medical examiners, and reasoned that although impairments may be added if substantial medical evidence supports physician’s opinion that adding them will result in more accurate rating of applicant’s level of disability than rating resulting from use of CVC, here there was no substantial evidence to support opinions of agreed medical examiners that addition of impairments was more accurate than combining impairments using CVC, and issue requires further development of medical record.

**Elaine Sedlack, Applicant v. University of California, Berkeley, PSI, and Sedgwick Claims Management Services (Claims Administrator), Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 545. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant’s cumulative injuries to her back and hips through 1/11/2008 resulted in 93 percent permanent disability, and held that WCJ properly calculated extent of applicant’s permanent disability by adding her back and hip impairments rather than combining them using Combined Values Chart (CVC), when WCAB reasoned that CVC is rebuttable and physician is not precluded from utilizing method other than CVC to determine employee’s whole person impairment so long as physician’s opinion remains within four corners of AMA *Guides*, that additive method may be used if it results in more accurate rating than CVC, that agreed medical examiner here concluded that applicant’s hip and back disabilities caused synergistic effect and, therefore, adding her impairments was mas more accurate way to determine permanent disability than using CVC, and that, especially without conflicting evidence, there was no basis to reject agreed medical examiner’s opinion.

**Karen Swanson, Applicant v. Fresno Unified School District, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 565. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant elementary school teacher’s 2/17/2004 industrial injuries to her neck, low back, psyche, cervical spine, esophagus, and bladder resulted in permanent total disability pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when vocational expert evidence established that applicant was precluded from returning to labor market and was not amenable to vocational rehabilitation as consequence of her industrial injury, and WCAB found that vocational evidence was sufficient to rebut scheduled AMA *Guides* rating consistent with Labor Code § 4660 and Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680.

**Alberto Tejada, Applicant v. PMC Global dba Direct Pack, Inc., QBE Specialty Insurance, administered by Gallagher Bassett Services, Inc., Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 557. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 46 percent permanent disability for applicant packer’s 11/17/2014 admitted industrial injuries to his cervical spine, left shoulder and left arm based on panel qualified medical evaluator’s analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, which WCAB found was valid, when panel qualified medical evaluator adequately explained “how” and “why” applicant’s left shoulder impairment should be rated by combining loss of strength and loss of range of motion, and grip strength should be used to rate left arm impairment, and WCAB noted that although panel qualified medical evaluator did not adopt strict AMA *Guides* rating, which would not permit combining loss of motion and loss of strength, he did not depart from four corners of AMA *Guides* in finding impairment as argued by defendant, and concluded that *Almaraz/Guzman* analysis produced most accurate rating of applicant’s disability.

**Xochitl Abarca, Applicant v. Department of Social Services/IHSS, legally uninsured, adjusted by York Risk Services Group, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 548. Permanent Disability—Rating—Range of Evidence—WCAB, in split panel opinion, rescinded WCJ’s decision that applicant who suffered industrial injury to multiple body parts on two dates in 2007 while employed as caregiver was entitled to unapportioned award of 78 percent permanent disability, and returned matter to trial level for further development of record regarding extent of applicant’s permanent disability and apportionment, when WCJ found that applicant had rebutted scheduled rating pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, yet awarded applicant permanent disability based on range of evidence between medical reporting (rated at 64 percent permanent disability) and vocational reporting (up to 100 percent permanent disability based on reporting of applicant’s vocational expert), and while WCAB emphasized that permanent disability rating may be based on range of evidence in record, WCAB concluded that disability rating may not be based on range between *medical* evidence and *vocational* evidence, as medical experts and vocational experts measure different aspects of how injury affects employee, and medical-legal evaluative reports and vocational expert reports, though overlapping in some respects, are essentially “apples and oranges;” WCAB further concluded that WCJ’s award of 78 percent permanent disability could not stand because it was not supported by record, where panel qualified medical evaluator on whose opinion WCJ relied regarding applicant’s level of permanent impairment for her cervical spine, lumbar spine, bilateral carpal tunnel syndrome, and bilateral cubital tunnel syndrome was insufficient, as doctor failed to adequately explain his use of Range of Motion method for finding impairment of both cervical spine and lumbar spine pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, did not discuss how impairment ratings for carpal tunnel and cubital tunnel were derived, and, additionally, provided improper apportionment analysis; Commissioner Sweeney, in concurring opinion, opined that while current record could not support WCJ’s permanent disability finding, permanent disability rating may be based on range between medical and vocational evidence in some cases given that trier of fact must consider all evidence, which would include both medical and vocational reporting as these two types of evidence are interrelated, inform each other and, when considered together, may present more complete picture of injury’s effect on applicant and ultimately most accurate permanent disability rating.

**Robert Burn, Applicant v. State of California Employment Development Department, Legally Uninsured, adjusted by State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 562. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant’s 5/9/2014 industrial injury (fracture) to his left ankle while working as disability insurance program representative, alone, without consideration of other industrial injuries, resulted in 100 percent permanent disability, based on opinion of panel qualified medical evaluator that applicant had 80 percent whole person impairment under AMA *Guides*, which adjusted to 100 percent permanent disability under Labor Code § 4660.1, due to his wheelchair dependence, when there was no evidence to rebut panel qualified medical evaluator’s impairment determination, and WCAB found no basis for apportionment of applicant’s permanent disability to other injuries or nonindustrial factors.

**Leonard De La Rosa, Applicant v. Kloeckner USA Holdings, Travelers Property Casualty Company of America, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 541. Permanent Disability—Rating—Conclusive Presumption of Total Disability—WCAB affirmed WCJ’s finding that applicant, while employed as plant operating manager on 10/8/2012, suffered industrial injury causing, among other injuries, mental incapacity as provided in Labor Code § 4662(a)(4), thereby entitling applicant to unapportioned award of 100 percent permanent disability, when panel qualified medical evaluator opined that applicant’s industrial head injury aggravated or “lit up” his preexisting neurodegenerative disorder, resulting in profound cognitive dysfunction, and WCAB concluded that reporting of panel qualified medical evaluator constituted substantial evidence to support WCJ’s finding of permanent total disability based on conclusive presumption in Labor Code § 4662(a)(4) due to severe brain injury and mental incapacity, that panel qualified medical evaluator’s change in opinion after repeated evaluations of applicant’s mental condition did not undermine his ultimate conclusions regarding causation and extent of applicant’s brain injury, when physician detailed medical basis for his ultimate conclusions, that, contrary to defendant’s assertion, absence of recommended diagnostic imaging test did not preclude qualified medical evaluator from finding that applicant’s injury was caused by industrial aggravation of underlying neurodegenerative condition, such as Alzheimer’s or Parkinson’s disease, and that when injury is conclusively presumed to have caused permanent total disability under Labor Code § 4662(a), apportionment to nonindustrial factors pursuant to Labor Code § 4663 is not applicable to reduce award [Note: Defendant’s petition for writ of review was subsequently denied on October 9, 2019, *sub nom.* Kloeckner USA Holdings v. Workers’ Comp. Appeals Bd. (De La Rosa) (2019) 84 Cal. Comp. Cases 1020].

**Maria De La Vega, Applicant v. Rally Staffing, American Home Assurance, administered by Broadspire, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 554. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB amended WCJ’s decision awarding applicant laborer/packer 91 percent permanent disability for 8/19/2008 industrial injuries to her cervical spine, thoracic spine, lumbar spine, left shoulder, psyche, sleep, hypertension/cardiovascular system, and upper digestive/gastrointestinal system, and awarded applicant 81 percent permanent disability for her injuries, when WCAB found that WCJ erred in rating applicant’s permanent disability by adding her gastrointestinal, hypertension, upper digestive, and sleep disabilities rather than combining disabilities using Combined Values Chart (CVC); WCAB reasoned that impairments may be added only if physician opines that adding disabilities will result in more accurate rating of applicant’s level of disability than rating disabilities using CVC and there is substantial medical evidence to support physician’s opinion, and here report of agreed medical examiner upon which WCJ relied was not substantial evidence to support use of additive method as agreed medical examiner did not advocate for adding impairments or conclude that use of CVC would not accurately rate applicant’s impairments, nor did he provide any analysis to establish how and why adding impairments resulted in more accurate rating of applicant’s disability than use of CVC.

**Gary Hawkins, Applicant v. Valley State Prison, legally uninsured, State Compensation Insurance Fund, adjusting agency, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 564. Permanent Disability—Rating—Occupational Group Numbers—WCAB affirmed WCJ’s finding that applicant, who was employed by California Department of Corrections as stationary engineer, was entitled to have permanent disability calculated utilizing occupational group number 490 for police officers, when WCAB reasoned that where employee’s job duties encompass duties of two occupations, employee is entitled to be rated for occupation which produces highest percentage of permanent disability, and that in this case evidence established that approximately 25 percent of applicant’s job duties involved supervision of inmates and custodial duties consistent with those of police officers, which produced higher permanent disability rating than group number for stationary engineer.

**Galit Lamni Nahmani, Applicant v. Kabbalah Center Los Angeles, The Hartford, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 563. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 30 percent permanent disability as result of admitted industrial injuries to her left upper extremity, elbow, wrist, hand, and in form of complex regional pain syndrome on 7/13/2011 while employed as clerk typist, when WCAB reasoned that, contrary to applicant’s assertion, vocational evidence in this case did not establish that applicant’s ability to participate in vocational rehabilitation was impaired and, therefore, did not rebut application of scheduled permanent disability rating pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, where vocational expert found that applicant had necessary transferable skills to obtain employment within her physical limitations and would only require assistance with finding job and with application process.

**Cleopatra Zmek, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 552. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who suffered industrial injuries to her knees, sleep, and circulatory, pulmonary and digestive systems while employed by state prison as nurse was entitled to unapportioned award of 100 percent permanent disability pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, based on opinion of applicant’s vocational expert, which WCAB found more persuasive than opinion of defendant’s vocational expert, when WCAB concluded that opinion of applicant’s vocational expert that applicant was unable to return to labor market and could not be retrained was sufficient to rebut strict AMA *Guides* impairment rating, and further determined that defendant did not meet burden of proving nonindustrial apportionment of applicant’s permanent disability, where reporting of agreed medical evaluator was not substantial evidence on issue of apportionment, and applicant’s vocational expert concluded that there was no basis for nonindustrial apportionment of applicant’s permanent total disability.

**Richard Gonzales, Applicant v. Cal Fire, legally uninsured by and through State Compensation Insurance Fund, State Employees Adjusting Agency, Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 15. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB rescinded WCJ’s findings that applicant’s industrial injuries to his ears (hearing), right wrist, left elbow, hips, knees, psyche, lower back, and in form of headaches during period 6/1/83 to 8/21/2015 resulted in 77 percent permanent disability and that medical evidence justified combining rather than adding impairments, when WCAB reasoned that WCJ’s determination of permanent disability was based upon need for “synergistic effect” between impairments as absolute precondition to adding rather than combining impairments, but, as discussed in De La Cerda v. Martin Selko & Co. (2017) 83 Cal. Comp. Cases 567 (Appeals Board noteworthy panel decision), impairments may be added if substantial medical evidence supports physician’s opinion that adding them will result in more accurate rating of injured employee’s overall permanent disability, that AMA *Guides* themselves explain that in appropriate cases, whole person impairments may be added or multiplier may be used, as opposed to combining impairments, that although psychiatric qualified medical evaluator’s deposition testimony in this case established that there was no overlap between physical and mental impairments, his agreement under questioning by applicant’s attorney that “this case reach[es] a more *fair result* with adding those disabilities,” was not equivalent of medically-supported opinion that adding disabilities will result in *more accurate rating*, as required by case law, and that since qualified medical evaluator opined that there was no overlap between physical and mental impairment, and this suggested that adding impairments *may* result in more accurate rating, medical record must be developed with supplemental report or additional testimony from qualified medical evaluator.

**Juan Juarez, Applicant v. Westside Building Materials, U.S. Fire Insurance Company, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 571. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant driver suffered permanent total disability as result of 7/26/2003 admitted industrial injuries to his back, neck, psyche, and urological system, based on medical evidence and vocational expert’s conclusion that due to effects of applicant’s admitted industrial injuries, without consideration of effects of disputed injuries or non-industrial factors, applicant was not amenable to vocational rehabilitation and was unable to return to labor market pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Jitka Van Dyne-Parmet, Applicant v. United Airlines, Inc., PSI, administered by Sedgwick Claims Management Services, Inc., Defendants,** 2020 Cal. Wrk. Comp. P.D. LEXIS 17. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant who, while employed as flight attendant on 8/3/2001, sustained industrial injuries to her neck, shoulders, muscle and connective tissue (in form of fibromyalgia), and psychological system, and alleged industrial injuries to her upper extremities, central nervous system (in form of aneurism), temporomandibular joint, teeth and gums, cardiovascular system (in form of hypertension), and cognitive system resulting from striking her head against wall during in-flight turbulence, suffered 100 percent permanent disability from her injuries, when agreed medical evaluator in psychiatry opined that applicant’s permanent disability to all body systems should be added in accordance with Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than calculated by utilizing Multiple Disabilities Table, despite defendant’s contrary assertion, and WCAB found no reasonable basis to deny application of *Kite* to cases arising under 1997 Schedule for Rating Permanent Disabilities, and, therefore, no reason to disturb WCJ’s award of permanent total disability.

**Angela Williams, Applicant v. Clovis Community Hospital, PSI, administered by Corvel Corporation, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 569. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as consequence of 3/23/2008 industrial injury to multiple body parts while employed as registered nurse, and rejected defendant’s assertion that applicant’s permanent disability, after apportionment, should be rated at 96 percent, when WCAB found that WCJ properly relied on conclusion of vocational expert that as consequence of industrial injury, applicant was not amenable to vocational rehabilitation and was precluded from returning to labor market, that vocational evidence was sufficient to rebut scheduled rating pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and established that applicant’s disability was greater than 96 percent rating derived from scheduled rating of medical records, that WCJ’s finding was based on substantial evidence of applicant’s vocational infeasibility and lack of future earning capacity, consistent with Labor Code § 4660 and Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick) (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, and that contrary to defendant’s assertion, apportionment of permanent disability to effects of applicant’s 2012 motor vehicle accident under Labor Code § 4663 was not justified because accident occurred while applicant was driving home from medical appointment related to industrial injury and, therefore, injuries sustained in accident were compensable consequence of industrial injury, and because defendant did not prove that applicant sustained further disability from motor vehicle accident.

**Julio Cardona, Applicant v. Lucky Transportation Company, State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 531. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that right shoulder injury suffered by applicant while working as driver/loader/unloader on 8/20/2017 resulted in 6 percent permanent disability based on opinion of qualified medical evaluator, who found zero impairment according to strict AMA *Guides* rating, but assigned 2 percent whole person impairment based on pain and range of motion findings, and WCAB found that qualified medical evaluator’s analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, was substantial evidence to support finding of 6 percent permanent disability, whereas *Almaraz/Guzman* analysis provided by applicant’s primary treating physician did not support his conclusion that applicant suffered 16 percent permanent disability, because physician did not provide strict AMA *Guides* rating nor did he explain why his *Almaraz/Guzman* analysis produced more appropriate rating than rating strictly based on AMA *Guides*.

**Terry Gutschlag, Applicant v. Los Angeles Department of Water and Power, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 494. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as result of industrial injuries to his shoulders, knees, neck, back, psyche, gastrointestinal system, urological system, and sleep, while employed as painter from 8/99 through 11/18/2004, when WCAB found that vocational expert evidence showing that applicant was precluded from returning to open labor market and not amenable to vocational rehabilitation constituted substantial evidence under Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, to rebut scheduled rating and support finding of 100 percent permanent disability, and that although medical evaluators concluded that some of applicant’s impairments were related to nonindustrial factors, vocational expert noted that nonindustrial impairments did not result in any of applicant’s disability.

**Monica Bernasani, Applicant v. International Filing Company, U.S. Fire Insurance Company, administered by Crum & Forster, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 508. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of cumulative injuries to her back, neck, knees, wrists, shoulders, psyche, upper gastrointestinal system, and in forms of hypertension, headaches and weight gain, while working as machine operator from 11/1/2004 through 1/10/2005, when orthopedic agreed medical examiner concluded that applicant was not capable of returning to gainful employment due to her industrial injuries, and WCAB found that his opinion was substantial evidence where medical evidence established extent of applicant’s disability, including her need for transportation assistance, use of cane, prescription medication usage, and need for housekeeping services; WCAB further found that vocational expert’s reports, which WCAB held were properly admitted into evidence, were substantial evidence to establish that applicant was not amenable to vocational rehabilitation and, for that reason, scheduled rating of applicant’s permanent disability was rebutted pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624.

**Richard Hovannisian, Applicant v. UCLA, PSI, Administered By Sedgwick CMS, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 517. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB granted reconsideration and deferred issues of whether applicant suffered industrial injury to his lumbar spine, in addition to his right shoulder and right knee, while employed as university professor on 6/2/2015, and regarding extent of applicant’s permanent disability caused by industrial injuries, when WCAB concluded that orthopedic qualified medical evaluator’s opinion upon which WCJ relied in finding lumbar injury and awarding 35 percent permanent disability for shoulder and lumbar injuries was not substantial evidence because evaluator never expressly discussed industrial causation of applicant’s lumbar injury in his report, and with respect to permanent disability, based right shoulder impairment on decreased muscle strength without explaining why this rating method should be utilized, why applicant’s impairment was not adequately considered by other methods in AMA *Guide*s, or why departure from strict AMA *Guides* rating was warranted, and, furthermore, evaluator never explained his opinion that applicant qualified for DRE category II impairment for his lumbar spine.

**Charles Sinclair, Applicant v. Richard J. Donovan Correctional Facility, Legally Uninsured, administered by State Compensation Insurance Fund/State Contract Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 529. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who suffered industrial injuries to his hands, wrists, upper extremities, and in form of complex regional pain syndrome while working as licensed vocational nurse on 12/21/2010, was permanently totally disabled by his injuries based on opinions of treating physicians and vocational expert that applicant’s injuries and medications that he took for his injuries impaired his ability to perform activities of daily living and substantially limited his ability to participate in open labor market and in vocational rehabilitation, and WCAB found that medical and vocational reporting was substantial evidence to rebut scheduled permanent disability rating, and that defendant did not meet its burden of proof regarding apportionment to prior injuries or nonindustrial factors.

**Jose Vargas, Applicant v. West Coast Liquidators, Inc., dba Big Lots Stores and Arch Insurance, Administered by Sedgwick CMS, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 511. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s findings that applicant warehouse worker/truck unloader’s 2/7/2011 industrial injuries to his back and psyche resulted in 50 percent permanent disability, and that report of applicant’s vocational expert was not substantial evidence to rebut scheduled rating and support award of permanent total disability as requested by applicant, when WCAB found that vocational expert’s description of applicant’s pain level was not corroborated by medical evidence or by applicant’s appearance and behavior at trial, nor was it supported by *sub rosa* video evidence depicting applicant moving about without any signs of pain, that vocational expert’s assumption that narcotic pain medication impacted applicant’s ability to work was unsupported, and that applicant’s description of his own subjective limitations was exaggerated and lacked credibility when viewed against other evidence in record.

**Lonnie Brown, Applicant v. City of Torrance, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 523. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, affirming WCJ’s decision, held that in awarding applicant garbage collector 71 percent permanent disability for injuries to multiple body parts on 6/2/2009 and 6/23/2009, WCJ properly relied on gait derangement impairment finding of orthopedic agreed medical examiner pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, based on applicant’s use of cane on part-time basis for bilateral knee problems, when agreed medical evaluator adequately justified his deviation from scheduled rating under *Almaraz/Guzman*, stating that applicant had bilateral total knee replacements which caused problems with his activities of daily living and that use of cane should be incorporated in impairment finding to accurately reflect extent of applicant’s disability.

**Hector Gonzalez, Applicant v. Recology Golden State, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 501. Permanent Disability—Rating—Occupational Group Numbers—WCAB, granting reconsideration, held that applicant, who performed multiple job duties involving operating debris box truck and trash collection, was entitled to rating based on occupation carrying higher percentage of disability, which in this case was trash collection or occupational group number 560.

**Kalena Buhman, Applicant v. Borders Group, Liberty Insurance, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 476. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who suffered industrial injuries to multiple body parts on 1/9/2010 and 1/21/2010 while employed as supervisor, was permanently totally disabled by her injuries pursuant to Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and LeBoeuf v. W.C.A.B. (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB concluded that vocational evidence combined with medical opinions of qualified medical evaluators and treating physicians upon which WCJ relied established that applicant sustained significant psychiatric and chronic physical pain from her industrial injuries, including complex regional pain syndrome, and that vocational expert confirmed that applicant’s limitations prevented her from participating in vocational rehabilitation, which supported finding under *Ogilvie* and *Dahl* that applicant’s permanent disability was greater than disability derived from strict application of rating schedule.

**Richard Glassman, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, adjusted by State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 473. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to multiple body parts on 7/29/2012, 3/10/2014 and cumulatively from 11/16/2007 through 10/10/2012, was permanently totally disabled based on opinions of his treating physician, psychiatric agreed medical examiner and vocational expert that applicant was unable to compete in open labor market and could not participate in vocational rehabilitation due to his erratic autonomic dysfunction, when WCAB found that, in making permanent disability finding in accordance with facts based on medical evidence and vocational expert reporting, WCJ’s finding was not contrary to **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, and was supported by substantial evidence.

**Jeffrey Davis, Applicant v. Pacific Bell Telephone Co., PSI, adjusted by Sedgwick Claims Management Services, Inc., Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 405. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 74 percent permanent disability as result of admitted injuries to his hips, shoulders, back, psyche, knees, wrists, and hands on 1/30/2009, and cumulatively over period ending on 2/2/2009, and WCAB rejected applicant’s assertion that he was 100 percent permanently disabled from industrial injuries, when WCAB found that reports of vocational expert were not substantial evidence under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, to rebut scheduled 74 percent permanent disability rating because they conflicted with applicant’s trial testimony as to his physical capabilities and also with medical evidence and did not sufficiently indicate whether applicant was amenable to participate in vocational rehabilitation.

**Zahra Stephens, Applicant v. Cox Enterprises, Inc., National Union Fire Insurance Company, administered by Broadspire, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 402. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant suffered permanent total disability from 4/16/2012 industrial injuries to her head, psyche, nose, neck, back, shoulders, and upper and lower extremities incurred in automobile accident, and returned matter to trial level for further development of medical record on issues of permanent disability and attorney fees, when WCJ found permanent total disability based on Labor Code § 4662 and on entire record, including opinions of evaluating psychologist and applicant’s vocational expert who found that applicant could not return to work and was not amenable to vocational rehabilitation, and WCAB panel majority determined that conclusions of psychologist were not substantial evidence due to gaps in her record review, conflict with findings of panel qualified medical evaluator in neurology, undercutting by applicant’s trial testimony concerning her repeated trips to Iran, and lack of awareness that applicant was taking opioids, and because vocational expert relied heavily on psychologist’s conclusions in formulating his opinion, vocational expert’s reporting was equally deficient and was not substantial evidence to support finding of permanent total disability; Commissioner Sweeney, dissenting, would affirm WCJ’s finding of permanent total disability based on opinions of evaluating psychologist and vocational expert, when Commissioner Sweeney found that reporting of psychologist that applicant’s neurological symptoms included post-concussive reaction with headache, blurred vision, dizziness, faintness, loss of balance, and cognitive impairment with concentration/attention/memory deficits, was consistent with objective neurological findings and WCJ’s observations of applicant at trial, and, together with conclusions of applicant’s vocational expert, constituted substantial evidence to support finding of 100 percent permanent disability.

**Soohyun Kim, Applicant v. Valentino, PSI, Administered by Gallagher Bassett Services, Inc., Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 425. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, in split panel opinion, granted applicant’s Petition for Reconsideration and affirmed its prior decision [see *Kim v. Valentino*, 2019 Cal. Wrk. Comp. P.D. LEXIS 143 (Appeals Board noteworthy panel decision)] rescinding WCJ’s finding of industrial injury in form of chronic pain, but dismissed applicant’s contention that WCAB erred in its prior decision by rescinding WCJ’s award of permanent total disability, when WCAB reasoned that its prior decision was not final order subject to reconsideration on issue of permanent disability, that since WCAB returned matter to trial level for further proceedings regarding extent of applicant’s permanent disability, applicant will have opportunity to present her request for further development of medical record to WCJ, and that since applicant is not foreclosed from requesting further development of record, there is no showing of significant prejudice or irreparable harm; in addressing applicant’s Petition for Reconsideration, WCAB explained that decisions issued by WCAB may address hybrid of both threshold and interlocutory issues, and if party challenges “hybrid” decision, petition seeking relief is treated as petition for reconsideration because decision resolves threshold issue; however, if petition challenging hybrid decision disputes determination made on interlocutory question, WCAB will evaluate issues raised by petition based on removal standard applicable to non-final decisions, *i.e.*, significant prejudice or irreparable harm; here, WCAB’s prior decision was hybrid decision because on one hand, WCAB determined threshold issue by finding that applicant did not sustain industrial injury in form of chronic pain, but on other hand did not finally determine issue of permanent disability, which was returned to trial level for further proceedings.

**Mohammed Bagobri, Applicant v. AC Transit, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 384 Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant bus driver sustained 100 percent permanent disability “in accordance with the fact” under Labor Code §§ 4660 and 4662(b), without basis for apportionment, as result of 3/24/2005 admitted industrial injuries to his lumbar spine, nose and psyche, when orthopedic agreed medical examiner and applicant’s vocational expert opined that applicant was unable to sustain gainful employment and had total loss of future earning capacity due to his industrial injuries, and WCAB rejected defendant’s assertion that holding in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, precluded finding of permanent total disability “in accordance with the fact” based on applicant’s work restrictions, and limited permanent total disability findings to whole person impairment ratings calculated pursuant to permanent disability rating schedule, when WCAB reasoned that 2005 Permanent Disability Rating Schedule (PDRS), which was issued pursuant to Labor Code § 4660, expressly defines permanent total disability as disability causing total loss of earning capacity, that because award of permanent disability based on injured worker’s inability to work/loss of earning capacity is consistent with Labor Code § 4660 and PDRS, holding in *Fitzpatrick* (*i.e.*, that WCAB must follow PDRS in assigning permanent total disability, unless scheduled rating is rebutted), cannot be interpreted to preclude award of permanent total disability in cases of inability to work and must be limited to specific facts in that case, that interpreting *Fitzpatrick* to preclude award of permanent total disability where applicant is unable to work is further unjustified as such interpretation conflicts with all other published case law addressing issue, including decision in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, that where applicant has lost all future earning capacity (and absent apportionment), WCAB *must* issue award of permanent total disability and *may* reference Labor Code § 4662(b), even though award, in fact, is issued pursuant to PDRS and Labor Code § 4660, that PDRS Future Earning Capacity tables were created for calculation of permanent partial disability and do not apply in cases of permanent total disability, that finding of permanent total disability “in accordance with the fact” can be based on medical evidence, vocational evidence or both, and that in this case there was substantial medical and vocational evidence to support finding of 100 percent permanent disability based on applicant’s work restrictions and preclusion from gainful employment.

**Maria Monrial, Applicant v. Gloria Rubalcaba, Allstate Insurance Company, administered by Sedgwick Claims Management Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 352. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, amending WCJ’s decision, held that applicant who suffered industrial injuries to her neck, low back, knees, gastrointestinal system, psyche, and in forms of mental impairment and sleep disorder on 3/19/2011 while working as caregiver was entitled to award of 100 percent permanent disability, rather than 91 percent permanent disability as awarded by WCJ, due to fact that applicant was unable to return to labor market and vocational evidence of her inability to benefit from vocational rehabilitation, pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB found that vocational expert’s report provided sufficient justification for determining that applicant’s inability to benefit from vocational rehabilitation arose solely from “individualized assessment” of effect of industrial factors, without consideration of nonindustrial factors, and this evidence alone was sufficient to rebut scheduled rating and entitle applicant to finding that she was permanently totally disabled, and WCAB further determined that vocational evidence was buttressed by agreed medical evaluator’s opinion that applicant was permanently and totally disabled and not capable of returning to work solely due to her orthopedic disabilities.

**Ronnie Phelps, Applicant v. State of California, Department of Corrections, California Institution For Men, Legally Uninsured, administered by State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 349. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant correctional officer was 98 percent permanently disabled by 12/12/2006 industrial injuries to his left knee, left elbow, lumbar spine, and cervical spine, and cumulative injuries to his upper gastrointestinal system, neurologic system, psyche, cervical spine, lumbar spine, shoulders, and left ankle during period 7/6/81 through 12/11/2006, and found that applicant did not rebut scheduled rating pursuant to **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, and establish permanent total disability, when WCAB concluded that overall record did not justify finding of 100 percent permanent disability either by substantial medical or vocational evidence or by determination that applicant’s injury was not part of sampling of disabled workers that was used to compute adjustment factor.

**Elvie Santiago, Applicant v. State of California, Patton State Hospital, legally uninsured, administered by State Compensation Insurance Fund—State Contract Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 350. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB rescinded WCJ’s finding that applicant incurred 49 percent permanent disability as result of injuries to her neck, back, shoulders, and psyche on 4/23/2016, and to her psyche from 3/8/2017 through 5/8/2017 while working as registered nurse, and WCAB returned matter to trial level on issue of whether applicant’s psychiatric and orthopedic disabilities should be added, as done by WCJ, or combined using Combined Values Chart (CVC), when agreed medical examiners did not address issue of whether adding applicant’s orthopedic and psychiatric disabilities would provide more accurate measure of her overall level of permanent disability than combining disabilities under CVC, that permanent disability rating schedule provides that CVC is “generally” used to combine multiple disabilities, and absent medical evidence justifying alternative approach, adding disabilities is not supported, and that existing record is inadequate to allow for determination regarding applicant’s level of permanent disability and must be further developed.

**Tobias Zucco, Applicant v. California Department of State Hospitals, Legally Uninsured, Administered by State Compensation Insurance Fund, Defendants, 2019 Cal. Wrk. Comp. P.D. LEXIS 348.** Permanent Disability—Rating—Vocational Expert Evidence—WCAB rescinded WCJ’s finding that applicant’s industrial injuries to his neck, left shoulder, right hand, psyche, and in form of headaches caused 77 percent permanent disability, and awarded applicant 80 percent permanent disability, after 20 percent nonindustrial apportionment as found by psychiatric agreed medical examiner, when WCAB reasoned that both applicant’s and defendant’s vocational experts concluded that applicant was not amenable to vocational rehabilitation and was unable to compete in open labor market, thereby rendering applicant 100 percent permanently disabled, and 20 percent apportionment was justified based on opinion of agreed medical examiner.

**Alicia Campos, Applicant v. PetCare Veterinary Hospital, American Auto Insurance Company, administered by Allianz Resolution Management, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 379. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that injuries incurred by applicant to her neck, wrists, fingers, nervous system, and reproductive system on 2/9/2009 caused 100 percent permanent disability, after apportionment, based on opinions of qualified medical evaluators and vocational expert, when WCAB found that medical reporting and vocational evidence constituted substantial evidence to rebut AMA *Guides* permanent impairment rating and support WCJ’s finding of permanent total disability, where qualified medical evaluator in physical medicine and rehabilitation found applicant permanently totally disabled due to complex regional pain syndrome, noting that applicant lost control of both limbs and could not compete in open labor market, psychiatric qualified medical evaluator conducted analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and determined that applicant was unemployable from both physical and psychiatric standpoint, and vocational expert persuasively opined that applicant was unemployable, had total loss of earning capacity and was not amenable to retraining.

**Joel Magdaleno, Applicant v. Simpson Manufacturing Company, PSI, adjusted by Matrix Absence Management, Inc., Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 386. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 23 percent permanent disability as result of crush injury to his fingers based on reporting of panel qualified medical evaluator, when panel qualified medical examiner explained that AMA *Guides* did not provide any precise methodology to rate impairment from applicant’s condition, which impacted his range of motion, grip strength and pinch strength and was not nerve-related, and WCAB reasoned that pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, scheduled permanent disability rating may be rebutted by establishing that another chapter, table or method within four corners of AMA *Guides* most accurately reflects injured employee’s impairment, and that panel qualified medical examiner’s opinion was substantial evidence under *Almaraz/Guzman* analysis regarding why strict application of AMA *Guides* was not accurate reflection of applicant’s impairment and why alternative rating was more accurate, based on reasonable medical probability.

**Rafael Sandoval, Applicant v. The Conco Companies, Zurich Insurance Company, administered by Athens, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 299. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s findings that applicant suffered 100 percent permanent disability as result of 1/23/2015 admitted industrial injury to his cervical and lumbar spine while employed as iron worker, and that there was no basis for defendant’s objection to admissibility of applicant’s vocational expert report, when WCAB found that applicant was entitled to use vocational evidence to attempt to rebut permanent disability rating under permanent disability rating schedule, and rejected defendant’s assertion that changes in Labor Code § 4660.1, removing language regarding consideration of future diminished earning capacity, made vocational expert evidence irrelevant and inadmissible for post-1/1/2013 dates of injury, where amendment of Labor Code § 4660.1 did not eliminate adjustment factor but rather standardized factor to multiple of 1.4, which, according to WCAB, when read in context of Labor Code § 4660 and entire permanent disability scheme premised on AMA *Guides*, refers to diminished future earning capacity, and WCAB further concluded that WCJ’s finding of permanent total disability due to applicant’s inability to return to gainful employment or benefit from vocational rehabilitation was properly based on physical limitations described in medical record, reporting of applicant’s vocational expert, and applicant’s unrebutted testimony regarding his limitations.

**Mark Yanchunis, Applicant v. Shasta Gold Corporation, Zurich American Insurance Company, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 311. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Combining Impairments—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of 2012 specific and cumulative industrial injuries to his back and lower extremities while employed as hard rock miner, when WCAB found that opinion of agreed medical examiner constituted substantial evidence under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, and Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), to rebut scheduled AMA *Guides* rating, where agreed medical examiner provided detailed reasons for how he arrived at impairment finding and explained exactly why using strict application of AMA *Guides* to rate applicant’s spine impairment did not provide accurate description of applicant’s disability given applicant’s significant gait problems, tendency to fall and need for cane, which substantially affected applicant’s activities of daily living and needed to be accounted for in determining impairment, and agreed medical examiner also explained that due to synergistic relationship between applicant’s gait problems and severe degenerative spine pathology, gait impairment should be added to spine impairment under AMA *Guides* rather than combined under Combined Values Chart, thereby producing 100 percent permanent disability rating.

**Brenda Melton, Applicant v. Hughes Market, PSI, administered by Sedgwick Claims Management Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 329. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant stock clerk who suffered industrial injuries to her psyche, back, neck, wrists, hands, knees, shoulders, and in forms of fibromyalgia and sleep loss during period 1/17/97 through 1/17/98, was permanently totally disabled from her injuries and was entitled to unapportioned award of 100 percent permanent disability, when WCAB found that vocational expert evidence establishing that applicant was unable to benefit from vocational rehabilitation due to chronic pain from her industrial injuries was sufficient to rebut scheduled rating pursuant to **Ogilvie v. W.C.A.B. (2011)** 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and **LeBoeuf v. W.C.A.B. (1983)** 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and that 15 percent apportionment of fibromyalgia permanent disability to nonindustrial factors found by agreed medical examiner was not substantial evidence and, moreover, did not automatically preclude finding of 100 percent permanent disability, as argued by defendant, where there was no evidence in record that applicant’s preexisting fibromyalgia had any effect whatsoever on her earning ability, and disability caused by industrial injury was solely responsible for applicant’s inability to participate in vocational rehabilitation.

**Wayne Musgrove, Applicant v. Astro Business Products/Canon Business Solutions, Yasuda, now Sompo Japan of America, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 339. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 39 percent permanent disability for applicant copy technician’s 6/15/92 industrial injuries to his low back, neck, psyche, and in forms of sexual dysfunction, headaches and sleep disorder, and found that opinion of orthopedic agreed medical examiner was not substantial evidence to support award of permanent total disability as requested by applicant, when agreed medical examiner testified in general terms that totality of applicant’s disability and dysfunction precluded him from competing in open labor market, and considered factors typically addressed by vocational evidence, such as length of time applicant was off work, in reaching his conclusion that applicant was unable to compete in open labor market, and WCAB, noting that agreed medical examiner is medical expert and not vocational expert, reasoned that agreed medical examiner did not attempt to apportion disability between applicant’s multiple dates of injury or industrial and nonindustrial causes, and that agreed medical examiner’s testimony was not sufficient to establish that applicant could not compete in open labor market due to 6/15/92 injury.

**Estella Nunez, Applicant v. 20th Century Plastics, Liberty Mutual Insurance Company, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 327 Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant sustained 80 percent permanent disability as result of her combined permanent disability, after apportionment of orthopedic disability, from 9/14/99 industrial injury and industrial cumulative injury over period ending 3/6/2002, to her neck, back, psyche, shoulders, and in form of chronic pain, when WCJ, in rating applicant’s permanent disability at 80 percent, relied solely upon impairment ratings provided by medical evaluators, and although in prior decision WCJ found that applicant was incapable of returning to labor market, and vocational experts agreed that applicant was not amenable to vocational rehabilitation, WCJ did not address these factors in his rating; WCAB concluded that applicant was permanently totally disabled based on WCJ’s finding that she was unable to return to labor market and on unanimous vocational evidence of her inability to benefit from vocational rehabilitation pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Rigoberto Diaz, Applicant v. JFC Construction, Inc., Travelers Property Casualty Company of America, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 272**.** Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that, pursuant to principles in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, applicant suffered permanent total disability as result of 8/1/2011 industrial injury to his head, neck, spine, ribs, and left scapula, when WCAB found that medical and vocational evidence was sufficient to rebut AMA *Guides* scheduled rating of 88 percent after apportionment and to support finding of 100 percent permanent disability, where psychiatric panel qualified medical evaluator described synergistic effect between psychiatric disability and physical disability, resulting in greater level of disability, medical evaluators opined that applicant would be unable to complete his work tasks 75 percent of time, and vocational expert reported that applicant, at best, could perform in sheltered work environment and, therefore, had total loss of earning capacity and was not able to participate in vocational rehabilitation.

**Debra Lux, Applicant v. County of Santa Barbara, PSI, Administered by Corvel, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 224. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant, while employed as firefighter, sustained 17 percent permanent disability due to right knee injury based on reports of orthopedic qualified medical evaluator, who opined that applicant’s permanent impairment was comprised of 4 percent whole person Range of Motion (ROM) impairment due to limitations in movement and 4 percent Diagnosis-Related Estimate (DRE) impairment for having undergone right knee partial medial and lateral meniscectomy, and WCAB determined that, while AMA *Guides* state that DRE method is not to be combined with ROM method in evaluating impairment, WCJ did not err in utilizing both methods to rate applicant’s permanent disability in this case, where qualified medical evaluator sufficiently explained why departure from strict application of AMA *Guides* was warranted here and why utilizing both DRE and ROM methods provided more accurate reflection of applicant’s disability than strict AMA *Guides* rating, as described in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837.

**Rusty Jackson, Applicant v. California Department of Corrections and Rehabilitation, Legally Uninsured, adjusted by State Compensation Insurance Fund, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 233. Permanent Disability—Rating—Occupational Group Numbers—WCAB affirmed WCJ’s finding that occupational group number 490 applied to rate applicant’s impairments resulting from industrial injuries to his cervical spine, lumbar spine, and left shoulder incurred while he was working at correctional facility, when WCAB found that although applicant’s job title was “Materials and Stores Supervisor II,” he was trained for and performed custodial functions, including oversight of inmate work crews and participation as “first responder” and crisis negotiator, and he was entitled to be rated using occupational variant code that carried highest factor in computation of disability based on his actual job duties, regardless of his job title.

**Michael Delgado, Applicant v. Southern California Gas Company, PSI, Defendant**, 2019 Cal. Wrk. Comp. P.D. LEXIS 192. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant sustained 100 percent permanent disability as result of admitted cumulative trauma injury to multiple body parts over period 8/24/83 to 12/17/2011, when WCAB concluded that, in finding permanent total disability, WCJ properly relied on persuasive opinions of two agreed medical examiners to determine that applicant suffered from deconditioning as ratable impairment due to his orthopedic injuries, and that reporting of applicant’s vocational expert, which was consistent with applicant’s unrebutted testimony, constituted substantial evidence to support determination regarding applicant’s vocational feasibility and lack of future earning capacity, thereby rebutting permanent disability rating schedule consistent with Labor Code § 4660 and **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick) (2018)** 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680.

**Beverly Brown, Applicant v. Qualcomm, Inc., Safety National Casualty Company, Sedgwick CMS, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 203 Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that reporting of psychiatric agreed medical examiner was substantial evidence to support WCJ’s finding that applicant, who suffered admitted industrial injury to her head on 4/2/2010 while working as administrative assistant, was permanently totally disabled from psychiatric symptoms and severe headaches related to her injury, when agreed medical examiner assigned applicant GAF score of 35 under AMA *Guides* but found that impairment associated with scheduled GAF score did not accurately reflect severity of applicant’s disability, which agreed medical examiner opined precluded applicant from gainful employment and participation in vocational rehabilitation, and WCAB found that agreed medical evaluator’s opinion was sufficient pursuant to holding in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to rebut scheduled rating and support finding of permanent total disability, that WCJ’s award of permanent disability based on agreed medical evaluator’s *Almaraz/Guzman* analysis did not violate Labor Code § 4660 or holdings in **Ogilvie v. W.C.A.B**. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and D**ept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, as asserted by defendant, and that there was no merit to defendant’s assertion that applicant was not entitled to permanent disability benefits because her psychiatric injury was based only on subjective complaints and not on any physical injury or disfigurement [Note: Defendant’s petition for writ of review was subsequently denied on May 14, 2019, *sub nom.* Qualcomm, Inc. v. Workers’ Comp. Appeals Bd. (Brown) (2019) 84 Cal. Comp. Cases 531].

**Noe Chavez, Applicant v. Barrett Business Services, PSI, Administered By Corvel Corporation, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 202. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that, pursuant to principles in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, applicant suffered permanent total disability as result of industrial orthopedic injury to multiple body parts, gastrointestinal problems, hypertensive cardiovascular disorder, psychiatric injury, and problems with her bowels and sleep, when there was substantial medical evidence indicating that applicant was not amenable to vocational rehabilitation and was unable to return to labor market, and WCAB found that applicant was not obligated to attempt vocational rehabilitation prior to being found permanently totally disabled, where medical evidence clearly established that applicant was not feasible for retraining.

**Noe Chavez, Applicant v. Barrett Business Services, PSI, Administered By Corvel Corporation, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 202. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s finding of permanent total disability, held that WCJ properly determined that most accurate assessment of applicant’s disability was achieved by adding her orthopedic and non-orthopedic impairments rather than combining impairments using Combined Values Chart, when orthopedic agreed medical examiner described in detail synergistic effects of applicant’s orthopedic and non-orthopedic disabilities, and explained why adding disabilities was most accurate reflection of applicant’s overall permanent disability.

**Lucas Casias, Applicant v. KF Howell Electric, Inc., and Imperium Insurance, adjusted by Athens Administrators,** Defendants, 2019 Cal. Wrk. Comp. P.D. LEXIS 181. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s permanent disability finding, held that WCJ did not err by adding applicant electrician’s impairments of upper extremities, cervical spine, lumbar spine, and in forms of headaches, cognitive problems and scarring to determine that applicant incurred 83 percent permanent disability as result of 3/24/2010 industrial injuries, pursuant to principles in Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), when WCAB found that medical opinions of agreed medical examiners in neurology, psychiatry and neuropsychology were substantial evidence to justify addition of applicant’s multiple impairments rather than combining impairments using Combined Values Chart (CVC); WCAB noted that although basis for addition in *Kite* was synergistic effect of one hip’s injury on opposite hip’s injury, situations in which evaluating physician may justify addition rather than combination using CVC are not necessarily limited to injuries involving bilateral or corresponding body parts, and physician’s failure to find “synergistic” effect is not determinative of validity of using additive rating method, as long as substantial evidence support’s physician’s opinion that adding impairments will result in more accurate rating of applicant’s level of permanent disability.

**Joel Gonzalez, Applicant v. EDCO Disposal Waste and Recycling Services, Travelers Property and Casualty,** Defendants, 2019 Cal. Wrk. Comp. P.D. LEXIS 199. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant sustained 100 percent permanent disability as consequence of three separate specific injuries to multiple body parts, and returned matter to trial level for further proceedings, when WCJ issued combined award of permanent disability, rather than separate awards as described in **Benson v. W.C.A.B.** (2009) 170 Cal. App. 4th 1535, 89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases 113, without reference to whether medical record justified combined award, and, additionally, WCJ applied Labor Code § 4662(b) to find permanent total disability even though impairment ratings supported 73 percent permanent disability and **Court of Appeal in Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, held that award of permanent total disability may *only* be made through impairment ratings by application of AMA *Guides* pursuant to Labor Code § 4660, and that finding under Labor Code § 4662(b), “in accordance with the fact,” does not provide “a second independent path to permanent total disability findings separate from section 4660.”

**Dennis Romero, Applicant v. County of San Diego, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 201. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s permanent disability award of 94 percent, when WCJ computed permanent disability by combining applicant’s separate impairments for hypertensive heart disease, coronary heart disease and arrhythmia using Combined Values Chart (CVC), based on impairment ratings assigned by qualified medical evaluator, and WCAB concluded that CVC accounted for any overlapping heart disabilities even if symptoms justifying placement within specific table or chapter of AMA *Guides* were identical.

**Soohyun Kim, Applicant v. Valentino, PSI, Administered By Gallagher Bassett Services, Inc., Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 143.Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant, while employed as visual merchandiser during period 3/31/2008 to 1/25/2012, suffered industrial orthopedic injuries/complex regional pain syndrome (CRPS) and psychiatric injuries that resulted in 100 percent permanent disability “in accordance with the fact” under Labor Code § 4662(b), when WCAB found that pursuant to **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick) (2018)** 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, Labor Code § 4662(b) does not provide independent basis, outside of Labor Code § 4660, to find permanent total disability “in accordance with the fact,” where medical record justifies scheduled rating of less than 100 percent and scheduled rating is not rebutted, that medical reports in this case did not produce rating of 100 percent permanent disability, and that vocational expert’s opinion was not sufficient to rebut scheduled rating of between 64 and 81 percent, where limitations and severity of pain relied upon by vocational expert in support of his conclusion that applicant was unemployable and not amenable to vocational rehabilitation were not fully corroborated by reporting physicians, who described significantly more moderate impairment than completely debilitating impairment proposed by vocational expert; Commissioner Sweeney, dissenting, believed that many significant disabling factors, particularly applicant’s constant severe pain related to her CRPS and preclusion from using her right upper extremity, with resulting psychiatric and sleep disorders, were substantial and compelling medical findings that supported vocational expert’s conclusion that applicant was permanently totally disabled.

**Kimberly Barry, Applicant v. Department of Food and Agriculture, State Compensation Insurance Fund, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 165. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB rescinded WCJ’s finding that applicant agricultural technician suffered 75 percent permanent disability as result of cumulative injury to her lungs, liver, kidney, and in form of Valley Fever, and returned matter to trial level for further development of medical record to obtain clarification from qualified medical evaluator regarding his opinion on which method for combing ratings for injuries to applicant’s separate body parts would most accurately represent her permanent disability, when WCAB determined that qualified medical evaluator’s opinion was insufficient to support WCJ’s determination of permanent disability by adding impairments, where qualified evaluator did not offer opinion in his report that applicant’s permanent disability would be best characterized using additive method for combining multiple disabilities, and WCAB explained that in deciding how to calculate permanent disability, it is necessary to determine which method most accurately depicts applicant’s disability, not whether there is synergistic relationship between impaired body parts, and that under Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), impairments may be added if substantial medical evidence supports physician’s opinion that adding them will result in more accurate rating of applicant’s level of permanent disability than rating resulting from use of Combined Values Chart.

**Feliciano Hernandez, Applicant v. Fresh Express, Inc., Federal Insurance Company, administered by Sedgwick Claims Management Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 158. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant, while employed as dumper/dryer operator on 11/22/2011, suffered 67 percent permanent disability as result of industrial injuries to his low back, excretory system, psyche, nervous system, and reproductive system, and WCAB awarded applicant 73 percent permanent disability, when WCAB determined that, in rating applicant’s permanent disability, WCJ improperly rejected agreed medical examiner’s alternative GAF rating of applicant’s psychiatric impairment, and reasoned that under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, physician may exercise his or her clinical judgment to evaluate injured employee’s impairment most accurately by reference to most relevant factors found in AMA *Guides*, that rating by analogy may be justified if alternative method is medically reasonable and methodology is explained by physician, that agreed medical examiner in this case cited applicant’s “significant and protracted difficulties” and explained why GAF score of 50 would more accurately reflect applicant’s actual disability than GAF score of 55 used by WCJ, and that in view of rationale given by agreed medical examiner, as supported by multiple medical evaluators, GAF score of 50 (which results in 73 percent permanent disability rating, when combined with other impairments) should provide basis for rating applicant’s psychiatric permanent disability; although WCAB found that applicant was entitled to greater permanent disability than that awarded by WCJ, WCAB agreed with WCJ that opinion of applicant’s vocational expert was not substantial evidence to support finding of permanent total disability, where vocational expert attempted to rebut permanent disability rating schedule by using applicant’s age as factor limiting his amenability to vocational rehabilitation.

**Francisca Bermejo, Applicant v. Jorge Castro Farms, Star Insurance Company, adjusted by Meadowbrook Insurance Group, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 93. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant, while employed as strawberry picker on 4/23/2014, suffered 23 percent permanent disability as result of admitted industrial lumbar spine injury based on reporting of orthopedic agreed medical examiner, and WCAB rejected applicant’s assertion that scheduled permanent disability rating was rebutted by vocational evidence indicating that she was not amenable to vocational rehabilitation, unable to work in labor market and permanently totally disabled “in accordance with the fact” pursuant to Labor Code § 4662(b), when WCAB reasoned that to rebut scheduled rating under Labor Code § 4660, vocational evidence is required to establish, as described in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, that due to industrial injury, injured employee’s future earning capacity is less than that anticipated by scheduled AMA *Guides* rating, and applicant may not simply provide *additional* evidence of permanent total disability, that under **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, Labor Code § 4662(b) does not provide independent path to finding of permanent total disability, separate from Labor Code § 4660, and that here, report of applicant’s vocational expert did not constitute substantial evidence to support finding of permanent total disability, where report was contradicted by applicant’s testimony regarding her ability to work and based on impermissible factors of disability.

**Paul Lopez, Applicant v. Bronco Wine Company, Zenith Insurance Company, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 103. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Apportionment—WCAB affirmed WCJ’s findings that applicant, while employed as mechanic on 5/27/2010, suffered 100 percent permanent disability as result of industrial injury to multiple body parts, without basis for apportionment, and that vocational expert’s conclusion that applicant was unable to participate in vocational rehabilitation and could not return to gainful employment was sufficient under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, to rebut scheduled AMA *Guides* impairment rating; WCAB also agreed with WCJ’s finding that apportionment of permanent disability was not justified, when WCAB reasoned that applicant was found to be permanently totally disabled due to complications of surgery for injury to his right lower leg, which qualified medical evaluator concluded was 100 percent industrial, that applicant’s vocational expert opined that applicant could not compete in open labor market based solely on factors of disability enumerated by qualified medical evaluator in internal medicine who opined that applicant’s internal medicine disability was 100 percent industrial, that fact that small portion of applicant’s orthopedic disability was apportioned to non-industrial factors was immaterial, and that applicant’s past felony conviction did not compel finding of apportionment, where vocational expert opined that, independent of felony conviction, applicant could not compete in open labor market as result of his medically-imposed work restrictions.

**Paul Lopez, Applicant v. Bronco Wine Company, Zenith Insurance Company, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 103. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB held that WCJ correctly combined applicant’s impairments to multiple body parts using Combined Values Chart (CVC), rather than by adding impairments, when internal medicine qualified medical evaluator opined that utilizing CVC to combine impairments would most accurately reflect applicant’s overall disability, and WCAB found that opinion of qualified medical evaluator in physical medicine was not sufficient evidence to support addition of impairments because physical medicine qualified medical evaluator did not discuss how applicant’s many impairments had independent impact on his activities of daily living or provide explanation regarding why adding impairments would more accurately reflect applicant’s permanent disability.

**Ezequiel Melgoza, Applicant v. Prkacin Company, Everest National Insurance Company, Administered by American Claims Management, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 104. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s finding that applicant suffered 73 percent permanent disability from 6/4/2012 industrial injuries, held that WCJ correctly determined applicant’s permanent disability by adding impairments of his right shoulder, left shoulder and left wrist, consistent with Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), rather than by combining impairments under Combined Values Chart, when applicant’s primary treating physician described synergistic effect between shoulder and wrist injuries in terms of performing activities of daily living, and WCAB found that due to synergistic effect of his bilateral shoulder injuries, applicant could not use one shoulder to compensate for disability in opposite shoulder, logically suggesting that his disability was greater than if only one shoulder was impaired, that 2005 Schedule for Rating Permanent Disabilities expressly authorizes evaluating physician to “exercise his or her judgment in avoiding duplication” when determining impairment, that physicians in this case exercised their judgment and found that applicant’s upper extremity injuries had synergistic effect in increasing impairment and, therefore, should be added, and that despite defendant’s assertion that primary treating physician’s report showed that applicant’s complaints of left wrist pain overlapped with his complaints of left shoulder pain in performing activities of daily living, primary treating physician did not find overlap.

**Michael Hennessey, Applicant v. Compass Group and National Fire Insurance Company of Pittsburg, Pennsylvania, administered by Gallagher Bassett Services, Inc., Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 121. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 25 percent permanent disability as result of injuries he incurred to his left wrist, left hand, left arm, left elbow, left shoulder, and left knee while employed as cook on 8/14/2013, and that reports of vocational expert did not constitute substantial evidence to rebut scheduled permanent disability rating, when WCAB reasoned that to rebut permanent disability rating, vocational expert must explain whether or not apportionment, as identified in medical evidence, was considered and how it affected his or her conclusions, and that vocational expert here did not explain why he failed to apply apportionment described by orthopedic agreed medical examiner; although WCAB determined that vocational expert’s reports obtained by applicant were not substantial evidence, WCAB found that applicant was entitled to use vocational evidence to attempt to rebut permanent disability rating under permanent disability rating schedule for post-1/1/2013 industrial injury pursuant to Labor Code § 4660.1, and WCAB rejected defendant’s assertion that changes in Labor Code § 4660.1, removing language regarding consideration of future diminished earning capacity, made vocational expert evidence irrelevant and inadmissible for post-1/1/2013 dates of injury, where 2012 amendment of Labor Code § 4660.1 did not eliminate adjustment factor but rather standardized factor to multiple of 1.4, and provisions in Labor Code and regulations enacted contemporaneously with Labor Code § 4660.1 support position that vocational expert reports are still admissible and not limited to dates of injury prior to 2013.

**Salvador Sainz, Applicant v. Svenhards Swedish Bakery, Federal Insurance Company, administration by Sedgwick Claims Management Services, Defendants, 2019** Cal. Wrk. Comp. P.D. LEXIS 126. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant suffered 57 percent permanent disability as result of admitted industrial injury to his low back and psyche on 1/6/2012, while employed as baker by defendant, and found that report of applicant’s vocational expert was not sufficient to rebut permanent disability rating calculated by WCJ, which was based upon orthopedic and psychiatric ratings in medical evidence, when conclusion of applicant’s vocational expert that applicant was precluded from participating in vocational rehabilitation and suffered total loss of earning capacity was not consistent with vocational expert’s own data showing that applicant, despite his physical limitations, still had access to 14 percent of labor market, and vocational expert’s assessment inaccurately reported whole person impairment assessed by reporting physician and included impairments from dyspepsia and side effects of applicant’s medications, which were not incorporated into any medical impairments.

**Cindi Brazee, Applicant v. Elephant Pharmacy, Cypress Insurance Company, c/o Berkshire Hathaway Homestate Companies, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 74. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of industrial orthopedic, internal and psychiatric injuries incurred while she was employed as human resources director on 9/26/2008, and found that WCJ properly calculated extent of applicant’s permanent disability by adding his impairments to different body systems rather than utilizing Combined Values Chart to combine these impairments, based on unanimous medical opinions regarding synergistic effect of applicant’s multiple impairments, and on reasoning in Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied).

**Frain De La Cruz, Applicant v. PG&E—Call Center, PSI, Defendant,** 2019 Cal. Wrk. Comp. P.D. LEXIS 50. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant suffered 71 percent permanent disability as result of cumulative trauma incurred while employed as customer service representative during period ending 9/3/2015, and also concluded that vocational expert report relied upon by applicant did not constitute substantial evidence to support finding of permanent total disability, when vocational expert’s conclusion that applicant was unable to participate in vocational rehabilitation was based on incorrect assumption that applicant was limited to sedentary occupation with maximum standing, sitting and lifting tolerances, but none of applicant’s treating physicians provided or endorsed such restrictions, and WCAB reasoned that opinions and conclusions based on invalid assumptions or incorrect facts cannot constitute substantial evidence.

**America Guandique, Applicant v. State of California, Department of Motor Vehicles, legally uninsured, administered by State Compensation Insurance Fund/State Contract Services, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 53. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant office assistant suffered 100 percent permanent disability as result of cumulative injuries to her shoulders, hands, elbows, neck, and psyche during period ending 10/23/2008 and specific injuries to her low back, shoulders, and psyche on 5/11/2012, when WCAB found substantial medical evidence to indicate that applicant’s disabilities from her two injuries were “inextricably intertwined” so as to support WCJ’s single permanent disability award, and also concluded that WCJ properly added applicant’s impairments to different body parts to find permanent disability, rather than utilizing Combined Values Chart (CVC) to combine impairments, where agreed medical examiner opined that applicant’s psychiatric disability should be added to her orthopedic disability and not combined based on CVC, concluded that her separate orthopedic disabilities should be added due to synergistic effect of all impairments, and adequately explained why impairments for different body parts did not overlap.

**Araceli Melgoza Garibay, Applicant v. Silverado Farming Company Inc. and Security National Insurance Company, administered by Risico Claims Management, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 57. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s award of 61 percent permanent disability to applicant who suffered industrial injury to her bilateral wrists while employed as agricultural laborer during period ending on 10/9/2015, when WCAB found that reports of panel qualified medical evaluator in pain management constituted substantial evidence to rebut scheduled AMA *Guides* impairment rating based on analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, where panel qualified medical evaluator believed that strict application of AMA *Guides* did not accurately reflect applicant’s impairment given impact of her symptoms on her activities of daily living, and he explained that more accurate description of applicant’s disability was based on fact that she had lost half use of her right wrist and 20 percent use of her left wrist; WCAB also agreed that it was appropriate to add applicant’s impairments rather than combine them using Combined Values Chart, based on panel qualified medical evaluator’s opinion that adding impairments resulted in more accurate description of applicant’s disability given synergistic effect of her bilateral upper extremity impairment.

**John Robertson, Applicant v. Bosco Oil, Wausau Underwriters Insurance, adjusted by Liberty Mutual, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 61. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant truck driver suffered 100 percent permanent disability as result of cumulative injuries to his arms, shoulders, knees, psyche, and in form of hernia during period 2/26/2009 through 1/4/2010, and found that WCJ properly calculated extent of applicant’s permanent disability by adding his orthopedic impairments rather than utilizing Combined Values Chart (CVC) to combine these impairments, where examining physician indicated that it was appropriate to add orthopedic disabilities in this case given extent of applicant’s injury and applicant’s inability to compensate for injuries due to effect of injuries on multiple body parts and opposite/corresponding member involvement; WCAB noted that reporting doctor did not overreach, as he limited adding to only orthopedic impairments given their synergistic effect and did not extend addition to include psychiatric impairment, which was combined with orthopedic impairment using CVC.

**Lavern James, Applicant v. Good Earth Natural Foods, Zenith Insurance Company, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 80. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 44 percent permanent disability to applicant who suffered industrial injury to her right elbow and right arm while employed as grocery stocker on 5/7/2016, based on panel qualified medical evaluator’s analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when panel qualified medical evaluator used Table 13-16 in AMA *Guides* to find impairment due to applicant’s difficulty with activities of daily living and dexterity, his difficulty writing and opening bottles, his answers to pain disability questionnaire, and surgery he underwent with no alleviation of pain, and WCAB determined that panel qualified medical evaluator adequately explained why Table 13-16 was more accurate representation of applicant’s impairment than strict AMA *Guides* impairment rating for his injury, considering applicant’s difficulty with use of involved extremity for self-care and grasping and holding objects and his lack of digital dexterity.

**Carl Gaither, Applicant v. California Resources Corporation, Star Indemnity and Liability Co., administered by Gallagher Bassett, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 626. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 85 percent permanent disability to applicant who suffered cumulative trauma to his neck, back, right hip, and right arm, while working as laborer/maintenance mechanic during period 12/7/74 to 6/15/2015, when WCAB found that reporting of panel qualified medical evaluator constituted substantial evidence under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, to rebut scheduled rating, where panel qualified medical evaluator explained that “strict” DRE rating in AMA *Guides* was based on assumption of single-level instability in lumbar spine, but that applicant’s instability was at two levels and consequently resulted in greater loss of function in his lumbar spine, which was accounted for by alternative rating.

**Sean Lawson, Applicant v. Zenith Insurance Company, PSI, Defendant**, 2019 Cal. Wrk. Comp. P.D. LEXIS 18. Permanent Disability—Rating—AMA *Guides*—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 40 percent permanent disability, after 15 percent apportionment to non-industrial factors, as result of 11/17/2014 industrial injury to his low back while employed as building maintenance worker, when WCAB panel majority determined that qualified medical evaluator appropriately used Range of Motion (ROM) method in AMA *Guides*, rather than Diagnosis-Related Estimate (DRE) method, to rate applicant’s spine impairment, where applicant had radiculopathy at L4-5, and qualified medical evaluator cited applicant’s motor weakness at L3 as element of multilevel spine involvement justifying use of ROM method to rate impairment; Commissioner Razo, dissenting, would rescind WCJ’s permanent disability award which followed qualified medical evaluator’s rating using ROM method, when Commissioner Razo noted that under AMA *Guides*, DRE method is principal methodology for rating spine injury resulting in single-level radiculopathy, and that qualified medical evaluator’s reliance on presence of motor weakness at L3 was contrary to AMA *Guides* requirement that there be finding of multilevel *radiculopathy* to support use of ROM method to determine impairment.

**Steven Salazar, Applicant v. County of Los Angeles, PSI, administered by York Risk Management Services, Defendants**, 2019 Cal. Wrk. Comp. P.D. LEXIS 41. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant who suffered industrial injuries to his neck, hands, wrists, lumbar spine, hips, psyche, and in forms of rhinosinusitis and asthmatic bronchitis while employed as senior laundry worker during period 11/4/2004 through 1/22/2010, sustained 100 percent permanent disability, when WCJ’s finding of permanent total disability was based solely on vocational evidence regarding applicant’s inability to compete in open labor market, without analysis of agreed medical examiners’ apportionment determinations, and WCAB concluded that WCJ’s finding of permanent disability “in accordance with the fact” pursuant to Labor Code § 4662(b) was inconsistent with holding in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, and that while applicant sustained at least 95 percent permanent disability, extent of applicant’s permanent disability was not adequately determined in view of medical evidence supporting apportionment to non-industrial factors and where vocational expert deemed medical apportionment irrelevant to his ultimate conclusion; WCAB remanded matter for further proceedings to determine applicant’s permanent disability rating after apportionment to non-industrial factors found by agreed medical examiners.

**Miguel Perez Arreola, Applicant v. 3 Diamond AG, Inc., and Star Insurance Company, administered byMeadowbrook Insurance Group, Defendants,** 2019 Cal. Wrk. Comp. P.D. LEXIS 39. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 42 percent permanent disability to applicant who suffered admitted industrial injury to his left ankle while employed as farm laborer on 5/25/2017, when WCAB found that report of panel qualified medical evaluator constituted substantial evidence to rebut scheduled AMA *Guides* impairment rating based on analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, where panel qualified medical evaluator analogized applicant’s lifting deficits to hernia impairment utilizing Table 6.6 of AMA *Guides*, and provided sufficient explanation as to why alternative rating more accurately reflected applicant’s disability than strict AMA *Guides* rating, which did not account for applicant’s significant loss of functional capacity for performing lifting activities of daily living, and, despite defendant’s assertion that it was inappropriate for doctor to utilize Chapter 6, related to digestive system, to rate ankle impairment, WCAB noted that qualified medical evaluator is allowed to utilize any chapter, table or method in AMA *Guides* that most accurately reflects injured employee’s impairment.

**Sharon Walter, Applicant v. International Capital Group and State Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 627. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant, who sustained industrial injuries to her neck, right shoulder, psyche, lower back, and in form of headaches on 4/25/2007 while working as bookkeeper, suffered 100 percent permanent disability based on reporting of panel qualified medical evaluator in psychiatry and on vocational expert evidence indicating that applicant could not compete in open labor market due to her psychiatric condition and was not amenable to vocational rehabilitation, which WCAB found was substantial evidence to rebut scheduled permanent disability rating [Note: The petition for writ of review filed by defendant was subsequently denied on January 28, 2019, *sub nom.* **International Capital Group v. Workers’ Comp. Appeals Bd. (Walter)** (2019) 84 Cal. Comp. Cases 215].

**Forest Bailey, Applicant v. Lunday Thagard Company, dba World Oil Corporation, National Union Fire Insurance Company of Pittsburg, Pennsylvania, administered byAIG Claims, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 585. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, affirming WCJ’s finding that applicant’s 9/13/2011 industrial burn injury caused 87 percent permanent disability, rejected applicant’s assertion that WCJ should have awarded 100 permanent disability, when WCAB determined that WCJ’s award of 87 percent permanent disability was supported by reporting of psychiatric agreed medical examiner indicating that applicant scored 41 on Global Assessment of Functioning scale and 48 percent whole person impairment, that psychiatric agreed medical examiner’s opinions must be accorded more evidentiary weight than opinions of applicant’s plastic surgeons, who both opined that applicant was precluded from competing in open labor market due to psychiatric consequences of burn injury, that reports of applicant’s treating psychologist indicating that applicant was permanently totally disabled were conclusory and did not constitute substantial evidence, and that opinions of applicant’s plastic surgeons and treating psychologist did not constitute good cause to reject opinion of psychiatric agreed medical examiner.

**Christopher Devereux, Applicant v. State Compensation Insurance Fund, PSI, administered byThe Hartford, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 592. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s decision, held that WCJ properly determined extent of applicant’s permanent disability by adding applicant’s ratable impairments from cognitive and cardiac/hypertension injuries, rather than combining them using Combined Values Chart (CVC), despite absence of medical evidence showing synergistic effect between impairments, when there was no overlap between cognitive and cardiac/hypertension impairments, and WCAB found that, contrary to defendant’s assertion, use of CVC is not mandated if there is no medical evidence of synergistic effect between impairments, as long as medical evidence shows that adding impairments produces more accurate rating with regard to effect of impairments on activities of daily living.

**Robert Green, Applicant v. East Bay Municipal Utility District, PSI, adjusted byAthens Administrators, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 595. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB denied defendant’s Petition for Removal challenging WCJ’s trial ruling reopening discovery as to vocational expert evidence and continuing matter for further trial, when WCJ’s ruling was based on new law set forth in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, regarding rating of permanent disability and burden of proof, and WCAB found that change in law constituted good cause to reopen discovery, and that denying applicant’s request to reopen would have been prejudicial to applicant.

**Paul Logan, Applicant v. Greyhound Lines, Inc., Gallagher Bassett Services, administered byACE USA, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 558. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 24 percent permanent disability to applicant who suffered cumulative trauma to his cervical spine, left shoulder, left wrist, and psyche while working as bus driver over period ending on 10/31/2007, and found that reporting of agreed medical examiner did not constitute substantial evidence under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut AMA *Guides*, to rebut scheduled rating, when agreed medical examiner did not provide alternative rating by analogizing to other sections of AMA *Guides* pursuant to principles in *Almaraz/Guzman*, but rather analyzed extent of applicant’s permanent disability based on loss of his functional capacity, and did not offer clear reason for rejecting application of AMA *Guides* other than to state that AMA *Guides* did not consider employee’s subjective complaints, work restrictions or inability to resume pre-injury occupation.

**Ronnie Phelps, Applicant v. State of California, Department of Corrections, California Institution For Men, Legally Uninsured, administered byState Compensation Insurance Fund, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 561. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant correctional officer suffered 100 percent permanent disability as result of 12/12/2006 industrial injuries to his left knee, left elbow, lumbar spine, and cervical spine, and cumulative injuries to his upper gastrointestinal system, neurologic system, psyche, cervical spine, lumbar spine, shoulders, and left ankle during period 7/6/81 through 12/11/2006, and returned matter to trial level to address recent decision in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, as it applies to applicant’s permanent disability.

**Roberta Moore, Applicant v. City of Los Angeles, PSI, Tristar Risk Management, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 575. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s award of 92 percent permanent disability, after apportionment, and returned matter to trial level for further development of record by clarification from agreed medical examiner in rheumatology of his conflicting medical reporting on apportionment of permanent disability caused by applicant’s fibromyalgia, when agreed medical examiner reported that applicant’s nonindustrial fibromyalgia was aggravated by psychological work stressors, and that applicant was permanently totally disabled due to fibromyalgia, but, without explanation, changed his opinion regarding apportionment of applicant’s disability, and WCAB found that record required further development on issue of apportionment either through supplemental report from agreed medical examiner or by appointment of regular physician; WCAB also noted that this matter was decided prior to issuance of decision in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, and directed WCJ, on remand, to address applicant’s permanent disability in light of medical and vocational evidence, giving consideration to opinion in *Fitzpatrick*.

**Jose Nieves, Applicant v. City of Hayward, PSI, Defendant**, 2018 Cal. Wrk. Comp. P.D. LEXIS 512. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 47 percent permanent disability after apportionment as result of industrial injury to multiple body parts while employed as backhoe operator during cumulative period ending on 8/30/2012, and found that vocational expert’s opinion that applicant lost 100 percent of his future earning capacity as consequence of 2012 injury did not constitute substantial evidence pursuant to principles in **Ogilvie v. W.C.A.B**. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, to rebut scheduled rating because vocational expert’s reporting failed to establish that applicant was not amenable to vocational rehabilitation; Commissioner Sweeney, dissenting, would rescind WCJ’s determination and return matter to WCJ for further consideration as to whether applicant’s injury caused total loss of future earning capacity, when Commissioner Sweeney believed that WCJ’s determination was based on imperfect understanding of medical and vocational evidence with regard to extent of applicant’s limitations arising from 2012 industrial injury and whether those limitations impaired his future earning capacity.

**Terry Brian, Applicant v. CDCR Kern Valley State Prison, legally uninsured, adjusted byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 523. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s decision, held that WCJ properly determined extent of applicant’s permanent disability by adding applicant’s ratable impairments rather than combining them using Combined Values Chart (CVC) when agreed medical examiner, whose opinion WCJ properly relied upon, reported synergistic effect of applicant’s ventricular hypertrophy and coronary artery disease, and indicated that adding impairments of these conditions rather than combining them would provide most accurate description of applicant’s overall permanent disability because two conditions together would cause diastolic and systolic dysfunctions in cardiovascular system, thereby creating greater disability than either condition would create alone.

**Elly Damian, Applicant v. County of San Mateo, PSI, administered byAthens Administrators, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 500. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant suffered 100 percent permanent disability as result of cumulative injuries to her upper extremities, cervical spine and psyche over periods ending on 3/3/2009 and 4/21/2010, and returned matter to WCJ for further proceedings, when WCAB found that WCJ’s rating of applicant’s permanent disability “in accordance with the fact” as provided in Labor Code § 4662(b) was inconsistent with decision in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, where Court of Appeal held that Labor Code § 4662(b) does not provide “a second independent path to permanent total disability findings separate from section 4660,” and that while method in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, may still be used to rebut scheduled rating in cases where injured employee has diminished future earning capacity and is not amenable to vocational rehabilitation, this method is limited to cases in which injured employee’s diminished future earnings are directly attributable to work-related injury and not due to nonindustrial factors.

**Terry Brian, Applicant v. CDCR Kern Valley State Prison, legally uninsured, adjusted byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 523**Jose Nieves, Applicant v. City of Hayward**, PSI, Defendant, 2018 Cal. Wrk. Comp. P.D. LEXIS 512. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 47 percent permanent disability after apportionment as result of industrial injury to multiple body parts while employed as backhoe operator during cumulative period ending on 8/30/2012, and found that vocational expert’s opinion that applicant lost 100 percent of his future earning capacity as consequence of 2012 injury did not constitute substantial evidence pursuant to principles in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, to rebut scheduled rating because vocational expert’s reporting failed to establish that applicant was not amenable to vocational rehabilitation; Commissioner Sweeney, dissenting, would rescind WCJ’s determination and return matter to WCJ for further consideration as to whether applicant’s injury caused total loss of future earning capacity, when Commissioner Sweeney believed that WCJ’s determination was based on imperfect understanding of medical and vocational evidence with regard to extent of applicant’s limitations arising from 2012 industrial injury and whether those limitations impaired his future earning capacity.

Elly Damian, Applicant v. County of San Mateo, PSI, administered byAthens Administrators, Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 500. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant suffered 100 percent permanent disability as result of cumulative injuries to her upper extremities, cervical spine and psyche over periods ending on 3/3/2009 and 4/21/2010, and returned matter to WCJ for further proceedings, when WCAB found that WCJ’s rating of applicant’s permanent disability “in accordance with the fact” as provided in Labor Code § 4662(b) was inconsistent with decision in **Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, where Court of Appeal held that Labor Code § 4662(b) does not provide “a second independent path to permanent total disability findings separate from section 4660,” and that while method in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, may still be used to rebut scheduled rating in cases where injured employee has diminished future earning capacity and is not amenable to vocational rehabilitation, this method is limited to cases in which injured employee’s diminished future earnings are directly attributable to work-related injury and not due to nonindustrial factors.

**Terry Brian, Applicant v. CDCR Kern Valley State Prison, legally uninsured, adjusted byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 523. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s decision, held that WCJ properly determined extent of applicant’s permanent disability by adding applicant’s ratable impairments rather than combining them using Combined Values Chart (CVC) when agreed medical examiner, whose opinion WCJ properly relied upon, reported synergistic effect of applicant’s ventricular hypertrophy and coronary artery disease, and indicated that adding impairments of these conditions rather than combining them would provide most accurate description of applicant’s overall permanent disability because two conditions together would cause diastolic and systolic dysfunctions in cardiovascular system, thereby creating greater disability than either condition would create alone.Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ’s decision, held that WCJ properly determined extent of applicant’s permanent disability by adding applicant’s ratable impairments rather than combining them using Combined Values Chart (CVC) when agreed medical examiner, whose opinion WCJ properly relied upon, reported synergistic effect of applicant’s ventricular hypertrophy and coronary artery disease, and indicated that adding impairments of these conditions rather than combining them would provide most accurate description of applicant’s overall permanent disability because two conditions together would cause diastolic and systolic dysfunctions in cardiovascular system, thereby creating greater disability than either condition would create alone.

**Jesus Rojas, Applicant v. Gay and Lesbian Community Center, Inc., State Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 494. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 81 percent permanent disability after apportionment to applicant maintenance worker who suffered 7/13/2009 injury to spine, psyche, and in forms of headaches and sleep disturbance, and rejected applicant’s claim that WCAB should have found permanent total disability “in accordance with the fact” under Labor Code § 4662(b), when **Court of Appeal in Dept. of Corrections & Rehabilitation v. W.C.A.B. (Fitzpatrick)** (2018) 27 Cal. App. 5th 607, 238 Cal. Rptr. 3d 224, 83 Cal. Comp. Cases 1680, held that Labor Code § 4662(b) does not provide “a second independent path to permanent total disability findings separate from” method provided in Labor Code § 4660.

**Alexander Rodriguez, Applicant v. Full Steam Staffing, Zurich American Insurance, adjusted byGallagher Bassett Services, Inc., Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 493. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Combining Multiple Disabilities—WCAB, rescinding WCJ’s award of 66 percent permanent disability, held that agreed medical examiner’s finding of impairment to applicant’s cervical spine based on Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, was substantial evidence to support finding of 72 percent permanent disability, when agreed medical examiner offered alternative rating for applicant’s cervical spine impairment by analogy to impairment caused by inguinal hernia because he found that strict interpretation of AMA *Guides* using DRE method, which would provide no impairment rating despite presence of pain, sleep problems and limitations on applicant’s activities of daily living, did not provide rating that accurately reflected applicant’s impairment, and WCAB found that agreed medical examiner provided adequate reasoning for his rating under *Almaraz/Guzman*, and that WCJ’s rationale for exclusion of rating for cervical strain impairment factors failed to consider specific impairments identified by agreed medical examiner arising from cervical strain which were not included in impairments to other body parts; WCAB also found that applicant’s permanent disability rating was properly determined by using Combined Values Chart rather than adding impairments, when agreed medical examiner concluded that addition of impairments was unnecessary because increased rating from his application of *Almaraz/Guzman* was sufficient to provide accurate rating.

**Victor Garcia, Applicant v. CSM Bakery Solutions, LLC, Travelers Property Casualty Company of America, Vons dba Safeway, Inc., National Union Fire Insurance Company of Pittsburgh, PA, ACE American Insurance, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 455. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that agreed medical examiner’s assignment of 6 percent impairment to applicant’s bilateral upper extremities constituted substantial evidence under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when agreed medical evaluator stated that neither range of motion analysis nor grip strength analysis accurately reflected extent of applicant’s impairment, and therefore based his impairment finding on applicant’s carpal tunnel syndrome and pain related to activities of daily living, and WCAB found that agreed medical examiner properly utilized Chapter 16 of AMA *Guides* pertaining to carpal tunnel syndrome in finding impairment, thereby staying within four corners of AMA *Guides* pursuant to *Almaraz/Guzman* to determine most accurate impairment rating.

**Rose Casado, Applicant v. Kaiser Permanente, PSI, administered bySedgwick, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 399. Permanent Disability—Rating—AMA *Guides*—Subjective Complaints—WCAB rescinded WCJ’s finding that applicant who suffered industrial injury to her cervical spine, shoulders and wrists while working as pharmacist during period 8/22/2007 through 9/10/2014, incurred 10 percent permanent disability for shoulder impairment and no permanent disability for impairment to spine and wrists based on reporting of orthopedic panel qualified medical evaluator, and WCAB returned matter to WCJ for further proceedings regarding extent of applicant’s permanent disability, when WCAB found that report of orthopedic panel qualified medical evaluator on which WCJ relied was inadmissible as evidence under Labor Code § 4628(e) for failure to properly identify person who performed diagnostic testing on applicant as required under Labor Code § 4628(b), and also found that panel qualified medical evaluator’s reporting did not constitute substantial evidence because panel qualified medical evaluator relied on incorrect legal theory in rating applicant’s impairment by finding no permanent disability based on lack of positive objective findings for her spine and wrists, and refusing to provide impairment rating for applicant’s subjective complaints regarding these body parts; WCAB explained that physician may provide impairment rating greater than zero percent based solely on subjective complaints if he or she finds that alternate rating, using any table, chapter or method of AMA *Guides*, would most accurately reflect injured employee’s level of impairment.

**Joaquin Rosales, Applicant v. Swanson Fahrney Ford, Zurich North America, Gallagher Bassett Services, Inc., Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 415. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant tow truck driver suffered 8 percent permanent disability as result of 11/13/2015 admitted industrial injury to his left elbow diagnosed as lateral epicondylitis, based on reporting of orthopedic panel qualified medical evaluator, who opined that applicant had no scheduled impairment under AMA *Guides*, but provided impairment rating of 4 percent for chronic pain utilizing Table 13-22 pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that panel qualified medical evaluator’s report adequately explained factors that justified his impairment rating under AMA *Guides* and *Almaraz/Guzman*, and that Table 13-22 has been utilized in cases of lateral epicondylitis in which there are factors other than pain justifying permanent impairment rating, and that here rating was justified based on chronic pain coupled with objective MRI findings.

**Adriana Solera, Applicant v. Sodexho, Insurance Company of the State of Pennsylvania, administered byGallagher Bassett Services**, Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 418. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Diminished Earning Capacity—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of burn injuries to multiple body parts and related psychiatric injury incurred on 10/19/2009 while she was working as catering cook, when WCAB found that although medical reports in this case were rated at 90 percent permanent disability, entirety of evidence in record supported finding of permanent total disability, and, specifically, vocational expert evidence describing applicant’s limited ability to engage in activities of daily living and significant limitations precluding applicant from participating in gainful employment supported WCJ’s finding of permanent total disability pursuant to **LeBoeuf v. W.C.A.B. (1983**) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B. (2011)** 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624.

**Michael Tullis, Applicant v. New United Motor Manufacturing, Inc., Safety National Insurance, administered byGallagher Bassett Services, Inc., Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 419. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s award of 67 percent permanent disability, after apportionment, and returned matter to trial level for further development of medical and vocational record regarding whether applicant who suffered industrial injuries to his back, neck, and extremities while employed as autoworker incurred 100 percent permanent disability “in accordance with the fact” pursuant to Labor Code § 4662 and/or based on lack of amenability to vocational rehabilitation and loss of future earning capacity as described in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, nor Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, when applicant asserted that he had rebutted scheduled rating, but existing medical reports were stale and inconclusive and, therefore, parties must obtain updated medical and vocational reports before determination can be made as to extent of applicant’s permanent disability.

Dante Stringer, Applicant v. Southland Contracting, Inc., Tutor Perini, as administered byZurich North America, Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 445. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant miner with 10/12/2011 industrial injuries to multiple body parts suffered permanent total disability and 90 percent permanent disability after apportionment, and returned matter to trial level for further proceedings on issues of permanent disability and apportionment, when WCAB found that despite applicant’s continuing attempts to introduce vocational evidence to rebut scheduled rating, WCJ refused to consider vocational evidence in reaching his decision, that even though WCJ’s decision considered issue of permanent total disability “in accordance with the fact” under Labor Code § 4662(b), vocational evidence is relevant to question of whether scheduled rating is rebutted and question of whether entirety of record supports finding of permanent total disability “in accordance with the fact,” with or without apportionment, that since WCJ made his apportionment determination using permanent disability rating schedule, under circumstances here, vocational evidence is relevant to issue of whether defendant met its burden to show apportionment applied, and that applicant and defendant should have been allowed to present vocational evidence pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Craig Hanus, Applicant v. URS/AECOM Corporation, National Union Fire Insurance Company of Pittsburgh PA, administered bySedgwick Claims Management Services, Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 355.** Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability, without apportionment, as result of admitted industrial injury to his left shoulder, neck, low back, and neurological system sustained on 11/15/2014 while he was employed by defendant as mechanic, when WCAB found that changes in Labor Code § 4660.1 applicable to injuries on or after 1/1/2013, which remove language regarding consideration of future diminished earning capacity, do not preclude rebuttal of strict AMA *Guides* rating with vocational expert evidence, and concluded that in this case WCJ’s finding of permanent total disability was supported by medical reports indicating that applicant had difficulty with almost all of his activities of daily living and by reporting of applicant’s vocational expert, which considered and discussed medical reports and established that applicant’s medical limitations and constant pain made vocational retraining impossible and rendered applicant unable to compete in open labor market, and that there was no substantial medical evidence in record to support apportionment of applicant’s permanent disability.

**Richard Rossi, Applicant v. Binks Manufacturing Company, California Insurance Guarantee Association for American Motorists Insurance Company, in liquidation, and American Manufacturers Mutual Insurance Company, in liquidation, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 391. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled without apportionment as result of cumulative injury in forms of cancer, hyperhidrosis, neuropathy, and pulmonary fibrosis incurred while he was employed as industrial finishing specialist, when WCAB concluded that reporting of applicant’s vocational expert supported finding of permanent total disability “in accordance with the fact” as described in Labor Code § 4662, and reporting of panel qualified medical evaluator was not substantial evidence to support apportionment of permanent disability because panel qualified medical evaluator did not demonstrate understanding of difference between causation of injury and causation of disability in discussing apportionment.

**Jesus Castillo, Applicant v. California Department of Corrections and Rehabilitation, legally uninsured, administered byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 302. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s award of 71 percent permanent disability to applicant who incurred injuries to his cervical spine, lumbar spine, shoulders, wrists, hands, and in form of hernia while employed as parole agent from 6/3/95 to 5/1/2012, and found that WCJ did not err by relying on opinion of agreed medical examiner who recommended impairment rating pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, by using range of motion method to rate both lumbar spine and cervical spine injury, when WCAB found that agreed medical examiner’s use of range of motion method to rate both body parts was allowed in this case, notwithstanding that AMA *Guides* section 15.2(a)(7) only allows range of motion rating to be used once for each injury, where agreed medical examiner justified his application of range of motion method for both cervical and lumbar spine on basis that applicant’s cervical spine range of motion was not affected by lumbar spine range of motion; WCAB also found that agreed medical examiner was justified in applying section 16.5d of AMA *Guides* to rate applicant’s wrist impairment, where applicant did not undergo carpal tunnel release, but had documented carpal tunnel syndrome.

**Leopoldo Hernandez, Applicant v. Better Way Construction, State Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 312. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled “in accordance with the fact” under Labor Code § 4662(b) as result of industrial injuries to his left foot, low back, psyche, and in forms of below right knee amputation and carpal tunnel syndrome incurred while he was employed as construction worker on 8/26/2000, when WCAB found that vocational evidence strongly supported WCJ’s determination, given evidence of applicant’s significant limitations that restricted his activities of daily living and due to effects of his bilateral amputations that preclude him from participating in gainful employment, that there was overwhelming evidence of applicant’s inability to benefit from vocational rehabilitation due to effects of his injuries, that applicant’s inability to compete in open labor market stems from applicant’s significant functional impairments, which were orthopedic and solely industrial, and agreed medical examiner, whose opinion constituted substantial evidence, determined that applicant’s orthopedic condition was not subject to apportionment.

**Sengathit Hansana, Applicant v. Homelegance, Inc., and Cypress Insurance Compan**y, Administered By Berkshire Hathaway, Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 331. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant delivery driver who suffered industrial injury to his left shoulder on 1/8/2016 incurred 6 percent whole person impairment under AMA *Guides* based on reporting of primary treating physician, and found that opinion of panel qualified medical evaluator did not constitute substantial evidence to rebut strict AMA *Guides* rating pursuant to analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when panel qualified medical evaluator did not explain why alternative rating was more accurate reflection of applicant’s impairment than strict AMA *Guides* rating, relied on incorrect legal theory by indicating that he was free to utilize *Almaraz/Guzman* analysis simply because he disagreed with whole person impairment in AMA *Guides*, and failed to provide clear and consistent reasoning for his rebuttal rating.

**David Hughes, Applicant v. State of California—Department of Transportation, legally uninsured, Defendant, 2018 Cal. Wrk. Comp. P.D. LEXIS 332.** Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB, in split panel opinion, affirmed WCJ’s award of 100 percent permanent disability to applicant who suffered injuries to his spine, psyche, left ankle, and in forms of sexual/reproductive and sleep dysfunctions while employed as equipment operator on 11/27/2006, based on reporting of applicant’s vocational expert that applicant lost all future earning capacity, which together with opinions of medical evaluators, constituted substantial evidence to support finding that applicant was permanently totally disabled “in accordance with the fact” as described in Labor Code § 4662(b); in affirming WCJ, WCAB panel majority determined that (1) WCJ correctly found permanent disability by adding applicant’s multiple impairments rather than combining them using Combined Values Chart (CVC), where AMA *Guides* supports adding impairments over use of CVC if this method more accurately reflects level of injured employee’s permanent disability, (2) neither **Ogilvie v. W.C.A.B. (**2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, nor Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, decisions limit consideration of nonindustrial factors such as economic conditions, illiteracy, proficiency in speaking English, or lack of education in addressing injured worker’s amenability to vocational rehabilitation, and applicant’s vocational expert properly considered applicant’s individualized factors to assess his amenability to vocational rehabilitation, and (3) reporting of defendant’s vocational expert was not substantial evidence because she did not consider effects of medications used by applicant, assumed level of functionality that was inconsistent with functional capacity evaluation (FCE) and medical examinations, and had incorrect understanding of applicant’s medical condition and work history; Commissioner Razo, dissenting, would rescind WCJ’s decision and enter new finding of 78 percent permanent disability consistent with parties’ stipulations and scheduled rating under 2005 Permanent Disability Rating Schedule, when Commissioner Razo found that there was insufficient evidence to rebut applicant’s scheduled diminished future earning capacity, and that WCJ’s reliance on reporting of applicant’s vocational expert was misplaced because, by identifying individualized factors such as applicant’s “advanced age” as impacting his future earning capacity, vocational expert did not meet standard established in *Dahl*, that medical evidence and FCE showed that applicant had capacity for semi-sedentary work if allowed to sit and stand at will, and that reporting of defendant’s vocational expert was substantial evidence that applicant had aptitude and transferable skills to perform work using his auto mechanic knowledge and customer service skills.

**Barbara Joberg, Applicant v. Illuminations, Inc., Arrowpoint Capital, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 334. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to several body parts while employed by defendant as customer service representative on 2/2/2001 was permanently totally disabled on psychiatric basis based on reporting evaluating psychiatrist appointed by WCJ, and, contrary to defendant’s assertion, WCAB found no evidence that psychometric testing relied on by psychiatrist was invalid or inaccurate and also determined that permanent disabilities caused by applicant’s orthopedic and psychiatric injuries did not overlap, and that applicant was 100 percent permanent totally disabled “in accordance with the fact” due to her total loss of earning capacity caused by industrial injury, pursuant to Labor Code § 4662(b) and analysis in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989.

**Kathy Kiesling, Applicant v. Charles V. Eckert III, Oak River Insurance Company, administered byBerkshire Hathaway Homestate Companies, State Compensation Insurance Fund, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 335. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as result of orthopedic and psychiatric injuries, including fibromyalgia/chronic widespread pain syndrome, over period ending 1/17/2008, without basis for apportionment, when WCAB found that qualified medical evaluator’s apportionment of applicant’s psychiatric permanent disability to unspecified “other medical conditions” did not constitute substantial evidence where other medical conditions were not identified, and that WCJ did not err in his reliance on reporting of applicant’s vocational expert, where medical evidence upon which vocational expert’s opinion was based clearly indicated that applicant was not capable of returning to labor force due to her industrial injuries, and opinions of defendant’s vocational expert were not substantial evidence.

**Nohemi Taina, Applicant v. County of Santa Clara/Valley Medical Center, PSI, Defendant,** 2018 Cal. Wrk. Comp. P.D. LEXIS 344. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ, held that WCJ did not err by determining level of permanent disability caused by applicant’s 10/4/2011 neck, shoulder and psychiatric injuries by adding orthopedic and psychiatric disabilities to find 87 percent permanent disability, rather than by combining percentages of permanent disability using Combined Values Chart (CVC), when agreed medical evaluators determined that disabilities caused by applicant’s orthopedic and psychiatric injuries did not overlap and that adding those separate values provided accurate overall permanent disability rating; WCAB noted that disability values of multiple impairments may be added instead of combined using CVC if that provides more accurate rating, particularly if there is no overlap and when synergistic effect of multiple disabilities supports that method of combination, and that adding disabilities is supported by AMA *Guides*, as shown by discussion of trier of fact’s role provided in Chapters 1.4 and 1.5 on pages 9 and 10 of AMA *Guides*.

**Tracy Portee, Applicant v. California Department of Corrections and Rehabilitation, Parole and Community Services, Legally Uninsured, State Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 291. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant was entitled to 16 percent permanent disability as result of industrial injuries to her neck (8 percent impairment) and shoulder (9 percent impairment) incurred on 3/11/2011 during her employment as parole agent, and found that WCJ was permitted to rely on qualified medical evaluator’s assessment of applicant’s shoulder impairment based on applicant’s subjective complaints of pain, rather than objective findings, pursuant to analysis in *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB reasoned that Labor Code § 4660 does not preclude finding of impairment based on subjective complaints of pain where no objective abnormalities are found, and that qualified medical evaluator adequately explained that since there is no specific AMA *Guides* impairment assigned for myofascial pain syndrome, he rated applicant’s impairment by analogy using AMA *Guides* Table 13-22 and found that applicant’s limitations on activities of daily living were best described by Class 1, encompassing individuals who can use dominant extremity for self-care activities, but with difficulty due to chronic pain.

**Samuel Espinoza, Applicant v. Excel Staffing Services and ACE American Insurance, administered bySedgwick Claims Management Services, Inc., Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 260. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant shipper’s 11/26/2008 lumbar spine injury caused 29 percent whole person impairment based on strict AMA *Guides* range of motion impairment rating, and instead found that applicant had 45 percent whole person impairment to his lumbar spine pursuant to alternate rating provided by orthopedic agreed medical examiner, which agreed medical evaluator found was more accurate description of applicant’s disability, when agreed medical examiner adequately explained why his use of regional spine impairment to find 45 percent whole person impairment rather than range of motion impairment more accurately reflected applicant’s disability, and WCAB concluded that agreed medical examiner’s opinion in this regard constituted substantial evidence under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support alternative rating, and that as agreed medical examiner, his opinion should be followed where there was no evidence to render opinion unpersuasive.

**Michael Hennessey, Applicant v. Compass Group and National Fire Insurance Company of Pittsburg, Pennsylvania, administered byGallagher Bassett Services, Inc., Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 265. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB affirmed WCJ’s order taking case off calendar to allow applicant who incurred injury to his left hand/wrist while employed as cook on 8/14/2013 to obtain report from vocational expert to attempt to rebut strict AMA *Guides* permanent disability rating, when WCJ rejected defendant’s assertion that changes in Labor Code § 4660.1, removing language regarding consideration of future diminished earning capacity, made vocational expert evidence irrelevant and inadmissible for post-1/1/2013 dates of injury, and reasoned that there is currently no settled case law interpreting Labor Code § 4660.1, and that provisions in Labor Code and regulations enacted contemporaneously with Labor Code § 4660.1 support position that vocational expert reports are still admissible and not limited to dates of injury prior to 2013.

**Maria Samson, Applicant v. State of California Department of Social Services, adjusted byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 294. Permanent Disability—Rating—Rebuttal of Scheduled Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that, based on report of vocational expert, applicant suffered 100 percent permanent disability as result of industrial injuries to multiple body parts, when WCAB found that report of vocational expert indicating that applicant was unable to compete in open labor market constituted substantial evidence to support finding of permanent total disability, where vocational expert reviewed agreed medical examiners’ reports and considered their apportionment to industrial and nonindustrial factors as required, and provided thorough analysis of occupations in labor market for applicant in finding that applicant was unemployable solely due to industrial injury; WCAB noted that although there was medical apportionment to applicant’s preexisting disability, applicant was working full-time until her last day of work, that vocational apportionment does not necessarily flow from medical apportionment and vocational expert can have different opinion than physician as to whether applicant is unable to work solely due to work injury, and that based on applicant’s full-time work history prior to her industrial injuries, there was no evidence of any work disability prior to her last industrial injury and no justification to apportion applicant’s permanent total disability for vocational purposes.

**Eldridge Taylor, Applicant v. California Department of Corrections and Rehabilitation, Legally Uninsured, administered byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 294. Permanent Disability—Rating—AMA *Guides*—Sleep Disorder—WCAB, affirming WCJ’s decision in split panel opinion, held that applicant suffered 75 percent permanent disability as result of industrial injuries to his neck, back, left shoulder, left elbow, gastrointestinal system, and in forms of hypertension, sleep disorder and hearing loss incurred while he was employed as correctional/patrol officer during period ending on 12/28/2012, and that WCJ did not err in awarding additional permanent disability for applicant’s sleep disorder, when agreed medical examiner in internal medicine reported that applicant’s sleep disorder was caused by physical pain from his industrial orthopedic injury and, secondarily, from psychological distress caused by his pain and job-related stressors; Commissioner Lowe, dissenting, opined that applicant’s sleep disorder was subsumed in his orthopedic permanent disability rating because his pain from his injury was direct cause of his nighttime waking.

**Chris Buckley, Applicant v. Cooper and Hawkins, Inc., Everest National Insurance Company, administered byAmerican Claims Management, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 229. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB, rescinding WCJ’s decision, held that medical and vocational evidence was not sufficiently developed to justify WCJ’s determination that applicant, while employed as HVAC technician, suffered 100 percent permanent disability as result of 10/12/2012 industrial injury to his arms, wrists, hands, fingers, and psyche, and returned matter to trial level for further proceedings to address whether applicant successfully rebutted scheduled permanent disability rating and determination by WCJ regarding whether applicant is amenable to vocational rehabilitation, when vocational expert relied upon findings in medical reports of pain management specialist and qualified medical evaluators to conclude that applicant’s physical and mental limitations precluded him from returning to open labor market, but WCAB found nothing in medical records that provided specific and reasoned discussion of applicant’s amenability to vocational rehabilitation based upon factors relevant to physicians’ expertise, and WCAB concluded that in absence of medical opinion relevant to question of applicant’s amenability to vocational rehabilitation, as discussed in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, medical record was insufficient to justify vocational expert’s conclusion that applicant is not amenable to vocational rehabilitation and is, therefore, precluded from returning to open labor market in any capacity.

**Steven Case, Applicant v. Golden Gate Bridge Highway and Transportation District, PSI, adjusted byAthens Administrators, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 231. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant bus driver’s 6/28/2015 bilateral shoulder injury resulted in 9 percent permanent disability, and instead found that applicant’s injury caused 38 percent permanent disability based on opinion of agreed medical evaluator, who found that strict rating of applicant’s shoulder impairment did not account for applicant’s strength loss and, utilizing strength measurements, provided impairment ratings using Table 16-32 of AMA *Guides* and strength loss index formula in AMA *Guides*, when alternative ratings assigned by agreed medical examiner were expressly within AMA *Guides*, and WCAB found that agreed medical evaluator was permitted under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to utilize Table 16-32 in AMA *Guides* to rate applicant’s disability even though Table 16-32 only provides data for individuals younger than applicant, because to restrict use of AMA *Guides* to only those cases where applicant’s condition, age or other distinguishing factors neatly fit into chapter, table or method being applied would render *Almaraz/Guzman* meaningless, that agreed medical evaluator adequately explained why strict ratings did not accurately reflect applicant’s impairment and utilized his judgement, experience and training to provide alternative ratings from within four corners of AMA *Guides* that more accurately reflected applicant’s disability, and that WCJ incorrectly believed that alternative rating under *Almaraz/Guzman* was only permissible if case was deemed “complex or extraordinary,” which was incorrect understanding of applicable case law, as nothing in *Almaraz/Guzman* or related case law restricts alternative rating to only complex and extraordinary cases.

**Joe Jordan, Applicant v. California Department of Corrections, Pleasant Valley, legally uninsured, administered byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 294 Permanent Disability—Rating—Cap on Benefits—WCAB amended WCJ’s joint award of permanent disability to applicant correctional officer who suffered cumulative injury to his heart ending on 3/18/2013, causing 100 percent permanent disability, and injury to his cervical spine, left knee, psyche, and in forms of headaches and cognitive disorder on 3/2/2009 and 10/27/2010, causing 62 percent permanent disability, when WCAB found that WCJ’s joint award violated Labor Code § 4664(c)(1), which states that accumulation of all lifetime permanent disability with respect to any statutorily defined “region of the body” cannot exceed 100 percent, and that because applicant’s headache disability (5 percent) constituted “head” disability for purposes of Labor Code § 4664(c)(1)(G) and “head” is considered same “region of body” as “cardiovascular system,” headache disability could not be awarded in addition to 100 percent heart disability; however, rather than subtract headache disability from 100 percent awarded for applicant’s cumulative injury claim, WCAB deducted it from award for specific injury claims, thereby reducing applicant’s permanent disability rating for specific injuries to 60 percent; WCAB determined that applicant’s cognitive disability was due to “mental and behavioral disorder” pursuant to Labor Code § 4664(c)(1)(C) rather than “head” under Labor Code § 4664(c)(1)(G) and, therefore, cognitive disability need not be deducted from either award.

**Crystal Reed, Applicant v. State of California, Department of Social Services, In-Home Support Services, Legally Uninsured, York Risk Services Group, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 153. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled as result of industrial injuries to her cervical spine, shoulders, back, left arm and in form of headaches incurred while she was employed as in-home caregiver on 8/27/2008, when WCAB found that due to effects of her chronic pain, impaired concentration caused by significant pain medications, and limited ability to engage in activities of daily living, applicant was precluded from participating in gainful employment, that reports of applicant’s vocational expert constituted substantial evidence to support finding that applicant was not amenable to vocational rehabilitation due to effects of industrial injury and, therefore, had total loss of earning capacity, that treating physician’s impairment rating failed to accurately describe applicant’s disability since physician did not consider adverse effects of her prescription pain medication, and that aggravation of applicant’s industrial injury as consequence of alleged tortious medical treatment (failed fusion surgery) for industrial injury was not “intervening event” that relieved defendant of liability for applicant’s increased disability.

**James Burr, Applicant v. The Best Demolition & Recycling Co., Inc., State Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 143. Permanent Disability—Rating—Conclusive Presumption of Permanent Total Disability—Vocational Evidence—WCAB affirmed WCJ’s findings that applicant incurred 88 percent permanent disability, after apportionment, as result of industrial back injury with additional compensable consequence injuries, and that applicant was not entitled to award of 100 percent permanent disability based on conclusive presumption in Labor Code § 4662(a)(3) or “in accordance with the fact” under Labor Code § 4662(b), when (1) agreed medical examiner concluded that applicant was medically paraplegic based on his bilateral lower extremity leg weakness, resulting in need for wheelchair, but WCAB noted that Labor Code § 4662(a)(3) requires “practically total paralysis,” which WCAB interpreted as equivalent to “near paraplegia,” and found that because applicant had no weakness in his upper extremities, his condition did not meet definition of “practically total paralysis” in Labor Code § 4662(a)(3), and, therefore, presumption of permanent total disability did not apply, and (2) WCAB found that reporting of applicant’s vocational expert did not constitute substantial evidence to support finding that applicant was permanently totally disabled solely due to his work injuries because she provided only cursory opinion that industrial injury alone without consideration of apportionment rendered applicant unemployable.

**Jerry Hunter, Applicant v. State of California Department of Justice, legally uninsured, adjusted byState Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 126. Permanent Disability—Rating—AMA *Guides*—Skin Cancer—WCAB affirmed WCJ’s finding that medical reporting of treating physician Samer Alaiti, M.D., constituted substantial evidence upon which to base permanent disability rating for skin cancer incurred by applicant during his employment as assistant bureau chief for California Department of Justice from 2/1/88 through 9/23/2011, when Dr. Alaiti relied on AMA *Guides* criteria for dermatologic disorders in Table 8-2 and determined that applicant fell within criteria for Class 2 impairment, which includes “Skin disorder signs and symptoms present or intermittently present and limited performance of some activities of daily living and may require intermittent to constant treatment,” and WCAB noted that Class 2 differs from Class 1 in that Class 1 reflects “no or few limitations” of activities of daily living and “no or intermittent” treatment, and that finding of Class 2 impairment was justified based on Dr. Alaiti’s belief that applicant would require intermittent treatment including exams at least two or three times per year, and his opinion that applicant was limited in some activities of daily living due to many prophylactic conditions imposed on him as result of injury and his need to avoid undue exposure to sunlight.

**Carmen Gutierrez, Applicant v. Bah California, Inc.,-Church’s Chicken, Travelers Property Casualty Company of America, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 149. Permanent Disability—Rating—AMA *Guides*—Grip Loss—WCAB affirmed WCJ’s finding that applicant who suffered 6/20/2014 industrial injury to her right wrist, hand and arm incurred 8 percent permanent impairment (13 percent permanent disability after adjustment for age and occupation) to her right wrist under AMA *Guides* based on her loss of range of motion, when applicant’s primary treating physician provided whole person impairment ratings based on both loss of range of motion (8 percent) and on grip loss (12 percent), and WCAB found that (1) WCJ correctly used loss of range of motion impairment rather than grip loss impairment to rate applicant’s permanent disability pursuant to AMA *Guides*, (2) grip loss rating was impermissible under Section 16.8a, page 508, of AMA *Guides*, where applicant had loss of range of motion and documented wrist pain, and there was no evidence that AMA *Guides* rating failed to adequately represent applicant’s impairment or that grip loss was due to unrelated etiological or pathomechanical cause so as to justify combining loss of strength with other impairments, and (3) WCJ was permitted to rely on treating physician’s loss of range of motion impairment finding, while rejecting his finding of impairment based on grip loss and was not compelled to either combine impairment ratings or to reject doctor’s reporting in its entirety as urged by applicant.

**Jose Hernandez, Applicant v. San Francisco Day School, The Hartford, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 151. Permanent Disability—Rating—AMA *Guides*—Rebuttal of Scheduled Rating—WCAB, affirming WCJ, found that applicant’s 10/19/2009 industrial right ankle and left thumb injuries caused 16 percent impairment under AMA *Guides*, and that report of applicant’s vocational expert was insufficient to rebut strict AMA *Guides* rating, when vocational expert provided impairment finding of 75 percent based on percentage of access to labor market applicant lost as result of injury, but WCAB found that loss of labor market access is not equivalent to diminished future earning capacity and is not in itself sufficient to rebut scheduled rating, that applicant did not prove that he suffered greater loss of future earning capacity because vocational expert refused to provide such analysis, that applicant did not meet requirements of **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut scheduled rating where vocational expert opined that applicant was amenable to vocational rehabilitation and could perform work in multitude of career fields, and that vocational expert’s report was deficient in that vocational expert did not discuss whether applicant’s preexisting nonindustrial disability, including concentration and memory problems following brain surgery, could affect his analysis of applicant’s vocational feasibility.

**Matthew Falade, Applicant v. Durando Home & Durando Home II, State Compensation Insurance Fund, Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 65. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant sustained new and further orthopedic permanent disability as consequence of 8/6/2009 industrial injury to his psyche, spine, groin, and sleep, with permanent disability increasing from 38 percent to 65 percent based on opinion of agreed medical examiner Alexander Angerman, M.D., and WCAB was not persuaded by defendant’s assertion that applicant’s prior use of cane precluded WCJ’s rating of applicant’s gait derangement, when prior award did not include rating for use of cane, and evidence showed that applicant’s need for cane substantially increased since time of prior award; WCAB upheld WCJ’s finding that apportionment of permanent disability was not supported by Dr. Angerman’s reporting, where Dr. Angerman did not provide sufficient rationale for his 20 percent apportionment to nonindustrial pathology since he did not discuss nature of pathology or how he reached 20 percent figure.

**Lorena Lopez, Applicant v. Dolan Foster Enterprises dba Taco Bell, And Pennsylvania Manufacturers Association Insurance Co., Adjusted By Gallagher Bassett Inc., Defendants**, 2018 Cal. Wrk. Comp. P.D. LEXIS 72 Permanent Disability—Rating—AMA *Guides*—Grip Strength—WCAB, affirming WCJ’s permanent disability awards based on opinion of agreed medical evaluator Stephen Conrad, M.D., determined that Dr. Conrad’s assessment of applicant’s whole person impairment using loss of grip strength was consistent with AMA *Guides*, when WCAB reasoned that AMA *Guides* allow loss of grip strength as separate rating where examiner believes individual’s loss of strength represents impairment that has not been adequately considered by other methods in AMA *Guides*, that although applicant would not be entitled to any impairment in upper extremities under AMA *Guides,* Dr. Conrad determined that applicant did in fact suffer genuine upper extremity symptoms with activities of daily living consistent with repetitive strain injury, and in order to achieve accurate depiction of applicant’s functional loss he utilized grip strength as measurement, and that Dr. Conrad specifically addressed defendant’s concerns by reporting that applicant provided full effort in grip strength testing and confirming that there was no painful condition to preclude use of grip strength in assessment of permanent impairment.

**Walter Donovan, Applicant v. United Parcel Service and Liberty Mutual Insurance Company, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 84 Permanent Disability—Rating—Occupational Group Numbers—WCAB rescinded WCJ’s finding that applicant UPS truck driver’s occupational group number was 350 (truck drivers), and found instead that given description of applicant’s job duties by qualified medical evaluator Mechel M. Henry, M.D., and applicant’s testimony, applicant worked both as truck driver and as loader/unloader because, unlike traditional truck driver, applicant was additionally tasked with loading and unloading packages from trucks, and based on “dual occupation” rule, WCAB concluded that applicant should be given occupational group number that produced highest level of permanent disability, which in this case was occupational group number 460 (material handlers and machine loaders/unloaders).

**Zoher Eyad, Applicant v. Airport Commuter, Inc., Praetorian Insurance Company, administered byQBE Insurance Group, Ltd., Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 85.** Permanent Disability—Rating—Occupational Group Numbers—WCAB affirmed WCJ’s determination that applicant airport limousine driver was entitled to permanent disability rating based on occupational group number 350, applicable to truck drivers, rather than occupational group number 250 for public transportation drivers as asserted by defendant, when WCAB reasoned that occupational group number 350 correlated most accurately with applicant’s job duties of loading and unloading heavy luggage out of limousine on regular basis.

**Zoher Eyad, Applicant v. Airport Commuter, Inc., Praetorian Insurance Company, administered byQBE Insurance Group, Ltd., Defendants, 2018 Cal. Wrk. Comp. P.D. LEXIS 85.** Permanent Disability—Rating—Combining Multiple Disabilities—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant airport limousine driver’s 3/12/2011 industrial injuries to his back, lower extremities and psyche combined to cause 98 percent permanent disability, when WCAB determined that reporting of agreed medical examiner Stephen Conrad, M.D., was substantial evidence based on analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), *aff’d sub nom.* *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating with respect to applicant’s orthopedic injuries, and that WCJ was justified in determining applicant’s permanent disability by adding her impairments rather than by combining impairments using Combined Values Chart, which would have resulted in 70 percent permanent disability, where Dr. Conrad reported that impairments from applicant’s gait disturbance and lumbar spine combined in synergistic manner to render applicant sedentary with assistance of walker, psychiatric agreed medical examiner noted synergy between applicant’s orthopedic and psychiatric impairments, and there was no evidence of overlap between any of applicant’s disabilities.

**Fermin Sandoval, Applicant v. Waterproofing Associates, Cypress Insurance, Berkshire Hathaway, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 39. Permanent Disability—Rating—AMA Guides—Rebuttal of Scheduled Rating—WCAB, affirming WCJ, found that applicant’s 6/21/2011 industrial injury to his back and right knee caused 50 percent permanent disability pursuant to AMA Guides, and that applicant did not rebut AMA Guides rating so as to prove that his injury caused permanent total disability under Labor Code § 4662(b) or based on vocational expert evidence, which applicant alleged showed total loss of earning capacity, when WCAB reasoned that no medical evaluator precluded applicant from performing work on medical basis or indicated that AMA Guides rating did not accurately reflect applicant’s impairment, vocational evidence produced by applicant’s and defendant’s vocational experts conflicted regarding applicant’s ability to compete in open labor market, and applicant did not show that his industrial injury alone precluded vocational rehabilitation as required under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, to establish permanent total disability, where applicant’s lost earnings in this case were caused by combination of industrial and nonindustrial factors, including applicant’s linguistic and literacy limitations.

**Herbert Schmitz, Applicant v. Westlands Water District, Liberty Mutual Insurance Company/Wausau, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 40. Permanent Disability—Rating—AMA Guides—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant’s 1/8/2014 industrial injuries to his brain, left shoulder and arm, left leg, back, ribs, pelvis, reproductive system, teeth, and psyche resulted in 74 percent permanent disability, when WCAB found that impairment rating of orthopedic panel qualified medical evaluator based on hernia chapter of AMA Guides, upon which WCJ relied, did not meet requirements of Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and was not sufficient to rebut strict AMA Guides rating, because panel qualified medical evaluator did not explain why departure from impairment ratings in appropriate chapters of AMA Guides was necessary, and WCAB concluded that further development of record was necessary on this issue.

**Joe Casillas, Applicant v. Grayd-A Precision Metal Fabricators, State Compensation Insurance Fund, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 7. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled “in accordance with the fact” under Labor Code § 4662(b), and pursuant to analyses in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, as result of 2/9/2011 industrial injury to his right upper extremity, cervical spine and psyche, when vocational expert evidence established that applicant had significant limitations that prevented him from engaging in activities of daily living due to effects of his chronic pain and impaired concentration from post-traumatic stress syndrome, and there was overwhelming evidence of applicant’s inability to benefit from vocational rehabilitation based on effects of his industrial injury.

**Ricardo Markowicz, Applicant v. Andrews International, LWP Claims, Defendants,** 2018 Cal. Wrk. Comp. P.D. LEXIS 16. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, affirming WCJ, found that WCJ properly relied on reports of qualified medical evaluator Ana Marta Salinas, M.D., to determine applicant’s permanent disability by adding her impairments rather than by combining impairments using Combined Values Chart (CVC), when Dr. Salinas testified that use of CVC was not appropriate here because of synergistic effect between applicant’s lower extremity and lumbar spine impairments and lack of overlap in those impairments, and because adding impairments more accurately reflected applicant’s level of impairment following 11/25/2010 industrial injury, and WCAB determined that opinion of Dr. Salinas constituted substantial evidence upon which to base determination of permanent disability.

**Richard Rossi, Applicant v. Binks Manufacturing Company, California Insurance Guarantee Association for American Motorists Insurance Company, in liquidation, and American Manufacturers Mutual Insurance Company, in liquidation, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 592. Permanent Disability—Rating—AMA Guides—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant suffered 99 percent permanent disability as result of industrial injury in forms of cancer, hyperhidrosis, neuropathy, and pulmonary fibrosis while employed from 5/24/94 to 5/24/99, and amended WCJ’s decision to substitute corrected rating of at least 88 percent permanent disability based on Permanent Disability Rating Schedule (PDRS) under Labor Code § 4660, and to provide for further proceedings at trial level regarding whether strict PDRS rating was rebutted pursuant to analyses in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and whether applicant suffered permanent total disability “in accordance with the fact” under Labor Code § 4662(b), when WCAB observed that approach used by WCJ, wherein he relied on reporting of applicant’s vocational expert to find that applicant’s level of permanent disability was essentially equivalent to percentage of labor market that was unavailable to him, was incorrect and without legal support, that WCJ should have applied recognized statutory approaches and approaches outlined in Ogilvie and Almaraz/Guzman for determining permanent disability, and that WCJ improperly disregarded relevance of vocational evidence both to question of whether PDRS rating was rebutted and question of whether entirety of record supported finding of permanent total disability under Labor Code § 4662(b) by only addressing effect of vocational evidence in his analysis of PDRS rating but not with respect to whether it supported finding of total permanent disability “in accordance with the fact.”

**Manuel Alonzo, Applicant v. Cingular, Inc., AIG Claims, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 528. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to his lumbar spine, cervical spine, thoracic spine, left shoulder, and left knee while working as warehouseman/general laborer on 11/14/2011 suffered 34 percent permanent disability, when WCJ calculated applicant’s overall permanent disability using Combined Values Chart (CVC) rather than by adding applicant’s disabilities, and WCAB, adopting WCJ’s report, found that use of CVC to combine disabilities was proper in this case where there was no evidence to rebut presumption of correctness applicable to CVC or to support adding disabilities to find permanent disability.

**Joel De La Cerda, Applicant v. Martin Selko & Co., State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 533. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB rescinded WCJ’s finding that applicant suffered 93 percent permanent disability, after apportionment, as result of industrial injuries to his neck, low back, right shoulder, cardiovascular system (hypertension), gastrointestinal system (GERD), pulmonary system (RAD), central nervous system (sleep disorder), neurological system (headaches), and psyche, while employed as laborer on 6/27/2003, and remanded matter to trial level for further proceedings on issue of permanent disability, when WCJ used Combined Values Chart (CVC) to combine applicant’s impairments despite opinion of agreed medical evaluator Timothy Reynolds, M.D., that additive method should be used instead to most accurately calculate extent of applicant’s disability, and WCAB found that WCJ’s refusal to follow Dr. Reynolds’ opinion on adding applicant’s impairment on basis that addition would impermissibly result in permanent disability rating greater than 100 percent was not justified because applicant cannot receive permanent disability award for single injury greater than 100 percent, and that, as discussed in Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), additive method may be used to calculate permanent disability in relevant circumstances, that it is role of medical expert to make medical determination as to how to combine separate impairments, and agreed medical examiner’s opinion should be followed if he or she provides reasonably articulated medical basis for opinion, that agreed medical evaluator’s failure to use term “synergistic” to advocate for use of additive rating method is not determinative of validity of using that method, that impairments may be added if substantial medical evidence supports physician’s opinion that adding them will result in more accurate rating than using CVC, and that to extent WCJ in this case did not find justification for Dr. Reynolds’ opinion that additive method should be used here, Dr. Reynolds should be provided opportunity to clarify basis for his rating recommendation.

**Vickie Dias, Applicant v. State of California, Department of Corrections and Rehabilitation, Pleasant Valley State Prison, State Compensation Insurance Fund, Defendants,** *2017 Cal. Wrk. Comp. P.D. LEXIS 534*. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant suffered 15 percent permanent disability as result of 5/22/2012 industrial injury to her left shoulder while she was employed as case records technician for state prison, and WCAB determined that, contrary to defendant’s assertion, report of panel qualified medical evaluator Scott Graham, M.D., constituted substantial evidence regarding extent of applicant’s impairment under AMA Guides to support WCJ’s finding of permanent disability, when Dr. Graham applied strict AMA Guides rating and was not, as argued by defendant, precluded under Section 16.8 of AMA Guides from considering both range of motion and loss of strength in assessing applicant’s impairment where medical evidence did not indicate that applicant’s complaints of pain or loss of range of motion interfered with manual muscle testing examination.

**Gloria Frialde, Applicant v. TJ Ward, Truck Insurance Exchange, Subsequent Injuries Benefit Trust Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 535. Permanent Disability—Rating—Sleep Disorder—WCAB, reversing WCJ, found that there was no substantial medical evidence to support WCJ’s finding that applicant incurred separately ratable compensable injury in form of sleep disorder, when agreed medical examiner Jonathan Ng, M.D., reported that applicant’s sleep problems were entirely due to pain from her physical injuries and, while Dr. Ng described applicant’s score on Epworth Sleepiness Scale as equivalent to Class 2 impairment of excessive sleepiness, WCAB noted that under Section 13.3 of AMA Guides, diagnosis of excessive daytime sleepiness for purposes of establishing ratable sleep disorder must be supported by formal studies in sleep lab as opposed Epworth Sleepiness Scale score, which is based on self-reported sleepiness.

**Deric Hobson, Applicant v. Bechtel Group, Inc., PSI, adjusted by AIG, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 539. Permanent Disability—Rating—AMA Guides—Rebuttal of Scheduled Rating—WCAB rescinded WCJ’s finding that applicant suffered 88 percent permanent disability as result of internal injury in form of Valley Fever incurred while he was employed as laborer over period 8/29/2011 through 7/23/2012, based on impairment findings of agreed medical examiner Todd Fearer, M.D., and instead awarded applicant 100 percent permanent disability based on vocational expert opinion of David Van Winkle, which WCAB found was substantial evidence to rebut strict AMA Guides rating derived from Dr. Fearer’s impairment findings, when Mr. Van Winkle properly analyzed impairments and restrictions described by Dr. Fearer and determined that due to his chronic pain and fatigue, applicant was not amenable to vocational rehabilitation and had lost his ability to compete in open labor market.

**Alexander Kamakeeaina, Applicant v. Super Heat, United States Fire Insurance (One of the Crum and Forster Group of Companies), Defendants,** *2017 Cal. Wrk. Comp. P.D. LEXIS 541*. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled “in accordance with the fact” under Labor Code § 4662(b), without basis for apportionment, as result of industrial injuries to his spine, urinary tract, bowel and in form of sexual and sleep disorders incurred on 11/23/2006 while he was employed as heating technician, when WCAB determined that WCJ properly based permanent total disability finding on reports of agreed medical examiner Joseph Izzo, M.D., and primary treating physician Alan Kimelman, M.D., which described medical bases for applicant’s inability to work in labor market, and WCAB, adopting WCJ’s report, confirmed that permanent total disability findings can be based solely on medical determinations, without need for vocational expert evidence.

**Leia Porter, Applicant v. Ridi Home Care, Inc., Nova Casualty Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 549. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant caregiver’s 10/13/2013 industrial injury to her lumbar spine caused 19 percent permanent disability based on strict interpretation of AMA Guides impairment offered by panel qualified medical evaluator James B. Shaw, M.D., under which applicant’s impairment rated at 8 percent using diagnosis-related estimate (DRE) method, plus 3 percent add-on for pain, and held that WCJ properly declined to adopt Dr. Shaw’s alternative impairment analysis pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that Dr. Shaw did not adequately explain his conclusion that strict application of AMA Guides did not accurately reflect applicant’s impairment or why strict application of AMA Guides was not warranted in this case, that Dr. Shaw’s alternate analysis was based upon incorrect assumption that pain add-on is not allowed with DRE method of rating impairment, and that Dr. Shaw improperly relied upon Figure 15-19 of AMA Guides in finding alternate impairment, where Figure 15-19 is not “table or method,” but rather provides information on how to convert whole person impairment to regional estimate of spinal impairment and is not intended to be used as rating mechanism.

**Patricia Preston, Applicant v. Los Angeles Unified School District, Sedgwick Claims Management Services, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 574. Permanent Disability—Rating—AMA Guides—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 15 percent permanent disability as result of industrial injury to her lumbar spine on 12/20/2013 while employed as cafeteria worker, and determined that report of qualified medical evaluator constituted substantial evidence to justify use of diagnosis-related estimate (DRE) method to rate applicant’s permanent disability, when WCAB panel majority found that DRE method was preferred rating method under AMA Guides, and that panel qualified medical evaluator’s finding of distinct injury and single-level sensory radiculopathy corresponding to herniation at L5-S1 supported use of DRE method, and WCAB observed that applicant’s primary treating physician used range of motion (ROM) method to rate applicant’s disability without reference to AMA Guides’ instruction to use DRE method as principle methodology to evaluate spinal injuries, that under Section 15.2a of AMA Guides, multi-level involvement in same spinal region is basis for using range of motion (ROM) method when there are fractures or radiculopathy in more than one level or recurrent disc herniation or stenosis with radiculopathy, and that factors supporting use of ROM method as listed in Section 15.2a were not present here; Commissioner Sweeney, dissenting, would return matter to trial level and require WCJ to either apply ROM rating method based on significant medical evidence of multi-level degenerative disc disease, or to obtain clarification from qualified medical evaluator to justify use of DRE method, when Commissioner Sweeney opined that while Section 15.2a of AMA Guides quoted by majority appeared to require use of DRE method, Section 15.8 and Figure 15-4 of AMA Guides support use of ROM method if there is more than single level injury, without regard to whether injury is fracture or there is radiculopathy, that qualified medical evaluator’s use of Table 15-3 for DRE impairment rating did not address applicant’s multi-level degenerative disc disease nor did qualified medical evaluator adequately explain why DRE method rather than ROM method applied in this case, and that because diagnoses of applicant’s injury consistently indicated that applicant did have multi-level involvement in lumbar spine, ROM rating method should be used to produce higher permanent disability rating.

**Silvia Martinez, Applicant v. Pack Fresh Processors, LLC, Midwest Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 492. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant’s 6/30/2011 industrial injuries to her psyche and right upper extremity/chronic regional pain syndrome (CRPS) caused permanent total disability based on scheduled rating under Labor Code § 4660, and concluded that WCJ properly determined extent of applicant’s permanent disability by adding her psychiatric permanent disability to permanent disability caused by her upper extremity injury and CRPS, rather than combining her disabilities using Combined Values Chart (CVC), when WCAB reasoned that Permanent Disability Rating Schedule (PDRS) is only guide and that adding permanent disabilities caused by injury to separate body parts is proper to determine overall level of permanent disability where addition results in more accurate rating than using CVC to combine disabilities, and that here adding impairments was more accurate because applicant’s orthopedic/CRPS impairment precluded her from performing physical work she had previously done and her psychiatric impairment limited her ability to enter new occupation, and there was no evidence that impairment to different regions of applicant’s body overlapped so as to support use of CVC; Commissioner Lowe, dissenting, disagreed with panel majority’s finding that record in this case supported deviation from use of CVC by adding orthopedic and psychiatric permanent disabilities, when Commissioner Lowe found no medical evidence indicating that adding disabilities would provide more accurate permanent disability rating than combining disabilities using CVC, and noted that in absence of substantial medical evidence or other evidence supporting use of additive method, PDRS provides for use of CVC to obtain accurate rating of combined effect of orthopedic and psychiatric disabilities, and that if disabilities are simply added together without supporting medical evidence instead of combined using CVC, resulting award of permanent disability indemnity would exceed amount employer is legally obligated to pay.

**Silvia Martinez, Applicant v. Pack Fresh Processors, LLC, Midwest Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 492. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant’s 6/30/2011 industrial injuries to her psyche and right upper extremity/chronic regional pain syndrome caused permanent total disability “in accordance with the fact” under Labor Code § 4662(b), based on reporting of panel qualified medical evaluator Mark Howard, M.D., which WCAB found was substantial evidence, and on opinion of applicant’s vocational expert, Tom Linvill, who provided analysis of individualized factors identified in **Argonaut Insurance Co. v. I.A.C. (Montana)** (1962) 57 Cal. 2d 589, 21 Cal. Rptr. 545, 27 Cal. Comp. Cases 130, 371 P.2d 281, which showed that before her injury applicant was well qualified for agricultural work she was performing but that effects of her industrial injury limited her ability to continue such work, and her limited skills and lower academic achievement impacted degree she could participate in labor market, and WCAB panel majority, while recognizing that decisions in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, appear to reject consideration of nonindustrial individualized factors described in Montana as way of rebutting diminished future earning capacity factor in Permanent Disability Rating Schedule, determined that these individualized factors are relevant in evaluating injured worker’s amenability to vocational rehabilitation as discussed in Dahl, and that Mr. Linvill properly considered them in determining that applicant could not participate in open labor market; Commissioner Lowe, dissenting, opined that there was insufficient evidence to support finding of permanent disability under Labor Code § 4662(b), and that applicant’s permanent disability should have been determined pursuant to Labor Code § 4660, when Commissioner Lowe reasoned that reporting of Mr. Linvill was not sufficient to rebut scheduled rating under Ogilvie, because he acknowledged that applicant’s inability to find alternative work was due to nonindustrial factors, including lack of academic skill and lack of fluency in English, and that under Ogilvie evidence that injured worker’s loss of future earning capacity was caused by nonindustrial factors, such as general economic conditions, illiteracy, English proficiency, or lack of education, cannot rebut scheduled permanent disability rating.

**Jam Kwong, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 517. Permanent Disability—Rating—Occupational Group Numbers—WCAB affirmed WCJ’s finding that applicant’s job duties as Correctional Supervising Cook I for California Department of Corrections and Rehabilitation required him, in addition to food preparation and cooking, to perform “custodial duties” as integral part of his job, thereby entitling him to higher permanent disability rating based on occupational group number 490.

**Juan Villagran, Applicant v. S&M Moving Systems, LWP Claims, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 523. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding, which was based on opinion of orthopedic agreed medical examiner Donald Pang, M.D., that applicant incurred 38 percent permanent disability as result of industrial injury to his left shoulder on 2/23/2014 while working as furniture mover, and returned matter to WCJ for further development of record, when WCAB determined that, although Dr. Pang attempted to assign applicant most accurate impairment rating, Dr. Pang’s opinion was not substantial evidence because he did not properly rate applicant’s loss of grip strength using strict application of AMA Guides nor did he adequately discuss Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, so as to justify alternative impairment finding; in concluding that Dr. Pang’s opinion was insufficient, WCAB reasoned that impairment due to loss of strength can be combined with other impairments only if based on unrelated etiologic or pathomechanical causes, and while Dr. Pang noted applicant’s complaints of pain in both shoulders and decreased muscle strength, he did not offer opinion as to whether pain, decreased motion, or physical deformity prevented applicant from using maximum force, nor did Dr. Pang advise whether he was using analogy to provide most accurate rating for applicant’s disability pursuant to Almaraz/Guzman.

**Vicki Smith, Applicant v. State of California Department of Developmental Services—Frank D. Lanterman State Hospital, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 453. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled “in accordance with the fact” under Labor Code § 4662(b) as result of 5/4/2001 industrial injuries to her low back, right knee, gastrointestinal system and psyche, and, noting that vocational expert opinion is not necessary for finding permanent total disability under Labor Code § 4662(b), concluded that reporting of orthopedic agreed medical examiner Joseph Alban, M.D., which was supported by opinion of applicant’s vocational expert, constituted substantial evidence in itself to support WCJ’s finding of 100 percent permanent disability.

**Maureen Hikida, Applicant v. Costco Wholesale, PSI, Defendant,** 2017 Cal. Wrk. Comp. P.D. LEXIS 442. Permanent Disability—Rating—Apportionment—WCAB, on remittitur from Court of Appeal [see **Hikida v. W.C.A.B.** (2017) 12 Cal. App. 5th 1249, 219 Cal. Rptr. 3d 654, 82 Cal. Comp. Cases 679], rescinded WCJ’s finding that it was proper to apportion permanent disability suffered by applicant as result of employer-provided medical treatment using same percentage of apportionment applied to permanent disability caused by industrial injury, and entered new finding that applicant was permanently totally disabled, when reporting of agreed medical examiner, Chester A. Hasday, M.D., showed that applicant’s complex regional pain syndrome which resulted from surgery to treat applicant’s industrial carpal tunnel syndrome, caused 100 percent permanent disability, and Court of Appeal held that there was no basis for apportionment of permanent disability caused by surgery.

**Bill Southwell, Applicant v. County of San Diego, PSI, Defendant,** 2017 Cal. Wrk. Comp. P.D. LEXIS 397. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of industrially-related Hodgkin’s lymphoma and injuries to his heart and in forms of erectile dysfunction and hypertension, incurred while applicant was employed as deputy sheriff from 6/17/94 through 11/13/2007, when WCAB concluded that WCJ’s finding of permanent total disability was based on substantial medical and vocational expert evidence indicating that applicant was unable to return to labor market and not able to participate in vocational rehabilitation, and rejected defendant’s assertion that applicant’s retirement from his employment prior to onset of industrially-related symptoms should preclude permanent total disability award, similar to situations involving temporary disability, when WCAB found that permanent disability compensates for both physical loss/impairment and reduction in earning capacity, and, additionally, that evidence in this case indicated applicant intended to return to work in some capacity and did not remove himself from labor market when he retired so as to support WCJ’s determination that applicant had willingness to work and was unable to return to work solely due to his industrial injury.

**Jose Aldana, Applicant v. Fairmount Tire and Rubber, Crum & Forster, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 330. Permanent Disability—Rating—Permanent Total Disability—Cap on Benefits—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of 10/26/2006 industrial injury to multiple body parts while employed as laborer/tire changer, and WCAB rejected defendant’s assertion that applicant had overlapping disabilities from separate 2004 eye injury that would cause applicant to receive permanent disability award in excess of 100 percent, which is precluded under Labor Code § 4664(c)(1), when WCAB found that defendant failed to establish that disability from applicant’s 2004 eye injury overlapped disability caused by 2006 orthopedic injury, such that applicant was entitled to award for full extent of his permanent disability for subsequent injury.

**Lorenzo Hernandez, Applicant v. State of California, Department of Corrections and Rehabilitation, North Kern State Prison, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 339. Permanent Disability—Rating—Rebuttal of Scheduled Rating—WCAB affirmed WCJ’s finding that applicant correctional officer suffered 24 percent permanent disability as result of 8/24/2011 admitted industrial injury to his right shoulder, and found that applicant’s conceded amenability to vocational rehabilitation precluded use of vocational evidence to rebut scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, and, therefore, report of applicant’s vocational expert P. Steve Ramirez was insufficient to rebut scheduled rating based on findings of panel qualified medical evaluator Robert White, D.C.

**Brent Johnson, Applicant v. State of California, Department of Corrections and Rehabilitation, legally uninsured, adjusted by State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 343. Permanent Disability—Rating—Atrophy—WCAB affirmed WCJ’s finding that applicant correctional officer suffered separate injury AOE/COE and permanent disability to his right shoulder and his right upper extremity based on reporting of agreed medical examiner Donald Schwartz, M.D., and WCAB concluded that Dr. Schwartz’s opinion was substantial evidence to support WCJ’s decision, when Dr. Schwartz found objective evidence of right arm atrophy in addition to loss of range of motion in right shoulder, and Dr. Schwartz explained that applicant’s atrophy was caused by decreased muscle strength due to pain and disuse of arm, and that while there is no specific method for rating atrophy of upper extremities, under principles on p. 508 of AMA Guides, if loss of strength represents impairing factor that has not been considered adequately by other methods in AMA Guides, loss of strength, such as occurred in this case, may be rated separately.

**Mark Long, Applicant v. City of Brea, PSI, administered by Keenan & Associates, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 369. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant firefighter suffered 16 percent whole person impairment for lumbar spine condition that precluded heavy lifting as described in Table 6-9 of AMA Guides, based on reporting of orthopedic agreed medical examiner Michael Luciano, M.D., whose opinion WCAB found was substantial evidence pursuant to analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when, contrary to defendant’s assertion, Dr. Luciano did not associate his finding of heavy lifting impairment as described in Table 6-9 of AMA Guides with “heavy lifting” preclusion in 1997 Schedule for Rating Permanent Disabilities, but instead based his finding on how applicant’s heavy lifting impairment effected his activities of daily living, and WCAB concluded that Dr. Luciano did not impermissibly use analogy to chapter, table or chart in AMA Guides simply to achieve desired result; WCAB also affirmed WCJ’s finding that applicant suffered 2 percent whole person impairment under Section 2.5g of AMA Guides for hearing loss and tinnitus based on opinion agreed medical examiner in otorhinolaryngology, Alfred Roven, M.D., when Dr. Roven used strict AMA Guides rating to increase applicant’s impairment rating as permitted under AMA Guides, based on fact that applicant was not completely free from hearing impairment even while using hearing aids.

**Mario Cocola, Applicant v. California Hospital Medical Center, administered by Sedgwick Claims Management Services, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 278. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 69 percent permanent disability as result of industrial injury to his lumbar spine, cervical spine, psyche, and head over period 9/23/2003 to 6/25/2007, and determined that opinion of agreed medical examiner James Strait, M.D., was not substantial evidence to support applicant’s claim that he suffered 100 percent permanent total disability, when WCAB panel majority found Dr. Strait’s opinion insufficient based on his failure to provide adequate description of objective changes he observed in applicant’s condition to justify increasing applicant’s work restrictions from ability to engage in semi-sedentary work to complete inability to work; Deputy Commissioner Newman, dissenting, concluded that opinion of Dr. Strait, together with opinion of vocational expert Judith Najarian, who both found that applicant was not amenable to vocational rehabilitation and was precluded from open labor market, was sufficient evidence to justify finding of permanent total disability.

**Todd Cregar, Applicant v. State of California, Department of Corrections, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 279. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant suffered 42 percent permanent disability as result of industrial injury to his bilateral wrists, hands and arms during period 5/20/2008 to 5/20/2009, and returned matter for further proceedings, when WCAB found that opinion of panel qualified medical evaluator Michael Wlasichuk, M.D., upon which WCJ relied in rating permanent disability, was not substantial evidence because Dr. Wlasichuk, without explanation, determined applicant’s right elbow impairment based on Chapter 13.8 of AMA Guides, which set forth criteria for rating impairments related to chronic pain, instead of evaluating impairment under Chapter 16.5 of AMA Guides pertaining to nerve disorders of upper extremities, and Dr. Wlasichuk’s evaluation of right elbow impairment did not meet requirement in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, that physician explain why departure from scheduled impairment rating was necessary and how he or she arrived at different rating; Dr. Wlasichuk’s reporting was also insufficient in that Dr. Wlasichuk changed his methodology for evaluating applicant’s impairment between his two reports without providing any explanation for change.

**Kathleen Goss, Applicant v. California State University Dominguez Hills, legally uninsured, administered by Sedgwick CMS, Defendants,** *2017 Cal. Wrk. Comp. P.D. LEXIS 284*. Permanent Disability—Rating—AMA Guides—WCAB, in split panel opinion, found that applicant suffered 5 percent impairment to her cervical spine as determined by qualified medical evaluator Jacqueline Lezine-Hanna, M.D., rather than 8 percent as assigned by applicant’s primary treating physician Timothy Hunt, M.D., when both Dr. Lezine-Hanna and Dr. Hunt agreed that applicant’s cervical spine impairment should be rated within DRE category 2, which allows between 5 percent and 8 percent whole person impairment assignment within discretion of physician, and WCAB panel majority found that Dr. Hunt’s higher impairment assignment based on his finding of diminished range of motion in cervical spine was not supported by other medical evidence in record indicating that applicant did not lose range of motion to cervical spine; Commissioner Sweeney, dissenting, determined that Dr. Hunt appropriately assigned higher impairment rating within DRE category 2 based on impact of applicant’s injuries on her ability to perform activities of daily living, as discussed in AMA Guides sections 15.2 and 15.3.

**Nathan Humes, Applicant v. County of Placer, Intercare Holdings, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 313. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant suffered 65 percent permanent disability, based on conclusion of agreed medical examiner that applicant suffered 30 percent whole person impairment for coronary artery disease under Table 4-2, category 3, of AMA Guides, which accounts for risk of end organ damage associated with hypertensive heart disease, and WCAB rejected defendant’s assertion that applicant should have received 15 percent whole person impairment for coronary artery disease pursuant to analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that Almaraz/Guzman was not applicable in this case, and that if it were applicable applicant nonetheless would have been afforded higher strict AMA Guides rating.

**Yelena Zakaryan, Applicant v. Glendale Community College District, PSI, adjusted by Keenan & Associates, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 327. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB, amending WCJ’s decision, determined that applicant’s industrial injury to her neck, low back and psyche, and in forms of irritable bowel syndrome (IBS), gastro-intestinal reflux disease, headaches, and myofascial pain syndrome during period 7/6/2008 to 7/6/2009 resulted in 71 percent permanent disability rather than 58 percent permanent disability as found by WCJ, when WCJ rated permanent disability by adding impairments from applicant’s gastritis, duodenitis, IBS, and headaches and then combining sum of those impairments with other impairments under Combined Values Chart (CVC), but WCAB concluded that medical record, including reports of internal medicine agreed medical examiner Timothy Reynolds, M.D., and substantial evidence supported adding impairments resulting from applicant’s gastritis, duodenitis, IBS, and headaches, and then adding sum of those impairments with combined impairments from other injuries, where record indicated that applicant was less able to compensate for stress and synergistic effects of impairments resulting from her gastritis, duodenitis, IBS, and headaches, and that stress and impairments resulting from her psychiatric injury, chronic myofascial pain syndrome, and orthopedic injuries also played role; WCAB rejected defendant’s assertion that use of CVC is required for determining whole person impairment for multiple injured body parts and that adding impairments is not allowed, and observed that whole person impairment or permanent disability may be added for multiple injured body parts caused by single work injury, as in this case, when there is synergistic effect, and injury and impairment is greater than if compensated by another body part that is not injured.

**Francis Hargreaves, Applicant v. Southwest Airlines, ACE USA Insurance Co., administered by Sedgwick CMS, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 240. Permanent Disability—Rating—Sleep Disorder—WCAB rescinded WCJ’s award of 90 percent permanent disability and found instead that applicant suffered 88 percent permanent disability as result of 1/20/2009 industrial injury in form of complex regional pain syndrome incurred while applicant was employed as airline customer service agent, when WCAB concluded that opinion of agreed medical examiner Timothy Reynolds, M.D., assigning applicant Class 1 sleep disorder, which WCJ had included in permanent disability rating, did not constitute substantial evidence because Dr. Reynolds did not base sleep disorder rating upon any diagnosed neurological disorder, such as sleep apnea, and instead based rating solely upon complaints of fatigue due to restless sleep, but applicant’s subjective reporting on Epworth Sleepiness Scale resulted in score of “0” and did not support finding that applicant had reduced daytime alertness that impacted his activities of daily living as described in Table 13-4 of AMA Guides.

**Maria Acevedo, Applicant v. Southern California Permanente Medical Group, Kaiser, PSI, administered by Sedgwick CMS, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 250. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant suffered 54 percent permanent disability as result of cumulative injury resulting from latex exposure from 1978 through 3/15/2002, based on analogy to skin disability under 1997 Schedule for Rating Permanent Disabilities, and WCAB rejected applicant’s assertion that WCJ should have found that latex caused permanent total disability, when WCAB determined that physician’s opinion upon which applicant relied indicating that applicant was permanently totally disabled was not substantial evidence because it stemmed from unproven assumption that latex was “everywhere” such that applicant had nowhere to work, and there was no other substantial evidence in record to support finding of 100 percent permanent disability.

**Jerry Chavez, Jr., Applicant v. City of Vernon, PSI, Administered by Athens Administrators Concord, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 259. Permanent Disability—Rating—Rebutting AMA Guides—WCAB affirmed WCJ’s finding that opinion of agreed medical examiner Roger Sohn, M.D., was not substantial evidence under analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut scheduled AMA Guides rating of impairment caused by applicant police officer’s 9/10/2015 injuries to his neck and shoulders, when WCAB did not find Dr. Sohn’s assessment of permanent disability based solely on his opinion that applicant was “really doing well,” in absence of any other objective standards, to be sufficient to justify 8 or 9 percent decrease in permanent disability as suggested by defendant, and WCAB noted that Dr. Sohn provided no explanation regarding why more objective measurements were not undertaken or explain why deviation from strict AMA Guides impairment rating more accurately reflected applicant’s disability, and that in order to support rebuttal, physician must explain why he or she believes departure from strict AMA Guides rating is justified.

**Alejandro Hernandez, Applicant v. Shree Shiva Murga, LLC, AmTrust North America, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 266. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant suffered 70 percent permanent disability as result of 6/30/2013 industrial injury to his upper extremities, head, neck, right knee, brain, and psyche, and returned matter to trial level on issue of injury and permanent disability to applicant’s kidney, when orthopedic agreed medical examiner John Warbritton, M.D., assigned 3 percent impairment for pain to applicant’s kidney but did not follow strict application of AMA Guides for rating impairment based on pain or provide any analysis of kidney impairment under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and WCAB found that Dr. Warbritton’s rating to applicant’s kidney, in addition to being improper under AMA Guides and Almaraz/Guzman, did not constitute substantial evidence because issue of impairment to kidney is outside expertise of orthopedic specialist and should be addressed by appropriate specialist.

**Jaye Neville, Applicant v. State of California, Highway Patrol, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 273. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant highway patrol dispatcher suffered 73 percent permanent disability, after apportionment, as result of industrial injuries to her neck, lower back, shoulders, arms, elbows, wrists, and thumbs, and found that WCJ did not err in relying upon opinion of agreed medical examiner Mitchel U. Silverman, M.D., to find extent of applicant’s permanent disability, notwithstanding that Dr. Silverman added applicant’s upper extremity impairment to her cervical spine impairment rather than combining impairments using Combined Values Chart, when WCAB determined that (1) Dr. Silverman’s failure to discuss synergistic effect of applicant’s bilateral carpal tunnel syndrome did not preclude addition of impairments where Dr. Silverman noted connection of applicant’s upper extremity impairment to her neck impairment and concluded that adding impairments was most accurate assessment of applicant’s whole person impairment, (2) Combined Values Chart is guide and physicians may, in certain circumstances, employ different method of combining impairments within four corners of AMA Guides, and (3) it is not necessary under AMA Guides to show synergistic effect of multiple impairments to support use of additive method as long as that method is most accurate assessment of disability.

**Stephanie Nowlin, Applicant v. City of Pacific Grove, PSI, administered by LWP Claims, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 274. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant suffered permanent total disability “in accordance with the fact” under Labor Code § 4662(b) due to cumulative injury ending on 6/27/2013 causing applicant to effectively lose use of both hands, when WCAB concluded that evidence did not support WCJ’s finding that applicant lost use of both hands where (1) orthopedic agreed medical examiner Mark Anderson, M.D., presumably chosen by parties because of his expertise and neutrality, assigned 39 percent whole person impairment with 3 percent pain add-on for upper extremity injury, described applicant as having some function in upper extremities with regard to activities of daily living, including ability to drive car, and assigned work limitations that allowed applicant to lift up to five pounds and perform repetitive movements for up to two hours, (2) vocational expert Scott Simon, M.S., opined that applicant was limited from participation in 95 percent, not 100 percent, of labor market due to upper extremity injury, and, although Mr. Simon opined that applicant was completely precluded from labor market if both physical and psychiatric injuries were considered, WCJ did not issue finding of fact as to applicant’s psychiatric disability, having found total disability based solely on upper extremity injury, and (3) record required further development on issue of whether applicant’s psychiatric impairment, which was raised but not decided, was compensable pursuant to Labor Code § 4660.1(c).

**Mukesh Singh, Applicant v. State of California, Legally Uninsured, Defendant,** 2017 Cal. Wrk. Comp. P.D. LEXIS 204. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant suffered 100 percent combined permanent disability as result of industrial orthopedic and psychiatric injuries incurred on 12/15/2006, 12/11/2007, 9/1/2009, and during cumulative period ending on 10/16/2009, when WCAB found that opinion of vocational expert upon which WCJ relied to find permanent total disability did not constitute substantial evidence and was insufficient to rebut scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, because vocational expert failed to address factors, whether medical or non-medical, which were contributing to applicant’s vocational non-feasibility, and did not address applicant’s ability to participate in vocational rehabilitation, and WCAB noted that even if evidence supported conclusion that applicant was unable to compete in open labor market solely due to his work injuries, Labor Code § 4663 and **Benson v. W.C.A.B.** (2009) 170 Cal. App. 4th 1535, 89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases 113, would still require that applicant’s permanent total disability be apportioned among his various industrial injuries, that separate injuries are combined by adding percentages of disability rather than combining them under Combined Values Chart, which is reserved for combining disabilities caused by single injury, and that scheduled disabilities caused by injuries in this case, which add up to far more than 100 percent, are not inconsistent with possibility that applicant had overall permanent total disability.

**Maribel Alvarez, Applicant v. American International Group, AIG Claims Services, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 209. Permanent Disability—Rating—Conclusive Presumption of Total Disability—Paralysis—Apportionment—WCAB affirmed WCJ’s award of 62 percent permanent disability, after apportionment, for applicant’s 9/2/2003 industrial injury to her low back and urological system, and found that applicant was not entitled to unapportioned award of 100 percent permanent disability pursuant to conclusive presumption in Labor Code § 4662 based on alleged paralysis and use of wheelchair, when medical reports did not support finding that applicant was “practically totally paralyzed” for purposes of applying conclusive presumption because applicant was able to stand independently, walk for a few steps and transfer from her wheelchair to her bed, and did not lose ability to feel or move her legs, and that even if conclusive presumption of 100 percent permanent disability did apply, medical evidence supported finding that 95 percent of applicant’s condition for which she needed wheelchair was apportionable to her nonindustrial multiple sclerosis and only 5 percent to her industrial injury.

**Chris Arsenault, Applicant v. Carpet Master, Mid-Century Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 210. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB, affirming WCJ, held that opinion of vocational expert Jeff Malmuth constituted substantial evidence to support WCJ’s finding that applicant suffered 100 percent permanent total disability as result of admitted industrial back injury incurred by applicant while he was employed as carpet cleaner/technician on 6/10/2004, when Mr. Malmuth reviewed all medical evidence, obtained applicant’s history through interview conducted by his assistant and through Skype interview, and expressly addressed requirement in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, for individualized assessment of whether industrial factors precluded applicant’s rehabilitation, and concluded that applicant was not capable of benefiting from or participating in vocational rehabilitation, and WCAB found that Mr. Malmuth’s opinion was consistent with medical evidence and applicant’s credible testimony.

**Juan Ayala, Applicant v. Elena Gonzalez and Employers Compensation Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 211. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that reporting of agreed medical examiner David Graubard, M.D., and qualified medical evaluator Wylie Scott, M.D., constituted substantial evidence rebutting scheduled permanent disability rating and supporting WCJ’s finding that applicant suffered 100 percent permanent total disability as result of admitted industrial injuries to his low back, right shoulder and psyche while employed as truck driver on 8/1/2006, when applicant had significant physical impairment, including inability to sit for prolonged periods, and both physicians concluded that he was unable to work because of that impairment, and WCAB reasoned that where there is evidence of significant physical impairment such as applicant’s, medical expert’s opinion regarding employee’s inability to work in open labor market is sufficient to establish permanent total disability.

**Guillermina Baldwin, Applicant v. Delphi Energy & Engine Management, California Insurance Guarantee Association For Reliance Insurance, In Liquidation, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 212. Permanent Disability—Rating—Conclusive Presumption of Permanent Total Disability—Brain Injury—WCAB rescinded WCJ’s finding that applicant floater suffered permanent total disability without apportionment as result of 2/23/2017 industrial orthopedic and psychiatric injuries based on conclusive presumption in Labor Code § 4662(a)(4) applicable to brain injuries, and returned matter to WCJ for further proceedings on issues of permanent disability and apportionment, when WCAB found that applicant did not sustain “brain injury resulting in permanent mental incapacity” for purposes of Labor Code § 4662(a)(4) because, even assuming purely psychiatric injury may qualify as “brain injury” under Labor Code § 4662(a)(4), conclusive presumption only arises if injury causes severe cognitive impairment, and, WCAB reasoned, in this case applicant was diagnosed with major depressive disorder and pain disorder but not with any cognitive disorder, and in absence of diagnosis of severe cognitive disorder, applicant’s memory and concentration lapses were insufficient for application of presumption.

**Roger Jay Bass, Applicant v. State of California, Department of Corrections & Rehabilitation, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 213. Permanent Disability—Rating—Combined Values Chart—WCAB rescinded WCJ’s finding that applicant suffered 66 percent permanent disability as result of heart and orthopedic injuries he incurred while working as correctional officer during period ending on 7/15/2014, when WCJ determined extent of applicant’s permanent disability by combining orthopedic disabilities using Combined Values Chart and then adding heart disability based on its impact on applicant’s work life as described by agreed medical evaluators, but WCAB concluded that there was insufficient medical evidence to determine whether orthopedic and heart disabilities should be combined or added, and that further development of medical record was necessary.

**Lance Goodwin, Applicant v. Edw Apffels Company, Inc., Pacific Compensation Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 218. Permanent Disability—Rating—Permanent Total Disability—Apportionment—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability without apportionment as result of industrial injuries to multiple body parts incurred while he was employed as route driver/salesman on 8/17/2016, based on medical reporting of orthopedic agreed medical examiner Andrew Rah M.D., which WCAB found was substantial evidence, when Dr. Rah found that while 50 percent of applicant’s spine impairment was apportionable to preexisting factors, applicant was permanently totally disabled and unemployable as result of failed back surgery which applicant underwent for industrial injury, and although defendant asserted that it was denied due process because it was not allowed to cross-examine Dr. Rah following issuance of his supplemental report, WCAB noted that Dr. Rah’s apportionment opinion did not change in his supplemental report, that Dr. Rah continued to opine that no apportionment existed in this case, that defendant had opportunity to cross-examine Dr. Rah on issue of apportionment at his earlier deposition but did not do so and was not denied due process, and that defendant did not meet its burden of proving apportionment.

**Glenn Stires, Applicant v. City of Pomona, PSI, administered and adjusted by AdminSure, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 229. Permanent Disability—Rating—AMA Guides—WCAB, affirming WCJ, held that WCJ did not err by relying on impairment determinations of agreed medical examiner Richard Siebold, M.D., in finding extent of applicant police officer’s permanent disability caused by injuries to his cervical and lumbar spines, right upper extremity and psyche incurred during period 3/1/89 to 2/8/2012, notwithstanding that Dr. Siebold rated applicant’s lumbar impairment using range of motion (ROM) method rather than diagnosis-related estimate (DRE) method, when WCAB reasoned that although DRE method is generally preferred method for rating lumbar impairment and that applicant’s lumbar injuries were not as serious as most lumbar injuries rated using ROM method, language on pages 379 and 380 of AMA Guides and facts of this case allowed for use of ROM method over DRE method, because AMA Guides, pages 379 and 380, state that ROM rating is justified where there is multilevel involvement in same region of spine and/or where employee has recurrent injury in same spinal region, and here Dr. Siebold found disk protrusions at two levels of applicant’s lumbar spine and disk desiccation at multiple levels and believed that applicant had abnormalities at three different levels, and applicant had recurrent injuries as he suffered prior injuries to lumbar spine in 1995 and again in 2003.

**Jesus Torres, Applicant v. Greenbrae Management, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 230. Permanent Disability—Rating—Sleep and Sexual Dysfunction—WCAB held that applicant who was awarded permanent disability for 1/8/2014 industrial injuries to his head, neck, back, ears, and psyche, was precluded by Labor Code § 4660.1(c)(1) from receiving increased permanent disability for sleep disorder and sexual dysfunction, when WCAB found that AMA Guides already incorporates sleep and sexual functions as activities of daily living in determining proper strict rating, that to allow additional consideration for such disorders outside of strict rating would both impermissibly violate Labor Code § 4660.1(c)(1) and allow, in essence, two impairments for same injury, that applicant may not include additional sleep or sexual dysfunction add-ons via Almaraz v. Environmental Recovery Services/Guzman v. Milpitas U9999nified **School District** (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, beyond that which is already considered in strict AMA Guides rating, and that to hold otherwise would ignore plain text of statute, which forbids any such add-ons, without exception.

**Anita Holstein, Applicant v. Sonoma Developmental Center, administered by State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 135. Permanent Disability—Rating—Combined Values Chart—WCAB affirmed WCJ’s finding that applicant psychiatric technician suffered permanent total disability as result of cumulative injury to her head, neck, upper extremities, and in forms of carpal tunnel syndrome and non-epileptic seizure disorder over period ending 11/26/2006, based on opinion of vocational expert Robert Cottle, Ed.D, and WCAB found that although WCJ should have combined impairment from applicant’s non-epileptic seizure disorder with ratings of applicant’s other impairments using Combined Values Chart rather than adding it to applicant’s other impairments, WCJ’s determination that applicant was permanently totally disabled due to her inability re-enter labor market and vocational non-feasibility as consequence of her seizure disorder rendered moot any error in calculation of her permanent disability under AMA Guides.

**Michael Leboy, Applicant v. Praxair, Inc., Old Republic Insurance Company, administered by Broadspire, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 139. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was 100 percent permanently disabled, without basis for apportionment, from 5/16/2008 industrial injuries to his head, spine, knees, ankle, psyche, and in forms of sleep disturbance, sexual dysfunction and carpal tunnel syndrome, when WCAB found that report of vocational expert Malcolm Brodzinsky indicating that applicant was permanently totally disabled due to vocational non-feasibility was substantial evidence supporting WCJ’s unapportioned award of 100 percent permanent disability despite opinion of panel qualified medical evaluators finding nonindustrial apportionment of applicant’s disability from medical standpoint.

**Jeremy Newberry, Applicant v. San Francisco Forty Niners, Atlanta Falcons, Oakland Raiders, San Diego Chargers, ESIS, Tristar, Zenith Insurance, Berkley Specialty, Travelers Insurance, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 143. Permanent Disability—Rating—Combined Values Chart—WCAB, having deferred issue of permanent disability, made no finding on issue of whether WCJ properly combined applicant professional football player’s impairments for injured body parts using Combined Values Chart (CVC) in AMA Guides, but indicated that WCJ’s decision to combine rather than add impairments appeared appropriate since opinions of agreed medical examiner Marvin Lipton, M.D., and Eric Morgenthaler, Ph.D., that impairments should be added were not substantial evidence because neither physician explained why applicant’s impairments should be added rather than combined under CVC and, consequently, were not sufficient to rebut AMA Guides.

**Mario Diaz, Applicant v. The Gainey Vineyard, Crum & Forster, United States Fire Insurance, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 154. Permanent Disability—Rating—Apportionment—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant laborer suffered 50 percent permanent disability, after apportionment, as result of 10/18/2011 lumbar spine injury, and issued unapportioned award of 48 percent permanent disability, after adjusting 45 percent regional spinal impairment to 34 percent whole person impairment to correctly reflect impairment finding of agreed medical examiner Dennis Ainbinder, M.D., when WCAB found that WCJ properly relied on Dr. Ainbinder’s analysis pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, but concluded that Dr. Ainbinder did not adequately justify his apportionment determination; in making its findings, WCAB noted that (1) Dr. Ainbinder met requirements of Almaraz/Guzman rating by providing strict rating using DRE method, explaining that this rating did not accurately reflect applicant’s impairment, and then providing alternative rating that was consistent with applicant’s impairment in activities of daily living, (2) contrary to defendant’s contention, there is no requirement that physician proclaim case to be complex or extraordinary in order to justify rating by analogy, as long as rating is based on AMA Guides, and (3) Dr. Ainbinder improperly apportioned applicant’s permanent disability to nonindustrial spondylolisthesis based on risk that spondylolisthesis posed to development of back pain and did not adequately explain how and why spondylolisthesis caused permanent disability and why it was responsible for 20 percent of applicant’s disability; Commissioner Lowe agreed that Dr. Ainbinder properly justified using Almaraz/Guzman analogy to find whole person impairment but dissented from panel majority’s finding that Dr. Ainbinder’s apportionment determination did not constitute substantial evidence, when Commissioner Lowe found that Dr. Ainbinder provided ample justification for apportioning 20 percent of applicant’s permanent disability to his nonindustrial spondylolisthesis by finding that condition was not caused by applicant’s industrial injury and then identifying relevant medical studies demonstrating effect spondylolisthesis would have to increase applicant’s pain and disability.

**Scott Elliott, Applicant v. Contra Costa Door, Inc., Zenith Insurance Company, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 157. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant garage door installer who suffered cumulative injury to his neck, back, shoulders, right hand, elbow and wrist, psyche, gastrointestinal system, and in forms of headaches, sleep dysfunction and sexual dysfunction was 100 percent permanently disabled under Labor Code § 4662(b) based on medical evidence and opinion of applicant’s vocational expert, Thomas Linder, that applicant was not amenable to rehabilitation, and WCAB also agreed with WCJ’s finding that apportionment found by agreed medical examiner was not valid because he relied on incorrect medical history and incorrect legal theory regarding apportionment.

**Charles Lopez, Applicant v. JLJ Trucking, Inc., Sparta Insurance Company, Gallagher Bassett Services, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 164. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 100 percent permanent disability from injuries to his neck, psyche, and in forms of headaches and sleep disorder incurred while he was employed as truck driver on 3/13/2011, when WCAB panel majority found that there was substantial evidence to support finding of permanent disability based on applicant’s testimony regarding effect of his injury on his ability to work, WCJ’s assessment of findings of three agreed medical examiners who evaluated applicant, and opinion of vocational expert establishing that, due to effects of his industrial injury, applicant was not able to benefit from vocational rehabilitation and was unable to compete in open labor market; Commissioner Lowe, dissenting, found that agreed medical examiners’ assessment of applicant’s disability did not support finding that applicant was precluded from returning to labor market as consequence of his industrial injury, as their reports did not contain any discussion of this issue that supported such determination, and that vocational expert’s report did not constitute substantial evidence because her conclusion that applicant was precluded from certain occupations was impermissibly based on applicant’s ninth grade education and her findings were not adequately justified.

**John Rodriguez, Applicant v. YRC Worldwide, Old Republic Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 177. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant dock worker’s 1/5/2010 industrial injury to his back and knees caused 100 percent permanent disability pursuant to Labor Code § 4662(b) without apportionment to nonindustrial factors, and remanded matter to trial level for further proceedings on issue of permanent disability, when vocational expert relied upon by WCJ to find permanent total disability based his opinion, in part, on effects of medications taken by applicant, including medication that was earlier prescribed for his nonindustrial diabetes, and WCAB found that although lay testimony about effects of medication has been relied upon in other cases notwithstanding absence of medical reporting concerning effects of medication, in this case effects of medications taken by applicant is more complicated because medications include medicine prescribed before applicant sustained his industrial injury, and that record required development to obtain substantial medical evidence concerning effect of medications used by applicant to treat his industrial injury and contribution of applicant’s nonindustrial medications and conditions on his overall level of disability so that his level of compensable permanent disability can be properly assessed.

**Julie Cagle, Applicant v. Bank of America, ACE American Insurance Company, administered by Corvel, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 82. Permanent Disability—Rating—AMA Guides—WCAB, in split panel decision, rescinded WCJ’s finding that applicant bank manager’s 6/26/2009 industrial injury to her internal systems and psyche caused 43 percent permanent disability based on opinion of agreed medical examiner Jeffrey Hirsch, M.D., and instead awarded 49 percent permanent disability after finding that Dr. Hirsch’s opinion that applicant’s impairment fell within Class 2 of Table 6-3 on page 121 of AMA Guides was not substantial evidence and that impairment should have been rated under Class 3 of Table 6-3, when Dr. Hirsch admitted that, under strict interpretation of AMA Guides, applicant’s digestive tract condition fit into Class 3 impairment based on fact that medication and dietary restriction did not completely control her acid reflux symptoms, but concluded that applicant’s condition was not as severe as examples of other conditions listed as Class 3 impairments, requiring minimum 25 percent rating, and that rating applicant’s condition at higher end of Class 2 impairments more accurately reflected applicant’s disability, and WCAB found that Dr. Hirsch should have rated applicant’s impairment under Class 3 given that she had breakthrough pain even with medication and restricted diet, and that, while examples provided in AMA Guides may provide insight and assist physician in assigning most accurate impairment, here Dr. Hirsch justified his finding of Class 2 impairment by comparing applicant’s condition to examples of other conditions in AMA Guides which were not similar to applicant’s condition and, therefore, did not support his finding; Commissioner Lowe, dissenting, would have affirmed WCJ’s assignment of 43 percent permanent disability, when Commissioner Lowe found that Dr. Hirsch adequately explained his reasoning for rejecting Class 3 rating in this case based on severity of Class 3 conditions as compared to applicant’s condition and on his determination that Class 3 did not accurately reflect applicant’s impairment, and Commissioner Lowe believed that WCAB panel majority erroneously substituted its own analysis of applicant’s condition and AMA Guides while disregarding only expert medical opinion in this case.

**Margaret Marti Foxworthy, Applicant v. State of California, Department of Parks and Recreation, Legally Uninsured, State Compensation Insurance Fund/State Contract Services, Adjusting Agency, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 86. Permanent Disability—Rating—Combined Values Chart—WCAB, in split panel opinion, affirmed its prior decision [see Foxworthy v. State of California, Dept. of Parks and Recreation, 2016 Cal. Wrk. Comp. P.D. LEXIS 634 (Appeals Board noteworthy panel opinion)] in which it awarded applicant 67 percent permanent disability for orthopedic, psychiatric and internal injuries based on Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule, when application of CVC was based on opinion of orthopedic agreed medical examiner Jeffrey T. Holmes, M.D., regarding lack of synergistic effect among applicant’s various injuries, which WCAB found more persuasive than other medical opinions in record indicating that disabilities to different body parts/systems should not be combined using CVC, and WCAB rejected applicant’s claim that impairments from her psychiatric, internal and orthopedic injuries did not overlap and, therefore, should be added to produce overall permanent disability of 92 percent, where WCAB found overlap of psychiatric and orthopedic impairments based on work restrictions and effect on applicant’s activities of daily living and her ability to work; Commissioner Sweeney, dissenting, opined that applicant successfully rebutted applicability of CVC by demonstrating that there was no overlap of spine, psychiatric and internal impairments, and that application of CVC in this case did not produce accurate reflection of applicant’s disability given medical evidence describing separate impairments and restrictions for each injury.

**Byron Irving, Applicant v. JP Morgan Chase, administered by Liberty Mutual Insurance, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 93. Permanent Disability—Rating—Sleep Dysfunction—WCAB, in split panel opinion, affirmed prior decision in which it found that applicant underwriter suffered industrial injury to his cervical spine, lumbar spine, right shoulder, knees, and dental injury on 8/4/2010 causing 69 percent permanent disability, but did not suffer industrial injury in form of sleep disorder or sleep-related permanent disability as alleged, when WCAB panel majority concluded that applicant’s testimony about his sleep problems and his use of Ibuprofen and Hydrocodone was not sufficient evidence, in itself, upon which to base finding of sleep injury, that report of sleep specialist Pedram Navab, D.O., was not substantial evidence to support finding of sleep injury because, among other things, Dr. Navab did not adequately explain how medications taken by applicant in connection with his industrial injury or “emotional stressors” described in his report contributed to applicant’s sleep problems, and that reporting of panel qualified medical evaluator in dentistry, Mayer Schames, D.D.S., which WCAB panel majority found did not provide sufficient detail regarding applicant’s sleep problems, was not adequate to rehabilitate Dr. Navab’s flawed reporting; Commissioner Sweeney, dissenting, would return this case to WCJ for further development of record concerning applicant’s sleep disorder, when Commissioner Sweeney believed that applicant’s unrebutted testimony indicating that his orthopedic pain was causing sleep problems and that he took Ibuprofen, medication which Dr. Schames stated could contribute to obstruction of airway during sleep, coupled with physical examinations of both Dr. Navab and Dr. Schames revealing objective findings indicative of airway obstruction during sleep plus sleep study providing objective evidence of sleep disorder, when considered cumulatively, justified, at minimum, further development of medical record.

**Valerie O’Dell, Applicant v. The State of California—Department of Social Services (legally uninsured), administered by State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 97. Permanent Disability—Rating—Occupational Group Numbers—WCAB amended WCJ’s award of permanent disability to applicant administrative law judge (ALJ) with cumulative injury to her neck, back and wrists during period ending on 8/1/2013 by increasing award from 8 percent to 13 percent based on its finding that applicant’s occupational group was 112, rather than 110 as determined by WCJ, when occupation of ALJ is not specifically identified in 2005 Permanent Disability Rating Schedule such that occupational group number must be determined by analogy to other occupations with similar requirements, and, based on applicant’s testimony that keyboarding and writing were integral part of her work, WCAB concluded that occupational group 112, which applies to work requiring highest demand for use of keyboarding, was more accurate than group number 110 for rating applicant’s permanent disability.

**Sisson Stewart, Applicant v. California State Prison, legally uninsured, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 101. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s award of 42 percent permanent disability to applicant with cumulative injury to her right wrist, right thumb and right shoulder and returned case to trial level for further proceedings, when WCAB found that reports of treating physician Domenick Sisto, M.D., upon which WCJ relied, did not constitute substantial evidence to establish extent of applicant’s permanent disability, where Dr. Sisto rated applicant’s hand impairments based upon loss of grip strength but did not explain why he used grip strength when applicant had other ratable hand impairments, including intermittent pain, trigger finger, DeQuervain’s tenosynovitis, and bone marrow edema, and did not properly rate impairment pursuant to analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because he did not explain why strict AMA Guides rating did not accurately reflect applicant’s disability, provide alternative rating using four corners of AMA Guides, or indicate why alternative rating most accurately reflected extent of applicant impairment.

**Kelly Truesdell, Applicant v. Von’s Grocery Company, PSI, Defendant,** 2017 Cal. Wrk. Comp. P.D. LEXIS 102. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that applicant sales manager/grocery supervisor’s cumulative injury to his cervical spine, thoracic spine, lumbar spine, right foot, right ankle, and psyche during period 12/10/2004 through 4/20/2011, suffered 100 percent permanent disability “in accordance with the fact” under Labor Code § 4662(b) following failed back surgery based on opinion of agreed medical examiner Alexander Angerman, M.D., when WCAB found that Dr. Angerman’s assessment of permanent total disability due to combination of failed back surgery and strong pain medications constituted substantial medical evidence to support WCJ’s determination that applicant was permanently totally disabled by his injury, despite Dr. Angerman’s provision of 67 percent impairment rating under AMA Guides, and WCAB found no merit to defendant’s assertion that vocational expert evidence, rather than medical opinion, was necessary to support finding of 100 percent PD “in accordance with the fact,” where Dr. Angerman had expertise to evaluate applicant’s orthopedic injury, assessed 100 percent permanent disability based on facts and objective findings using his medical judgement and properly determined, from medical standpoint, that applicant was unable to compete in labor market.

**Theodoro Gonzalez, Applicant v. Adams Campbell Company, Incorporated, CompWest Insurance Company, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 113. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant die setter/punch press operator suffered 100 percent permanent disability as result of 11/4/2008 industrial injury to his right upper extremity (forearm amputation), left shoulder, and psyche, based on substantial medical and vocational evidence that applicant was not capable of benefiting from vocational rehabilitation, consistent with requirements of Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, where Court of Appeal held that under Labor Code § 4660, applicant’s scheduled rating is presumptively correct but may be rebutted by evidence providing individualized assessment of whether industrial factors limit applicant’s ability to benefit from vocational rehabilitation.

**Shalisa Chamberlain, Applicant v. Humphrey & Giacopuzzi Hospital, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 27. Permanent Disability—Rating—WCAB affirmed WCJ’s finding that applicant suffered 99 percent permanent disability, rather than 100 percent permanent total disability as asserted by applicant, from industrial injuries to multiple body parts while employed as veterinary technician on 9/10/2009, when there was no vocational expert reporting in evidence, and WCAB found that substantial medical evidence supported finding of 99 percent permanent disability based on Combined Values Chart.

**Garry Dawson, Applicant v. County of Los Angeles, PSI, administered by York Risk Services Group, Inc., Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 28. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that reporting of agreed medical examiner Jeffrey A. Berman, M.D., who rated applicant deputy sheriff’s lumbar spine permanent disability using range of motion (ROM) method rather than diagnosis-related estimate (DRE) method, constituted substantial evidence to support WCJ’s finding of 71 percent permanent disability under analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Dr. Berman explained that he used ROM method based on MRI showing multilevel disc involvement and clinical findings, and WCAB concluded that Dr. Berman provided adequate explanation for why DRE method was not accurate representation of applicant’s permanent disability and why ROM method was more appropriate.

**Edward Martinez, Applicant v. County of Orange, PSI, administered by York Risk Services Group, Inc., Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 39. Permanent Disability—Rating—Occupational Group Numbers—WCAB, amending WCJ’s decision, held that applicant county welfare fraud investigator who suffered cumulative trauma to his right hand, right wrist and right shoulder over period 10/3/92 through 5/25/2010 was entitled to permanent disability rating based upon his actual occupational duties that were in line with those of police officer and that he should, therefore, be rated using occupational group number 490, rather than 251 as found by WCJ based on occupational history obtained by agreed medical examiner and badge applicant wore identifying him as investigator, when applicant carried firearm and performed field investigations on daily basis to enforce criminal laws against welfare fraud, was sworn peace officer and twice made felony arrests during his 20-year career as welfare investigator, and WCAB reasoned that these actual duties undertaken by applicant and not formal job description or type of badge applicant wore were determinative in assigning proper occupational group.

**Mary Saunders, Applicant v. Synergy Therapy, Inc. and Travelers Indemnity, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 47. Permanent Disability—Rating—Sleep Dysfunction—WCAB rescinded WCJ’s award of 79 percent permanent disability, which included separate rating of 20 percent for insomnia based on opinion of panel qualified medical evaluator in internal medicine, Jyh Choa Chang, M.D., and returned matter to WCJ for further development of record regarding appropriate rating of applicant’s insomnia, when WCAB found that, although Dr. Chang’s failure to conduct sleep study did not render his reporting insufficient as defendant asserted, Dr. Chang’s reports were not substantial evidence on issue of impairment caused by applicant’s insomnia based on Dr. Chang’s failure to explain how applicant’s insomnia reduced her daytime alertness or interfered with her ability to perform some activities of daily living and, as such, did not address applicable rating criteria described in AMA Guides.

**Melissa Vosburgh, Applicant v. California Department of Corrections, State Compensation Insurance Fund, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 52. Permanent Disability—Rating—Occupational Group Numbers—WCAB affirmed WCJ’s finding that applicant inmate academic teacher at Department of Corrections who suffered admitted injury to her left lower extremity on 3/17/2004 and to her right upper extremity, right shoulder, brachial plexus, and lumbar spine on 7/10/2008 was correctly rated for permanent disability using occupational group number 214 rather than occupational group number 212 as urged by defendant, when WCAB reasoned that appropriate occupational variant must be based upon evidence regarding actual duties performed by injured worker and not based upon job title alone, and that, here, rating expert properly relied upon applicant’s credible and corroborated testimony that her job required excessive bending and stooping and, given potential violence of inmates, required vigilance with respect to her own safety and safety of other students, to determine that occupational variant of 214 was reasonable and best described applicant’s job duties.

**Timothy Bedford, Applicant v. City of Los Angeles, PSI, Defendant,** 2017 Cal. Wrk. Comp. P.D. LEXIS 55. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant who incurred industrial injury to his back while working as police officer on 1/15/2015 successfully rebutted strict AMA Guides permanent disability rating under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, with reporting of orthopedic agreed medical examiner Steven Silbart, M.D., which WCAB found sufficient to support WCJ’s award of 55 percent permanent disability, when WCAB determined that Dr. Silbart was permitted to find impairment using Figure 15-19 in AMA Guides, and Dr. Silbart provided substantial discussion regarding why strict application of AMA Guides was not accurate reflection of applicant’s impairment and explained why he applied Figure 15-19 to achieve more accurate rating and did not rely on work restrictions or limitations which are excluded from measurement of impairment of activities of daily living.

**Moses Castillo, Applicant v. City of Los Angeles, PSI, Defendant,** 2017 Cal. Wrk. Comp. P.D. LEXIS 58. Permanent Disability—Rating—Sleep Dysfunction—WCAB rescinded WCJ’s finding that applicant, while employed as police officer during period ending on 12/9/2014, incurred 73 percent permanent disability from industrial injury to his low back, right hand, right wrist, and in forms of hypertension, irritable bowel syndrome, diabetes, and sleep apnea, and returned matter to WCJ for new rating without inclusion of sleep apnea, when WCAB concluded that WCJ erred by increasing applicant’s permanent disability rating due to sleep dysfunction because, even accepting opinion of agreed medical examiner Mark H. Hyman, M.D., that applicant’s obesity, which caused sleep apnea, was industrially related in that applicant had altered eating habits due to job duties, obesity is considered physical injury even if it does not arise out of physical trauma, and any increase in permanent disability for sleep dysfunction caused by obesity is barred by Labor Code § 4660.1(c)(1).

**Roy Lehman, Applicant v. Walgreens, Zurich American Insurance Company, as administered by Sedgwick Claims Management Services, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 66. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant retail manager who suffered industrial injury to his low back and psyche on 12/5/2009 successfully rebutted scheduled permanent disability rating by demonstrating through expert opinions of orthopedic agreed medical examiner Marvin Lipton, M.D., psychiatric agreed medical examiner Richard Lieberman, M.D., and vocational expert Jeff Malmuth that he incurred 100 percent permanent total disability “in accordance with the fact” under Labor Code § 4662(b) because he was not amenable to vocational rehabilitation, and that there was no basis for apportionment to nonindustrial factors under Labor Code § 4663 despite Dr. Lipton’s opinion that five percent of applicant’s orthopedic disability was due to nonindustrial, asymptomatic spondylolisthesis, when Dr. Lieberman and Mr. Malmuth concluded that psychiatric injury sustained by applicant as compensable consequence of orthopedic injury alone rendered applicant permanently totally disabled without basis for apportionment, and, additionally, Mr. Malmuth concluded that combined effects of applicant’s orthopedic and psychiatric functional limitations, even after apportionment of orthopedic factors, caused applicant to be permanently totally disabled; WCAB rejected defendant’s assertion that opinion of Mr. Malmuth was deficient based on Mr. Malmuth’s failure to conduct labor market survey and fact that Mr. Malmuth conducted interview of applicant via Skype, when WCAB noted that there is no requirement under 8 Cal. Code Reg. § 10606.5 that labor market survey be performed nor prohibition against use of video technology such as Skype, and found that Mr. Malmuth complied with all requirements in 8 Cal. Code Reg. § 10606.5 such that his report was substantial evidence upon which WCJ could rely.

**Karan Singh, Applicant v. United Products, Inc., California Insurance Guarantee Association, For Fremont Insurance Company, In Liquidation, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 73. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that physical and rehabilitation specialist Steven Feinberg, M.D., was competent to opine on spine-related symptoms and that his reporting constituted substantial evidence to support WCJ’s finding that applicant truck driver with 5/18/2000 low back injury sustained new and further disability in form of urinary and fecal incontinence following multiple spinal surgeries, rendering applicant permanently totally disabled, and WCAB further found that even excluding Dr. Feinberg’s reporting there was sufficient evidence in record that applicant suffered urinary and fecal incontinence, which had standard permanent disability rating of 100 percent under “Spine” section of 1997 Schedule for Rating Permanent Disabilities, and that, contrary to defendant’s contention, there is no requirement that only urologist opine on urinary and fecal incontinence in every case.

**Glenn Miller, Applicant v. Stroer and Graff, Inc., Zurich American Insurance Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 667. Permanent Disability—Rating—Combined Values Chart—WCAB affirmed WCJ’s finding that most accurate method of assessing applicant’s level of orthopedic and psychiatric impairments was to add them rather than using Combined Values Chart (CVC) based on opinion of Richard Lieberman, M.D., that there was synergistic effect of impairments as described in Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), when WCAB found that opinion repeatedly expressed by Dr. Lieberman that additive approach would more accurately reflect applicant’s overall disability because of lack of integrated approach to his psychiatric and orthopedic impairments was well-reasoned and constituted substantial evidence, and that WCJ properly relied on opinion of Dr. Lieberman, who parties presumably chose as agreed medical examiner because of his expertise and neutrality.

**Jason C. Moore, Applicant v. Salinas Valley State Prison, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 668. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s award of 33 percent permanent disability to applicant correctional officer who suffered industrial injury to his right knee and in form of gout on 4/3/2012 and 5/22/2013, based on report of primary treating physician Allen Kaisler-Meza, M.D., when Dr. Kaisler-Meza determined applicant’s impairment using analysis set forth in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and explained that this was most accurate assessment of applicant’s impairment given applicant’s gait derangement and effect it would have on his ability to perform sustained standing and walking activities, and WCAB concluded that Dr. Kaisler-Meza’s reporting constituted substantial evidence to support WCJ’s permanent disability award.

**Michael Solomon, Applicant v. Los Angeles Unified School District, adjusted by Sedgwick Claims Management Services, Defendants,** 2017 Cal. Wrk. Comp. P.D. LEXIS 21. Permanent Disability—Rating—Combined Values Chart—WCAB, affirming WCJ, held that WCJ correctly calculated permanent disability incurred by applicant physical education teacher by adding applicant’s separate impairments rather than using Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule based on reporting of agreed medical examiner Peter Newton, M.D., when applicant sustained industrial injuries to his cervical spine, thoracic spine and lumbar spine from 1/1/94 through 6/24/2013, and WCAB found Dr. Newton’s reporting sufficient to convey synergistic effect of applicant’s spinal injuries as described in Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), so as to support use of additive method to determine applicant’s overall permanent disability, where Dr. Newton opined that applicant suffered significantly more disability based on injury in three regions of spine than he would have if only one region was affected and concluded that adding impairments was most accurate reflection of applicant’s actual disability.

**Stephanie Duncan, Applicant v. State of California, Employment Development Department, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 612. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant program representative suffered 93 percent permanent disability without apportionment as result of industrial cumulative injury to her neck, shoulders, wrists, upper extremities, psyche, and in form of sleep/arousal disorder over period ending 10/2/2008, and returned matter for further development of record to clarify opinion of psychiatric agreed medical examiner James Robbins, M.D., as to extent that applicant’s ability or inability to return to work was affected by her use of pain medication Tramadol to treat orthopedic injury, when WCAB found that, in awarding 93 percent permanent disability, WCJ discounted Dr. Robbins’ deposition testimony regarding whether applicant’s ability to participate in vocational rehabilitation and re-enter labor market was related to her continued use of Tramadol, that record required supplemental report from Dr. Robbins further detailing his opinion as to whether applicant was permanently totally disabled pursuant to Labor Code § 4662(b) and whether she was able to benefit from vocational retraining, notwithstanding effects of pain medication for her orthopedic injury, and that applicant’s permanent disability should be evaluated based on her actual physical and mental condition and not on whether she should discontinue taking pain medication in order to be amenable to vocational rehabilitation; Commissioner Razo, dissenting, opined that applicant did not establish permanent total disability and that WCJ’s finding of 93 percent permanent disability was based on substantial evidence, when Commissioner Razo found that Dr. Robbins did not state that applicant was unable to work or engage in retraining based on effects of her industrial injury, and that his statement that applicant must stop using Tramadol before she could pursue vocational training to “perform any type of fast-paced clerical work” was not evidence that she was unable to benefit from any retraining.

**Bridgitte Strawberry, Applicant v. California Department of Corrections and Rehabilitation, Legally Uninsured, Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 624. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant suffered 55 percent permanent disability as result of cumulative injury to her psyche (including sleep disturbance), lumbar spine, right knee, wrist, and in forms of hypertension and GERD, while employed as correctional officer from 5/28/90 to 8/14/2010, and returned matter to trial level for WCJ to issue new rating instructions using alternative ratings pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that alternative rating provided by agreed medical examiner Michael Luciano, M.D., under *Almaraz/Guzman* constituted substantial evidence to rebut strict AMA Guides rating, where Dr. Luciano adequately explained why alternative rating most accurately reflected applicant’s disability, and WCAB rejected WCJ’s suggestion that Almaraz/Guzman analysis of disability may only be used in “complex and extraordinary” cases.

**John Treneer, Applicant v. Pro Tech Office Services, Liberty Mutual Insurance, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 651. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant service technician suffered 100 percent permanent disability “in accordance with the fact” pursuant to Labor Code § 4662(b) as result of 1/3/2002 motor vehicle accident which caused injury to his neck, back, chest, left wrist, urinary system, psyche, face, and in forms of insomnia, TMJ, headaches, and Crohn’s disease, when WCAB concluded that there was substantial medical evidence that applicant was not capable of returning to workforce, that opinion of agreed medical examiner in neuropsychology indicating that applicant could return to workforce if he were provided with work-hardening program was not substantial evidence as he was unable to substantiate his opinion that applicant’s condition arose from nonindustrial personality disorder, that where there is substantial evidence of significant impairment, medical expert’s opinion regarding employee’s ability to return to workforce may be sufficient to establish permanent total disability even absent vocational expert evidence, and that here, where medical evidence regarding combined effects of applicant’s orthopedic, internal and psychiatric impairments established that applicant was not capable of returning to labor market, there was sufficient medical evidence to support finding of permanent total disability.

**Margaret Marti Foxworthy, Applicant v. State of California, Department of Parks and Recreation, Legally Uninsured, State Compensation Insurance Fund/State Contract Services, Adjusting Agency, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 634. Permanent Disability—Rating—Combined Values Chart—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant park ranger suffered 71 percent permanent disability as result of 6/11/2010 industrial injury to her low back, psyche, internal system, and in form of sexual dysfunction, and instead found that applicant suffered 67 percent permanent disability based on Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule, when WCAB determined that WCJ improperly applied Multiple Disabilities Table in 1997 Schedule for Rating Permanent Disability rather than CVC to rate applicant’s overall impairment from her orthopedic, psychiatric, internal, and sexual dysfunction injuries, and, although WCJ subsequently recommended adding impairments rather than applying CVC, and WCAB recognized that CVC operates only as guide for combining impairments, WCAB noted that CVC should ordinarily be applied unless there is some overriding reason to use different method of accounting for multiple impairments, that orthopedic agreed medical examiner Jeffrey T. Holmes, M.D., whose opinion WCAB found to be most thoughtful and well-reasoned, opined that CVC should be applied to determine applicant’s overall permanent disability, that contrary to WCJ’s reasoning, there was overlap between applicant’s orthopedic restrictions regarding ability to lift and carry and her psychiatric impairments in interacting and communicating, that CVC accounts for fact that once injured worker has impairment in one body system, worker no longer has 100 percent of his or her abilities, but has something lesser, and that there was no reason not to use CVC to calculate applicant’s permanent disability in this case; Commissioner Sweeney, dissenting, was persuaded that there was no significant overlap between functional limitations described by agreed medical examiners for applicant’s psychiatric, orthopedic, internal, and sexual dysfunction and believed that, because there was no evidence of overlap, applicant’s impairments should be added rather than combined using CVC to achieve most accurate determination of permanent disability based on reporting of agreed medical examiners.

**Norman Wong, Applicant v. Amdocs, Inc., National Union Fire Insurance Co. and AIG Claim Service, Adjusting Agency, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 604. Permanent Disability—Rating—Combined Values Chart—WCAB affirmed WCJ’s award of 91 percent permanent disability, and found that WCJ properly instructed Disability Evaluation Unit to rate applicant software engineer’s permanent disability from psychiatric injury and compensable consequence physical injury using Combined Values Chart (CVC) rather than by adding disabilities, when WCAB found that adding permanent disabilities is approved only if there is medical evidence showing synergistic effect of multiple disabilities such that adding them would provide more accurate permanent disability rating, and that great weight of case authority holds that WCAB should rate by combining separate disabilities using CVC unless there is substantial medical evidence that disabilities should be added, which there was not in this case.

**John Van Fleet, Applicant v. Lambert and Phillips Construction, American Assurance of America, Adjusted by Zurich North America, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 575. Permanent Disability—Rating—Sleep Dysfunction—WCAB rescinded WCJ’s award of 45 percent permanent disability, which included separate rating for sleep disorder based on opinion of qualified medical evaluator in neurology, Robert Shorr, M.D., and returned matter to WCJ for further development of record regarding appropriate rating of applicant’s sleep disorder, when WCAB found that whole person impairment provided by orthopedic qualified medical evaluator Steven Nagelberg, M.D., for lumbar spine did not include sleep disorder because he did not add 3 percent for back pain, although there was medical evidence that applicant’s back pain caused his sleep problems, that Dr. Shorr assigned Class 1 sleep disorder and 8 percent whole person impairment under Table 13-4 of AMA Guides based on applicant’s sleep difficulties, including wakefulness due to back pain and excessive daytime fatigue, that, while Class 1 sleep disorder under Table 13-4 of AMA Guides does not require sleep study and/or diagnosis of obstructive sleep apnea as suggested by defendant, it does expressly require showing of reduced daytime alertness and sleep pattern indicating that individual can perform most activities of daily living, and that because Dr. Shorr failed to explain applicant’s reduced daytime alertness or discuss how applicant’s sleep disorder affected his performance of daily activities, his opinion was not substantial evidence to support permanent disability for sleep disorder awarded by WCJ.

**Megan Prell, Applicant v. Cedar Fair, L.P. dba as Knott’s Berry Farm, ACE American Insurance Company, administered by Sedgwick Management Services, Inc., Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 570. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant suffered 2 percent permanent disability as result of industrial injury to her left shoulder while employed as performer/greeter/park character on 9/17/2013, and found permanent disability in accordance with panel qualified medical evaluator Jasper Mann, M.D.’s finding of 15 percent whole person impairment, when WCAB found that Dr. Mann’s opinion was sufficient to rebut strict AMA Guides rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, where Dr. Mann thoroughly explained why strict rating under AMA Guides was inaccurate to describe applicant’s actual disability, noting that applicant was young and would probably need repeat surgeries, and that based on table 16-4 in AMA Guides, applicant had equivalent to 25 percent total loss of function for upper extremity.

**Maureen Hikida, Applicant v. Costco Wholesale Corporation, administered by Helmsman Management Services, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 560. Permanent Disability—Rating—Apportionment—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant suffered 98 percent permanent disability as result of cumulative trauma to her cervical spine, thoracic spine, upper extremities, psyche, and in form of complex regional pain syndrome (CRPS) over period ending on 5/17/2010, after apportionment of 10 percent permanent disability that resulted entirely from surgery applicant underwent to treat her carpal tunnel condition, which was found to be 10 percent nonindustrial; WCAB noted that, in her Petition for Reconsideration of WCJ’s decision, applicant improperly sought to re-litigate apportionment determination in WCJ’s prior decision dated 6/22/2015, when WCAB had expressly affirmed WCJ’s prior apportionment determination [see Hikida v. Costco Wholesale, 2016 Cal. Wrk. Comp. P.D. LEXIS 72] and had returned matter to WCJ only to account for applicant’s psychiatric injury in determining extent of applicant’s permanent disability, which WCJ had previously neglected to do; Commissioner Sweeney, dissenting, opined that applicant was entitled to unapportioned award of permanent total disability, reasoning that Chester A. Hasday, M.D., physician upon whom WCJ relied, impermissibly apportioned to non-industrial cause of applicant’s carpal tunnel injury rather than to cause of her permanent disability, as required by Labor Code § 4663, and that since sole cause of applicant’s CRPS and permanent total disability was medical treatment for industrial carpel tunnel injury, applicant’s permanent total disability was not subject to apportionment.

**Bozenna Kasperowicz, Applicant v. Metropolitan State Hospital, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 564. Permanent Disability—Rating—Sleep Dysfunction—WCAB amended WCJ’s award of 76 percent permanent disability and instead awarded applicant psychiatric technician 70 percent permanent disability for 6/14/2011 industrial injury to her sleep, psyche, gastrointestinal system, sleep, and in forms of dizziness, cognitive impairment, and high blood pressure, when WCAB found that opinion of qualified medical evaluator James O’Brien, M.D., upon which WCJ relied, constituted substantial evidence to support WCJ’s finding regarding extent of applicant’s psychiatric impairment, but concluded that record did not support separate rating for sleep dysfunction, where Dr. O’Brien reported that applicant’s Epworth score did not indicate existence of sleep disorder and incorporated applicant’s sleep complaints directly into his assigned GAF rating, and WCAB determined that applicant’s disturbed sleep did not rise to level of sleep disorder and that 2015 report of primary treating physician Max Matos, M.D., relied upon by applicant to assert entitlement to separate sleep dysfunction rating, was stale, and, therefore, was not substantial evidence on sleep impairment, because report was based on review of 2012 sleep study which was obtained prior to applicant becoming permanent and stationary.

**David Williams, Applicant v. Industrial Lock and Security, State Farm Insurance Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 578. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that medical evidence supported WCJ’s finding that applicant suffered 57 percent permanent disability as result of injury sustained to his right shoulder, psyche, teeth, and in form of diabetes while employed as locksmith on 6/15/2007, and that vocational expert opinion of Paul Broadus was not substantial evidence to establish permanent total disability as either rebuttal of Labor Code § 4660 scheduled rating or pursuant to Labor Code § 4662(b), when Mr. Broadus’ opinion was inconsistent with medical evidence, as Mr. Broadus did not accurately state level of disability reported by agreed medical evaluators and inaccurately found that applicant was motivated to work, such that Mr. Broadus’ finding that applicant had no future earning capacity was based on incorrect information and could not be relied upon.

**Tracy Baker, Applicant v. Foothill De Anza Community College District, PSI, adjusted by Sedgwick CMS, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 583. Permanent Disability—Rating—Substantial Evidence—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant physical education instructor suffered 15 percent permanent disability as result of 6/17/2013 industrial injury to her ribs and chest based on opinion of qualified medical evaluator Ronald Fujimoto, D.O., and remanded matter for further proceedings on issue of permanent disability, when WCAB panel majority found that, although AMA Guides do not provide strict rating for applicant’s injury, Dr. Fujimoto’s opinion analogizing applicant’s injury with diagnosis-related estimate of lumbar spine impairment based solely on her subjective complaints was conclusory and did not constitute substantial evidence because Dr. Fujimoto did not explain how applicant’s reported loss of activities of daily living equated to assigned impairment rating; Commissioner Brass, dissenting, opined that Dr. Fujimoto’s reporting constituted substantial evidence to support WCJ’s permanent disability finding based on applicant’s subjective complaints and analysis under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, such that further development of record was not necessary.

**Randal Delao, Applicant v. State of California, Department of Mental Health, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 586. Permanent Disability—Rating—Permanent Total Disability—Combining Multiple Disabilities—WCAB, amending WCJ’s decision only to correct date of injury, held that applicant custodian’s 7/31/96 industrial injury to his back, psyche and internal system caused 45.3 percent permanent disability, but that permanent disability for 7/31/96 injury was subsumed by 100 percent permanent disability caused by 6/13/96 industrial injury to same body parts, as consistent with Labor Code § 4664(c)(2), and, additionally, WCAB found that WCJ properly exercised his discretion in declining to apply Multiple Disabilities Table (MDT) to combine applicant’s disabilities where WCJ requested two sets of recommended ratings for each date of injury, one set with application of MDT and one without, and determined that application of MDT did not accurately reflect applicant’s level of permanent total disability.

**Joseph Fos, Applicant v. Oakdale Irrigation District, PSI, adjusted by York Risk Services Group, Inc., Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 589. Permanent Disability—Rating—Substantial Evidence—WCAB rescinded WCJ’s finding that applicant engineer’s 12/3/2012 industrial left thumb injury caused 28 percent permanent disability and deferred issue of permanent disability and attorney’s fees, when WCAB determined that qualified medical evaluator Paul Caviale, M.D., on whose opinion WCJ relied to find permanent disability, did not properly rate applicant’s loss of grip strength using strict application of AMA Guides, nor did Dr. Caviale advise whether he was using analogy to provide most accurate rating for applicant’s disability, and WCAB reasoned that although Dr. Caviale was attempting to assign applicant most accurate rating, without proper strict rating or adequate discussion of *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, record required further development.

**Juventino Macias, Applicant v. Award Construction and Roofing, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 593. Permanent Disability—Rating—Inadequate Case Record—WCAB rescinded WCJ’s finding that applicant carpenter incurred 100 percent permanent total disability as result of 6/16/2004 industrial injury to his bilateral knees, dental/jaw, sleep, and in forms of headaches and high blood pressure based on reporting of applicant’s vocational expert, and returned matter to trial level for further proceedings with regard to determination of permanent disability rating and apportionment to nonindustrial causation as found by agreed medical examiners, when WCAB determined that record required clarification regarding extent of applicant’s permanent disability as there was no evidence of formal rating by Disability Evaluation Unit rating agreed medical evaluators’ reports and providing single rating for applicant’s 10/8/2003, 6/16/2004 and 4/11/2007 industrial injuries, and without scheduled rating in evidence WCAB was precluded from making finding on whether vocational evidence was sufficient to rebut scheduled rating; Commissioner Razo, concurring separately, agreed with rescission of WCJ’s permanent total disability award, and opined that matter should be returned for further clarification of vocational evidence to ensure that it constitutes substantial evidence upon which to base permanent disability finding.

**Manya Prybyla, Applicant v. Stater Bros. Market, The Hartford, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 595. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant suffered 34 percent permanent disability, after 30 percent apportionment to prior nonindustrial injury, as result of 2/21/2012 admitted industrial injury to her head, face, neck, and left shoulder, and returned matter to trial level for further development of record on issues of permanent disability and apportionment, when WCAB found that opinion of orthopedic agreed medical examiner Richard Fedder, M.D., upon which WCJ relied, did not constitute substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because while Dr. Fedder stated that strict subtraction of 25 percent impairment based on preexisting DRE Category IV impairment from applicant’s post-injury impairment did not accurately reflect applicant’s actual impairment, Dr. Fedder’s use of subjective complaints and work restrictions to find apportionment of 70 percent industrial and 30 percent nonindustrial was not proper under AMA Guides.

**Maria Aguilera, Applicant v. Collins Chiropractic Group, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 475. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, affirmed its prior decision [see Aguilera v. Collins Chiropractic Group, 2016 Cal. Wrk. Comp. P.D. LEXIS 336 (Appeals Board noteworthy panel decision)] that applicant chiropractic assistant’s 8/24/2007 industrial injury to her gastrointestinal system, cervical spine, lumbar spine, shoulders, elbows, wrists, hands, knees, psyche, and in forms of irritable bowel syndrome, hypertension, fibromyalgia, and affective spectrum disorder, caused 88 percent permanent disability after apportionment, rather than 100 percent permanent total disability as determined by WCJ, when WCAB panel majority relied on substantial and well-reasoned opinions of agreed medical examiners Richard Fedder, M.D., David Freeman, M.D., and Stanley Majcher, M.D., which identified applicant’s residual impairments attributable to industrial injury in this case, as well as those impairments attributable to nonindustrial factors, and made proper apportionment determinations as required by Labor Code §§ 4663 and *4664*, and WCAB specifically rejected opinion of rheumatologist Rodney Bluestone, M.D., relied upon by WCJ, as lacking in substantial evidence, especially in view of his failure to account for duplication in factors of impairment between applicant’s psychological illness and affective spectrum disorder/chronic pain syndrome, and also rejected vocational expert evidence relied upon by WCJ as inconsistent with overwhelming and persuasive opinions of agreed medical examiners; Deputy Commissioner Newman, dissenting, would affirm WCJ’s finding of permanent disability “in accordance with the fact” under Labor Code § 4662(b), based on opinion of Dr. Bluestone coupled with vocational expert evidence provided by Enrique Vega and applicant’s credible testimony regarding her chronic widespread pain.

**Julian Gonzalez, Applicant v. S. Martinelli & Company, California Insurance Guarantee Association for California Compensation Insurance Company, in liquidation, adjusted by Tristar Risk Management, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 485. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant bottle machine operator was 100 percent permanently totally disabled “in accordance with the fact” under Labor Code § 4662(b) as result of 4/6/99 industrial low back injury, when WCAB determined that WCJ’s finding of permanent total disability was supported by substantial evidence, including opinions of both applicant’s and defendant’s qualified medical evaluators indicating that applicant was incapable of successfully competing in open labor market, that opinions of medical evaluators were consistent with applicant’s trial testimony regarding his limitations, that, contrary to defendant’s contention, vocational expert testimony was not necessary to rebut rating under 1997 Schedule for Rating Permanent Disabilities, as 1997 Schedule states that physicians may determine employee’s level of impairment and that inability to compete for work in open labor market constitutes basis for finding total disability, that where there is evidence of significant physical impairment, medical expert’s opinion regarding employee’s inability to work in open labor market is sufficient to establish permanent total disability, and that, in addition to medical evidence in this case, reporting of applicant’s vocational expert, which WCAB found more persuasive than reporting of defendant’s vocational expert, established that applicant was unable to successfully compete for jobs in open labor market.

**Sean Holguin, Applicant v. City of Fresno, c/o Risico Claims Management, Defendants, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 489. Permanent Disability—Rating—Combined Values Chart—WCAB affirmed WCJ’s finding that applicant motorcycle police officer who suffered injury to multiple body parts on 5/15/2005 incurred 69 percent permanent disability based on analysis under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, as applied by agreed medical evaluator James Strait, M.D., and, additionally, held that WCJ properly calculated permanent disability by adding disabilities for applicant’s left and right upper extremities as recommended by Dr. Strait but using reduction formula in Combined Values Chart (CVC) to combine disabilities within each upper extremity as well as those for right knee and psychiatric disabilities, when WCAB reasoned that while presumption that use of CVC is preferred method of combining impairments/disabilities can be overcome, there must be substantial evidence to support adding disabilities rather than combining disabilities under CVC, that Dr. Strait persuasively opined that adding disabilities for both upper extremities most accurately reflected applicant’s disability but did not adequately support his opinion as to why disabilities within same upper extremity should be added rather than combined under CVC based on activities of daily living, and that calculation method employed by WCJ was consistent with Dr. Strait’s rationale by reflecting higher level of disability resulting from inability of one injured upper extremity to compensate for other injured upper extremity while providing reduction for overlapping disabilities inherent in injuries to two joints in same extremity.

**Cleveland Rayford, Applicant v. National Gypsum Company, ACE American Insurance, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 500. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant who suffered industrial injury to his back, lower extremities and psyche through 4/1/2011 incurred 53 percent permanent disability, and held that, although decision in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, was issued after vocational expert issued report and after close of discovery in this case, record could not be developed to Dahl standard here because both medical reporting and vocational expert’s opinion were in agreement that applicant’s disability did not preclude him from working or engaging in vocational retraining, regardless of whether individualized assessment was substituted for similarly situated analyses submitted by applicant’s vocational expert, and applicant did not meet his burden of proof to rebut 2005 Permanent Disability Rating Schedule.

**Cleveland Rayford, Applicant v. National Gypsum Company, ACE American Insurance, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 500. Permanent Disability—Rating—Occupational Group Numbers—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant was employed as rock handler within occupational group 460 and deferred issue for further proceedings, when WCAB found that applicant’s undisputed testimony showed that part of his duties as rock handler involved very heavy work, that employee is entitled to be rated for occupation which carries highest factor in computation of disability, and that, on this record, it was unclear if applicant’s duties, while heavy, were that of “miner” and “miner’s helper” within occupational group 560, as alleged by applicant; Commissioner Sweeney, dissenting, opined that applicant’s occupational group was 560 based on defendant’s failure to rebut applicant’s testimony about his very heavy job duties and defendant’s failure to submit job description or formal job analysis.

**Kong Chrea, Applicant v. Warner Brothers Studios, Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 521. Permanent Disability—Rating—AMA Guides—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant air conditioning gang boss sustained 77 percent permanent disability as result of 7/13/2011 industrial injury to his low back, internal system, psyche, and in forms of IBS and GERD, based upon report of Philip Sobol, M.D., which WCAB panel majority found constituted substantial evidence to rebut strict AMA Guides rating pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Dr. Sobol first strictly applied AMA Guides to find applicant’s whole person impairment for lumbar spine injury and then analyzed impairment under Almaraz/Guzman in light of applicant’s inability to return to heavy work, and opined that this was more accurate reflection of applicant’s actual disability given maximum whole person impairment represented by total impairment of one spinal region according to Section 15-13 and Figure 15-19 in AMA Guides, coupled with effect of applicant’s injury on his functional capacity and on his ability to perform activities of daily living, as described by applicant; Commissioner Razo, dissenting, opined that Dr. Sobol impermissibly rated impairment of applicant’s functions and capacity in performing work using criteria set forth in former permanent disability rating schedule, and inappropriately utilized Figure 15-19 where there were no objective medical findings justifying its use, that alternative rating based on loss of work functions, work restrictions or loss of future work capacity in labor market is not permitted, and that because Dr. Sobol did not provide adequate justification for his determination of percentage of applicant’s loss of functional capacity and relied upon impermissible considerations to justify alternative rating, Dr. Sobol’s opinion should not be relied upon.

**Yee Yang, Applicant v. State of California, CSP Kings, County at Corcoran State Prison, Legally Uninsured, State Compensation Insurance Fund/State Contract Services, Adjusting Agency, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 544. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant who injured his back on 3/8/2012 while working as registered nurse incurred 37 percent permanent disability based on Michael Charles, M.D.’s impairment analysis under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, which WCAB determined was sufficient to rebut strict AMA Guides rating, when WCAB concluded that Dr. Charles properly found additional 19 percent whole person impairment for applicant’s station and gait disorder not accounted for in overall rating based on analogy to peripheral neurologic impairment in table 13-15 of AMA Guides.

**Leticia Cuellar, Applicant v. Earthbound Farm, Travelers Property Casualty Company of America, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 420. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant agricultural worker’s 3/5/2011 admitted right hand and arm injury/amputation caused 100 percent permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662(b) based on opinion of applicant’s vocational expert, Tom Linvill, that applicant was unable to compete in open labor market due to arm amputation and psychiatric sequelae, when defendant sought no vocational expert evidence to rebut Mr. Linvill’s opinion, WCJ found that 81 percent scheduled rating under 2005 Permanent Disability Rating Schedule did not adequately represent her disability, and, although WCAB generally follows opinions of agreed medical evaluators, in this case agreed medical evaluators were never asked what work applicant could perform nor were they given job descriptions to review to enable them to determine whether applicant could feasibly perform any occupations.

**Carol Gannon, Applicant v. Hallmark Marketing Corporation, Arrowood Indemnity Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 424. Permanent Disability—Rating—Permanent Total Disability—WCAB, on remittitur from Court of Appeal [see **Hallmark Marketing Corp. v. W.C.A.B. (Gannon)** 80 Cal. Comp. Cases 1132 (Court of Appeal Unpublished Opinion)], reinstated and affirmed WCJ’s finding that applicant was permanently and totally disabled from 12/13/2000 industrial injury to her low back, neck and wrists, and in form of rectal incontinence and sexual dysfunction, when Court of Appeal concluded that WCJ applied correct legal standard in finding that injured employee is 100 percent permanently disabled if having to work from home is necessitated by limitations that also render employee unable to compete in open labor market, that injured employee has initial burden, under this standard, to show that she can work only from home in work that is not generally available, that if this burden is met, burden shifts to defendant to establish employee’s ability to compete in open labor market, and that WCJ could properly conclude on present record that employer failed to meet burden and that applicant was permanently totally disabled, and WCAB, reviewing matter in light of principles discussed by Court of Appeal, found that opinion of agreed medical examiner Michael A. Kasman, M.D., and applicant’s testimony established that applicant was limited by effects of her injury to work in her home, but still could not work consistent and predictable hours, that burden then shifted to defendant to establish that applicant could compete in open labor market, that vocational expert evidence offered by defendant was insufficient to meet defendant’s burden, and that, as explained by Court of Appeal, sheltered workshop concept is not applicable for determining extent of applicant’s disability.

**Hugh Leo, Applicant v. Greenspan Adjusters International, Inc., The Hartford, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 431. Permanent Disability—Rating—Combined Values Chart—WCAB held that WCJ improperly added applicant’s lumbar spine, cervical spine and pain impairments to find 54 percent permanent disability, and amended WCJ’s decision to find 46 percent permanent disability using Combined Values Chart (CVC), when panel qualified medical evaluator Ali Soozani, M.D., opined that applicant’s impairments should be added together because they represent two different spinal regions, but WCAB found that Dr. Soozani did not adequately explain how or why addition of impairments was more accurate than combining disabilities using CVC and, therefore, concluded that Dr. Soozani’s opinion was not substantial evidence justifying use of addition method.

**Tyson Conger, Applicant v. Care Ambulance, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 449. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant emergency medical technician suffered 62 percent permanent disability from 1/20/2009 industrial injury to his back and psyche, and WCAB rejected applicant’s assertion that WCJ should have awarded 100 percent permanent total disability, when WCAB reasoned that permanent total disability may be shown by rebutting Labor Code § 4660 scheduled rating, or by presenting evidence showing permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662(b), that, contrary to applicant’s assertion, report of vocational expert Michael Bonneau was not substantial evidence to rebut scheduled rating under Labor Code § 4660 and did not support finding of permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662(b), that although substantial evidence from vocational expert of loss of all future earning capacity is not required to support finding of permanent total disability under Labor Code § 4662(b), record must otherwise contain substantial evidence of permanent total disability to support such award, that evidence of permanent total disability may include substantial medical evidence that injured worker’s medical condition precludes gainful employment or only allows for work in protected environment, that neither orthopedic nor psychiatric agreed medical examiner in this case opined that applicant was permanently and totally disabled, that there was no other evidence in record to establish that applicant was unable to compete in open labor market, and that applicant did not rebut scheduled rating and did not otherwise meet burden of proving permanent total disability “in accordance with the fact.”

**Jacob Davis, Applicant v. O’Brien Market, Inc., Wausau Insurance Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 450. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB’s Duty to Develop Record—WCAB rescinded WCJ’s finding that applicant meat cutter suffered 39 percent permanent disability from cumulative injury to his right shoulder and psyche during period ending on 4/19/2008, and returned matter to trial level for further development of record on issues of applicant’s psychiatric work restrictions and vocational feasibility, when WCJ found permanent disability utilizing scheduled ratings based on opinions of panel qualified medical evaluators, but WCAB determined that because vocational experts in this case interviewed applicant prior to issuance of decision in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, which clarified type of evidence which may be considered in rebutting scheduled rating on grounds that injured worker was not amenable to vocational rehabilitation, record needed development with updated medical reports and new vocational reports discussing applicant’s amenability to vocational rehabilitation.

**James Fraser, Applicant v. Geil Enterprises, Inc., dba Valley Security and Alarm, US Fire Insurance Company, administered by Crum Forster,** Defendants, 2016 Cal. Wrk. Comp. P.D. LEXIS 454. Permanent Disability—Rating—Permanent Total Disability—Brain Injury—WCAB rescinded WCJ’s finding that applicant suffered 85 percent permanent disability from industrial injury to his left clavicle, skull, left shoulder, left ribs, head, brain, and psyche, issued new finding which included hypertension and hearing loss as industrially injured body parts, and returned matter to trial level for further proceedings on issue of permanent disability, when WCAB agreed with WCJ that reporting of qualified medical evaluator in neuropsychology, Fernando Gonzalez, Ph.D., relied upon by applicant, did not adequately support finding of 100 percent permanent disability under Labor Code § 4662(a), creating presumption of total disability for brain injury resulting in “permanent mental incapacity,” which WCAB interpreted to be synonymous with terms “imbecility” or “insanity” used in Labor Code § 4662 prior to 2007 and 2014 amendments, but WCAB found that applicant may be permanently and totally disabled “in accordance with the fact” under Labor Code § 4662(b) based on Dr. Gonzalez’ report, wherein Dr. Gonzalez stated that he believed applicant was permanently totally disabled due to inability to function independently in any competitive work environment based on combination of his impaired cognition from brain injury coupled with his impaired verbal and visual memory, poor frustration tolerance, and irritability.

**Mike Taylor, Applicant v. Wilson Welding & Hydraulics, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 468. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s decision granting applicant welder’s petition to reopen for new and further disability and WCJ’s finding that applicant welder suffered 100 percent permanent total disability as result of 8/19/96 industrial back injury, based on opinions of treating physician and agreed medical examiner stating that applicant was not employable in open labor market due to his failed back syndrome.

**Ruzanna Zulalyan, Applicant v. California Department of Social Services, legally uninsured, administered by State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 474. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that applicant suffered 48 percent permanent disability from industrial injury to her cervical spine, forearms, elbows, wrists, and hands during period 1999 to 5/14/2012, when WCAB found that reports of primary treating physician Philip A. Sobol, M.D., upon which WCJ relied in finding permanent disability, constituted substantial medical evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support WCJ’s finding, and that WCJ was not bound to follow opinions of rating expert as rater is not trier of fact and WCJ was permitted to apply his own expertise and authority in finding permanent disability.

**Allison De La Cruz, Applicant v. Salinas Valley Memorial Hospital, P.S.I., administered by Acclamation Insurance Management Services, Defendants,** *2016 Cal. Wrk. Comp. P.D. LEXIS 369*. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that opinions of vocational expert Scott Simon, who concluded that applicant with admitted injury to her lumbar spine on 9/6/2011, suffered loss of future earning capacity as direct result of limitations from her work injury, were insufficient to rebut scheduled rating, when WCAB found that, because Mr. Simon conceded that applicant was able to benefit from vocational rehabilitation and was, in fact, enrolled in training program, applicant did not establish that her work injury impaired her ability to benefit from rehabilitation and, therefore, did not satisfy requirements in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and *Contra* **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, to rebut 2005 Permanent Disability Rating Schedule.

**Thomas Eckert, Applicant v. County of Los Angeles, PSI, Administered By Tristar, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 394. Permanent Disability—Rating—AMA Guides—WCAB affirmed WCJ’s finding that medical reporting was sufficient to rebut strict AMA Guides rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when reporting physician analogized applicant district attorney investigator’s spinal impairment from lumbar spinal injury to impairment from hernia, and WCAB found that physician adequately explained his reasoning and utilized four corners of AMA Guides to assign most accurate rating for permanent disability.

**Roy Lacy, Applicant v. State of California Corrections & Rehabilitation Parole, Legally Uninsured, State Compensation Insurance Fund/State Contract Services, Adjusting Agency, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 396. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant parole officer’s 1/18/2013 bilateral knee injury caused 18 percent permanent disability after apportionment and that cumulative injury to applicant’s knees through 6/14/2013 caused 37 percent after apportionment based on parties’ stipulations regarding permanent disability rating, and WCAB returned matter to WCJ to develop record by obtaining clarification from agreed medical examiner Michael F. Charles, M.D., with respect to his analysis under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that it was unclear from record how parties arrived at stipulated impairments, and, additionally, concluded that that while Dr. Charles provided sufficient justification for going beyond strict AMA Guides rating pursuant to Almaraz/Guzman, stating that applicant’s impairment was not fully expressed by strict AMA Guides rating, he did not render complete opinion because his reporting did not clearly set forth percentage of whole person impairment incurred by applicant for each knee under *Almaraz/Guzman*, and because Dr. Charles’ opinion was deficient in this respect, WCAB had authority to further develop record by seeking clarification from Dr. Charles.

**Audrey McKinney, Applicant v. State of California, California Department of Corrections & Rehabilitation, California State Prisons, Los Angeles County, Lawfully Uninsured, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 400. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant correctional officer’s 9/13/2013 industrial left knee injury caused 15 percent permanent disability, and held, instead, that applicant suffered 20 percent permanent disability based on opinion of agreed medical examiner Jeffrey Berman, M.D., when Dr. Berman opined that combination of applicant’s five percent whole person impairment for muscle weakness, two percent impairment for crepitus and additional one percent impairment for pain accurately represented applicant’s overall impairment, but rating expert, upon whose opinion WCJ relied, declined to include two percent impairment due to crepitus in her rating based on her reliance on Table 17-2 of AMA Guides, which she indicated did not permit combination of impairment for weakness and arthritis, and WCAB concluded that WCJ was not bound by rater’s recommended permanent disability rating and may elect to independently rate employee’s permanent disability based on substantial evidence, that, here, Dr. Berman did not diagnose arthritis as suggested by rater, but instead found two percent impairment for crepitus using Table 17-31 of AMA Guides, which does not require finding of arthritis and rather specifically applies without findings of arthritis or joint space narrowing, and that Dr. Berman’s opinion that applicant suffered two percent impairment due to crepitus was substantial evidence such that crepitus should be included in applicant’s permanent disability.

**Guillermo Anaya, Applicant v. Bay Area Carbide, Valley Forge Insurance Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 314. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant who suffered industrial injury to his lungs, respiratory system, psyche, and in form of diabetes while employed as tool handler from 7/8/2009 through 7/8/2010, was entitled to unapportioned award of 100 percent permanent disability “in accordance with the fact” pursuant to Labor Code § 4662(b) based on opinions of examining physicians indicating that applicant was unable to return to labor market due to his physical and psychiatric limitations; however, WCAB disagreed with WCJ’s implication that Labor Code § 4660 does not apply in cases involving permanent total disability, clarifying that permanent total disability may be established by presenting evidence of permanent total disability “in accordance with the fact” as provided in Labor Code § 4662(b) or by rebutting Labor Code § 4660 scheduled rating, which is based on percentage of disability, and WCAB did not concur with defendant’s position that Labor Code § 4660 standards are applicable to determinations made pursuant to Labor Code § 4662, but instead recognized that Labor Code §§ 4660 and *4662* offer different paths to prove permanent total disability, that it is not necessary for injured worker to have total loss of earning capacity in order to be found permanently and totally disabled, and that entirety of evidence in this case established that applicant was permanently and totally disabled “in accordance with the fact” under Labor Code § 4662(b); Commissioner Razo dissented from panel majority’s conclusion that permanent total disability was established “in accordance with the fact” as required by Labor Code § 4662, and would return matter to trial level for development of record on issues of applicant’s amenability to vocational rehabilitation and his loss of future earning capacity, when Commissioner Razo reasoned that, although medical examiners in this case opined that applicant was permanently totally disabled and unable to work, physicians are not vocational experts and their opinions are not substantial evidence of lack of amenability to vocational rehabilitation and total loss of future earning capacity, and that, while permanent total disability “in accordance with the fact” under Labor Code § 4662(b) may not always require evidence of lack of amenability to vocational rehabilitation and proof of total loss of future earning capacity, here reporting physicians did not provide sufficient reasoning to support their opinions that applicant was permanently totally disabled.

**Jose Montiel, Applicant v. Cal-Tech Precision, Inc., Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 328. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was totally permanently disabled as result of admitted 5/8/2003 injury to his back and compensable consequence injuries to his psyche, left knee, and in forms of diabetes, gastritis, sleep disorder, and sexual dysfunction, while employed as machine operator, and found that reports of physicians who found that applicant was not capable of returning to open labor market were substantial evidence to support WCJ’s award of 100 percent permanent disability even without vocational expert evidence, when WCAB concluded that determination of inability to compete in open labor market is not solely within province of vocational expert, that where there is substantial evidence of significant impairment, medical expert’s opinion regarding patient’s vocational capacity may be sufficient to establish total permanent disability, particularly where combined effects of orthopedic, internal and psychiatric impairments, such as documented in medical record here, establish employee is not capable of returning to labor market, that medical expertise of treating and evaluating physicians in discerning applicant’s inability to engage in full-time employment, in view of physical and mental disabilities related to his failed back condition, justified WCJ’s reliance upon their opinions, that absent valid apportionment, WCJ could reasonably find on this record that applicant was permanently totally disabled “in accordance with the fact” under Labor Code § 4662, and that WCJ was not required to obtain formal rating as WCJ is considered to have special expertise in performing permanent disability ratings and need not obtain formal rating before finding permanent disability provided there is substantial evidence to justify WCJ’s rating.

**Maria Aguilera, Applicant v. Collins Chiropractic Group, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 336. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel decision, rescinded WCJ’s finding that applicant chiropractic assistant’s 8/24/2007 industrial injury to her gastrointestinal system, cervical spine, lumbar spine, shoulders, elbows, wrists, hands, knees, psyche, and in forms of irritable bowel syndrome, hypertension, fibromyalgia, and affective spectrum disorder, caused 100 percent permanent disability after apportionment, and instead awarded applicant 88 percent permanent disability after apportionment, when WCAB found that (1) WCJ disregarded reasoned opinions of agreed medical examiners Richard Fedder, M.D., David Freeman, M.D., and Stanley Majcher, M.D., in finding that applicant was permanently and totally disabled “in accordance with the fact” under Labor Code § 4662(b), *(2)* WCJ improperly relied on opinion of rheumatologist Rodney Bluestone, M.D., indicating that applicant was permanently and totally disabled with widespread and chronic pain and with “shockingly poor” musculoskeletal function, to find that applicant had “practically total paralysis” under Labor Code § 4662(a)(3), where none of agreed medical evaluators stated that applicant was totally disabled or suggested that applicant was “practically totally paralyzed,” but rather described applicant’s impairments under AMA Guides and together produced permanent disability rating of 88 percent after apportionment, (3) there was nothing in applicant’s testimony indicating that she was practically totally paralyzed, (4) WCJ overlooked fact that Dr. Bluestone found no objective factors of disability relative to applicant’s musculoskeletal pain, but rather diagnosed affective spectrum disorder with respect to applicant’s rheumatologic condition, which was already included in psychiatric impairment assessed by Dr. Freeman, and (5) vocational expert evidence relied upon by WCJ indicating that applicant was unable to return to open labor market was not substantial evidence because it was inconsistent with overwhelming and persuasive opinions of agreed medical examiners and did not account for apportionment; Deputy Commissioner Newman, dissenting, would affirm WCJ’s finding of permanent disability “in accordance with the fact” under Labor Code § 4662(b), based on opinion of Dr. Bluestone coupled with vocational expert evidence provided by Enrique Vega and applicant’s credible testimony.

**Eric Dana, Applicant v. State of California, Legally Uninsured, Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 284. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant suffered 25 percent permanent disability as result of 12/4/2012 injury to his right thumb, and that opinion of orthopedic panel qualified medical evaluator David Broderick, M.D., rebutted AMA *Guides* scheduled disability rating by establishing that another chapter, table or method in AMA *Guides* more accurately reflected applicant’s impairment, when Dr. Broderick opined that, since AMA *Guides* does not contain specific rating for ulnar collateral ligament injuries of thumb, most appropriate rating would be that of pinch strength deficit, which he found was applicant’s major impairment, and WCAB determined that Dr. Broderick’s opinions constituted substantial evidence and were properly followed by WCJ, as Dr. Broderick clearly incorporated descriptions of impairments in AMA *Guides* as required by Labor Code § 4660(b)(1), that since there was no impairment rating specifically relating to ulnar collateral ligament injuries of thumb in AMA *Guides*, there was no scheduled rating to rebut and, therefore, rule set forth in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, was not strictly applicable, that Dr. Broderick did utilize tables within four corners of AMA *Guides* and explained his methodology, and that, although defendant quoted AMA *Guides* to argue that using pinch strength impairment is generally incompatible with loss of motion impairments in hand, WCJ did not incorporate loss of motion into ultimate permanent disability rating, which was comprised of applicant’s loss of strength and pain impairments.

**Fernando Perez, Applicant v. Sunshine Nurseries, Imperium Insurance Company, administered by Tristar Risk Management, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 272. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s award of 62 percent permanent disability and found, instead, that applicant landscaper suffered 81 percent permanent disability as result of industrial orthopedic and internal injuries incurred on 8/4/2007, and that reporting of orthopedic agreed medical examiner Stuart Green, M.D., constituted substantial evidence under analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating, when Dr. Green provided strict rating of 30 percent whole person impairment but gave detailed opinion as to why applicant’s actual impairment was greater than 30 percent, and, although WCJ rejected Dr. Green’s Almaraz/Guzman rating because Dr. Green did not follow strict rules of AMA *Guides* in combining applicant’s gait derangement with other impairments, WCAB reasoned that, per holding in *Almaraz/Guzman*, physician does not have to follow rigid protocol in assigning impairment, but rather may assess impairment using clinical judgment, that Dr. Green’s opinion in this case conformed to holdings in *Almaraz/Guzman* in that Dr. Green analogized applicant’s disability with gait derangement table (Table 17-5) of AMA *Guides* and ultimately opined that applicant’s disability was equivalent to ambulation of someone with two canes or crutches and long leg brace, which described applicant’s impairment “right on the nose” and rated at 71 percent permanent disability, and that orthopedic disability, when combined with 36 percent internal permanent disability, rated at 81 percent.

**Anthony Manuel Gonzalez, Applicant v. McMurray Painting, State Compensation Insurance Fund, self-administered through State Compensation Insurance Fund, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 288. Permanent Disability—Rating—Vocational Evidence—WCAB, affirming WCJ, held that applicant painter who sustained industrial injury to his low back, left knee, psyche, left shoulder, and neck suffered 100 percent permanent disability based on opinion of applicant’s vocational expert, Mark Remas, indicating that applicant was unable to compete in open labor market or sustain suitable gainful employment and would not benefit from vocational rehabilitation due to his physical and psychological impairments, when WCAB found that reporting of Mr. Remas constituted substantial evidence to support finding of permanent total disability and that his opinion was more persuasive than reporting of defendant’s vocational expert, Rebecca Montano, who did not sufficiently detail her methodology or state that her approach was based on peer reviewed process, reviewed limited medical records, failed to adequately address applicant’s ability to perform activities of daily living, did not perform sufficient labor market survey, and appeared to conform her assessment of applicant to fit desired result, which was that applicant could work at least in a part-time position.

**Manuel Torres, Applicant v. Valdez and Sons, Everest National Insurance Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 306. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant vineyard worker who suffered admitted industrial injury to his low back, psyche, and in form of erectile dysfunction on 9/2/2011 incurred 50 percent permanent disability based on opinion of panel qualified medical evaluator Andrew Burt, M.D., and remanded matter to trial level for further proceedings on issue of permanent disability, when WCAB reasoned that in order to rebut strict application of AMA *Guides* pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, doctor must provide strict AMA Guides rating, explain why strict rating does not accurately reflect injured worker’s disability and explain why alternative rating most accurately reflects injured worker’s level of disability, and that in this case Dr. Burt’s reporting did not comply with requirements in *Almaraz/Guzman* because Dr. Burt initially provided strict AMA Guides rating and then issued supplemental report providing alternative rating under *Almaraz/Guzman* without explaining why he no longer believed strict rating accurately reflected applicant’s disability or why alternative rating accurately reflected applicant’s level of disability and without providing explanation as to why he added applicant’s impairments rather than combining them using Combined Values Chart.

**Cory Allred, Applicant v. RST Cranes, ACE American Insurance, administered by Barrett Business Services, Inc., Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 222. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant suffered 31 percent permanent disability as result of 11/11/2014 crush injury to his left middle and ring fingers, and returned matter to trial level for further development of record as outlined in McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), when WCAB concluded that reporting of panel qualified medical evaluator Robert Wilson, M.D, upon which WCJ relied, was insufficient on issue of applicant’s level of permanent disability under AMA *Guides* and Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because, although Dr. Wilson stated that applicant “has difficulty using [the injured fingers] in any type of normal fashion,” and it appeared that applicant did sustain significant injury, Dr. Wilson did not state that applicant’s condition was not covered by AMA *Guides* or that it was not adequately addressed by diagnostic criteria in AMA Guides, and did not address whether and to what extent applicant had difficulty with activities of daily living, and WCAB determined that since there insufficient medical evidence regarding permanent disability, WCAB had duty to develop record.

**Billy Branham, Applicant v. Arroyo Grande Glass, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 197 Permanent Disability—Rating—Vocational Evidence—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant was entitled to permanent disability award of 63 percent, and returned matter to trial level for development of medical and vocational records regarding effects of applicant’s medications relative to extent of his permanent disability, when WCJ had rejected opinion of applicant’s vocational expert, P. Steve Ramirez, who concluded that combined effects of applicant’s physical condition after industrial injury and of medications Norco and Gabapentin prescribed to treat his industrial back injury resulted in permanent total disability, but, given medical history documented by agreed medical examiners in orthopedics and internal medicine regarding applicant’s long-standing use of pain-killers, WCAB panel majority disagreed with WCJ’s suggestion that it was inappropriate for Mr. Ramirez to consider cognitive effects of industrially-prescribed medications on applicant’s ability to compete in open labor market, and concluded that such opinion from vocational expert may be sufficient, in conjunction with medical expert opinion, to support finding of permanent total disability, and that rather than dismiss Mr. Ramirez’s opinion, it was appropriate to further develop medical and vocational records to investigate cognitive effects of medications on applicant’s work restrictions and on his ability to compete in open labor market; Commissioner Razo, dissenting, would affirm WCJ’s 63 percent permanent disability award on basis that Mr. Ramirez’s opinion did not constitute substantial evidence because, Commissioner Razo found, Mr. Ramirez (1) improperly provided analysis of applicant’s diminished future earning capacity as relevant to 2005 Permanent Disability Rating Schedule, when he should have analyzed whether applicant could be retrained for suitable gainful employment consistent with **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, because applicant’s permanent disability was subject to determination under 1997 Schedule for Rating Permanent Disabilities, (2) considered medical factors that were beyond his expertise and were not contained in reports of medical evaluators, and (3) was not qualified to offer opinion on any restrictions applicant may have under 1997 Schedule, because he is not physician.

**Wayne La Cosse, Applicant v. Carone & Company and State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 205. Permanent Disability—Rating—Conclusive Presumption of Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant operating foreman who suffered injury to his neck, back, left shoulder, both wrists, and left knee on 3/1/2004 suffered permanent total disability based on conclusive presumption in Labor Code § 4662(a)(2), when WCAB concluded that applicant’s total loss of grip strength under 1997 Schedule for Rating Permanent Disabilities due to bilateral wrist injury was equivalent to loss of use of his hands, and WCAB further found that neither applicant’s failure to allege hands as injured body part nor failure to raise Labor Code § 4662(a)(2) as issue for trial precluded WCJ from applying conclusive presumption.

**Dale Cortez, Applicant v. California Department of Corrections and Rehabilitation, legally uninsured, adjusted by State Compensation Insurance Fund, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 229. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant correctional officer suffered 8 percent permanent disability as result of 11/18/2009 injury to his right shoulder based on reporting of primary treating physician Irene Sanchez, M.D., and returned matter to trial level for further proceedings regarding extent of applicant’s permanent disability, when WCAB found that Dr. Sanchez’s reporting did not constitute substantial evidence on issue of applicant’s permanent disability because Dr. Sanchez did not provide rating for applicant’s right shoulder nor did she diagnose applicant with medical condition that was characterized by pain absent measureable dysfunction of right shoulder so as to justify her provision of pain add-on to that body part using strict AMA *Guides* analysis, and that to extend Dr. Sanchez’s opinion could be construed as offering alternative rating pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, Dr. Sanchez did not adequately explain why strict AMA Guides rating of zero percent permanent disability was inadequate or why applicant’s rating based solely on pain was most accurate; WCAB also concluded that reporting of Ernest Miller, M.D., relied upon by defendant, was not substantial evidence as he assigned zero percent whole person impairment based solely on applicant’s range of motion measurements, but did not provide range of motion measurements, nor did he provide complete evaluation of shoulder using Figure 16-53b of AMA *Guides*, which requires evaluator to note and comment on any other ratable disorders that may be present in shoulder in addition to abnormal motion.

**Brian Johnson, Applicant v. Wayman Ranches and State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 235. Permanent Disability—Rating—Combining Multiple Disabilities—WCAB affirmed WCJ’s finding that applicant ranch hand incurred 92 percent permanent disability from 11/6/96 industrial injury to his back and psyche, and found that rater was properly instructed to use Multiple Disabilities Table to combine applicant’s orthopedic and psychiatric disabilities rather than to add disabilities, when WCAB found that neither orthopedic agreed medical examiner, Richard Scheinberg, M.D., nor psychiatric agreed medical examiner, David Friedman, M.D., adequately explained their rationale for finding that applicant’s disabilities were synergistic and should be added, that simply using word “synergistic” does not suffice, and that to constitute substantial evidence on issue, physicians should explain how separate disabilities are acting in synergistic fashion and why adding disabilities is more accurate reflection of applicant’s disability.

**Shannon Nick, Applicant v. State of California Department of Motor Vehicles, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 243. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that opinion of panel qualified medical evaluator constituted substantial evidence under analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), to support finding that applicant who suffered industrial injury to her hands, wrists and thumbs from 10/24/2010 through 10/24/2011 suffered 46 percent permanent disability, when panel qualified medical evaluator explained that applicant’s permanent disability under strict AMA *Guides* rating was not accurate representation of her permanent disability, given problems with her activities of daily living (especially with respect to self-care) and work restrictions, and further explained that applicant’s impairment could be analogized to impairment reflected in Tables 16-4, 13-16 and 13-17 of AMA *Guides*, which each independently measured applicant’s impairment at 36 percent.

**Silvestre Acevedo, Applicant v. Pahrump Heifer Ranch, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 138. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant suffered 71 percent permanent disability, after apportionment, as result of 11/17/2007 industrial injuries to his head, neck, back, vision, gastrointestinal system, psyche, and sleep, when, although WCAB found no particular error in WCJ’s rating of applicant’s impairment based upon findings of medical experts, WCAB wanted to provide vocational expert opportunity to prepare supplemental report in light of analysis in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, which was issued after vocational expert had already submitted her report.

**John Eagle, Applicant v. State of California, Department of Corrections and Rehabilitation, legally uninsured, administered by State Compensation Insurance fund, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 146. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that reporting of agreed medical examiner Steven S. Isono, M.D., constituted substantial evidence to support WCJ’s finding that applicant special agent with 5/23/2013 industrial right hip injury suffered 23 percent permanent disability, after apportionment, based on analysis under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Dr. Isono provided strict AMA *Guides* rating of 4 percent whole person impairment due to gait derangement, but also found that applicant had additional impairments from multiple diagnoses, pathology, and surgical procedure which were not subsumed by gait derangement impairment, and that to determine most accurate assessment of applicant’s permanent disability, all of applicant’s impairments needed to be included in rating utilizing Combined Values Chart.

**Charles Edwards, Applicant v. Forbes Security Company, American Guarantee and Liability Insurance, adjusted by Zurich Insurance Company, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 147. Permanent Disability—Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s findings that applicant security guard suffered 30 percent permanent disability from injuries to his cervical spine and left upper extremity on 9/15/2011, and that vocational expert opinion of Timothy Farrell did not support finding that applicant was 100 percent permanently disabled under standards set forth in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that to rebut scheduled permanent disability rating, Ogilvie requires showing that employee is not amenable to rehabilitation due to industrial injury, that in finding applicant unemployable based on his “significant academic/intellectual limitations, and history of primarily unskilled work,” Mr. Farrell relied on impermissible factors which cannot be considered in determining diminished future earning capacity, and that Mr. Farrell’s statement that applicant’s physical limitations were “substantial barrier” to successful employment in open labor market fell short of standard in *Ogilvie* for rebutting scheduled rating.

**Edwin Martinez, Applicant v. Coca-Cola Enterprises, Inc., PSI, administered by Sedgwick CMS, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 160. Permanent Disability—Rating—Sleep Disorder—WCAB held that WCJ did not abuse his discretion in finding that applicant truck driver with admitted back and neck injuries also suffered separately compensable sleep disorder that rated at 23 percent permanent disability, based on applicant’s credible testimony, opinion of orthopedic panel qualified medical evaluator Neil Halbridge, M.D., and unrebutted findings of sleep specialist Pedram Navab, D.O., as supported by sleep study, indicating that applicant’s sleep disorder was not simply due to pain from his orthopedic injury, but to multiple factors arising from industrial injury, including psychological issues, obesity arising from injury, and side effects of medication, and WCAB found that, although applicant’s sleep study showed normal sleep efficiency, applicant’s repeated complaints of sleep disturbance and reliance on sleeping pills coupled with medical reporting describing applicant’s sleep problems justified finding of separately compensable sleep disorder.

**Martin Mendez, Applicant v. Waterproofing Specialties, Virginia Surety Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 161. Permanent Disability—Rating—Diminished Future Earning Capacity—Refusal to Submit to Medical Treatment—WCAB affirmed WCJ’s finding that applicant construction laborer incurred 100 percent permanent total disability, without apportionment, as result of industrial injuries to his back, left shoulder, psyche, and other body parts on 7/9/2003, based on reporting of qualified medical evaluator Frank Lucchetti, Ed.D., and vocational expert Jeff Malmuth, M.S., when WCAB concluded that (1) applicant’s refusal to participate in programs to address his chronic pain was not basis to reduce permanent disability pursuant to Labor Code § 4056 as asserted by defendant, as there was no substantial medical evidence that programs would have reduced level of applicant’s permanent disability, and, additionally record showed that applicant did request to participate in one of programs in 2012 but program decided applicant was not appropriate candidate, and (2) Mr. Malmuth did not rely upon impermissible factors in his analysis, as he addressed applicant’s lack of amenability to vocational rehabilitation in evaluating level of applicant’s diminished future earning capacity as required under Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, rather than merely considering “similarly situated workers,” and his reporting, which considered reports of Dr. Lucchetti, constituted substantial evidence.

**Rogelio Velasquez, Applicant v. Molofsky Builders, Inc., Everest National Insurance Company, administered by American Claims Management, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 169. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant suffered 38 percent permanent disability as result of industrial injuries, and held that WCJ properly rated applicant’s left knee impairment based on strict AMA *Guides* rating, and found that reporting of qualified medical evaluator Alan Kimelman, M.D., was insufficient to rebut AMA *Guides* rating pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Dr. Kimelman utilized AMA Guides chapter for rating hernias to rate left knee disability, reasoning that applicant was most affected functionally by his loss of lifting capacity, and he assigned highest rating possible, 30 percent whole person impairment, under Table 6–9, Class 3 of AMA *Guides*, and WCAB found that AMA *Guides* did not contain language used by Dr. Kimelman as characterizing Class 3 impairment, that Dr. Kimelman did not specify applicant’s deficits in terms of activities of daily living, that elements of impairment to applicant’s left knee overlapped with factors considered in connection with applicant’s psychiatric injury, and that due to these deficits, Dr. Kimelman’s report was not substantial evidence upon which to base *Almaraz/Guzman* rating.

**James Navarro, Applicant v. Water Components and Building Supply, The Hartford, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 187. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant truck driver who sustained industrial injuries to his head, memory, psyche sleep, and in forms of cognitive impairment, weight gain and headaches on 11/4/2009, suffered permanent total disability from his injuries “in accordance with the fact” under Labor Code § 4662(b), without basis for apportionment, when applicant’s vocational expert, Malcolm Brodzinsky, concluded that applicant had no transferrable skills, no ability to learn new skills, and did “not have the capability to work in even the simplest, unskilled occupation in competitive employment,” and WCAB reasoned that, while vocational evidence is not essential to finding of permanent total disability in accordance with Labor Code § 4662, Mr. Brodzinsky’s opinion evidenced total loss of future earning capacity whereas defendant’s vocational evaluator, Ira Cohen, could only conclude that applicant was capable of employment by relying on his own observations of applicant rather than medical opinions.

**Chad Snell, Applicant v. California Department of Corrections & Rehabilitation, CCI Tehachapi, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 192. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant correctional officer suffered 22 percent permanent disability from 7/3/2013 left shoulder injury based on opinion of agreed medical examiner William Mouradin, M.D., who found impairment under AMA *Guides* based on applicant’s loss of strength, when WCAB rejected defendant’s assertion that loss-of-strength ratings were not permitted under strict AMA *Guides* standard and must meet standards for alternative rating under *Almaraz/Guzman*, and found that while loss of strength impairment is secondary rating to be used only in rare circumstances, it is nonetheless standard method of rating under AMA *Guides*, that if physician believes employee’s loss of strength represents impairing factor that has not been considered adequately by other rating methods in AMA *Guides*, loss of strength may be rated separately and can even be combined with other impairment ratings based on other causes except in conditions where effective application of maximum force is prevented, and that, here, applicant’s pain and lost motion in left shoulder do not prevent him from exerting maximal force in his left upper extremity so loss-of-strength rating was permissible.

**George Unsworth, Applicant v. Grandview Real Estate, Fire Insurance Exchange, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 193. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s award of 75 percent permanent disability to applicant project manager/carpenter who suffered industrial injuries to his spine, hips, legs, and psyche on 11/22/2005, and returned matter to trial level, when WCAB found insufficient medical evidence to support WCJ’s finding that applicant was not capable of returning to gainful employment and that 25 percent of his permanent disability was apportionable to nonindustrial factors, as agreed medical examiner in physical medicine, Steven Feinberg, M.D., found that applicant had 38 percent permanent disability from physical standpoint, and agreed medical examiner in psychiatry, Stephen Raffle, M.D., apportioned most of applicant’s psychiatric permanent impairment to nonindustrial causes.

**Toni Cramer, Applicant v. County of Sonoma, PSI, administered by Northern Claims Management, Defendants**, *2016 Cal. Wrk. Comp. P.D. LEXIS 87*. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s award of 25 percent permanent disability to applicant child support officer who suffered 8/2/2011 industrial injury to her left ankle, and held that report of orthopedic agreed medical examiner Thomas Miles, M.D., upon which WCJ relied, did not constitute substantial medical evidence to rebut strict AMA *Guides* rating under **Milpitas Unified School Dist. v. W.C.A.B. (Almaraz/Guzman)** (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when Dr. Miles’ provided both strict rating and alternative rating for applicant’s injury but did not explain whether strict rating adequately reflected applicant’s level of disability, or why alternative rating most accurately reflected applicant’s level of disability and, instead, improperly left decision of whether to apply *Almaraz/Guzman* to trier of fact, and WCAB found that without medical evidence to support which of applicant’s proposed disability ratings was most accurate, trier of fact could not make determination of applicant’s level of permanent disability and matter must be returned to trial level for further development.

**Doreen Dahl, Applicant v. Contra Costa County, PSI, Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 88. Permanent Disability—Rating—Vocational Evidence—WCAB, on remittitur from Court of Appeal, rescinded its award of 79 percent permanent disability and entered award of 59 percent permanent disability in accordance with appellate court’s conclusion that applicant did not rebut scheduled rating pursuant to methods set forth in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624.

**Orlando Graham, Applicant v. Ecolab, Insurance Company of Pennsylvania, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 119. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant pest control employee suffered industrial injury to his back, digestive system and psyche on 9/8/2008, causing 35 percent permanent disability after apportionment, and that opinion of applicant’s vocational expert, Jeff Malmuth, was not substantial evidence to rebut scheduled permanent disability rating because Mr. Malmuth did not have complete background and history and because Mr. Malmuth based his opinion on analysis of “similarly situated workers” without sufficient consideration of applicant’s amenability to vocational rehabilitation in evaluating level of his diminished future earning capacity, as required under Contra **Costa County v. W.C.A.B. (Dahl)** (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Juliana Masters, Applicant v. State of California, Department of Motor Vehicles, Legally Uninsured, Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 128. Permanent Disability—Rating—Sleep Impairment—WCAB, in split panel opinion, affirmed WCJ’s decision disregarding opinion of agreed medical evaluator in neurology, Michael Adelberg, M.D., that applicant book binder who suffered industrial injuries to her upper extremities, psyche and in form of sleep disorder during period through 9/15/2009, sustained ratable impairment in form of sleep disorder, when WCAB reasoned that, in order to rate sleep disorder under Table 13 4 of AMA *Guide*s, sleep disorder cannot result from pain due to underlying injury for which AMA *Guides* impairment ratings have already been accounted, that based on opinions of Dr. Adelberg and pain management qualified medical evaluator Lee Snook, M.D., applicant’s sleep disorder was consequence of her musculoskeletal pain, which was already accounted for in impairment rating for her physical injury, and that to the extent Dr. Adelberg’s whole person impairment provided for impairment to sleep, it did not comport with AMA *Guides* and could not be included in the rating instructions; Commissioner Sweeney, dissenting, found no good reason to disregard Dr. Adelberg’s opinion that sleep disorder caused 10 percent whole person impairment, when Dr. Adelberg described sleep disorder impairment as not simply fitful sleep due to pain but rather “significant daytime concentration problems that applicant attributes to sleep deficits” and “related affective/social disturbances,” causing applicant to experience “[r]educed daytime alertness; interferes with ability to perform some activities of daily living,” and determined that applicant had 10 percent whole person impairment on that basis.

**Arnold Montenegro, Applicant v. City of Los Angeles, PSI, administered by Acclamation Claims Services, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 129. Permanent Disability—Rating—Sexual Dysfunction—WCAB affirmed WCJ’s finding that applicant firefighter who suffered industrial injury during period 4/11/81 through 8/11/2014 in forms of diabetes, hypertension, heart disease, prostate cancer, and sexual dysfunction was not precluded by Labor Code § 4660.1(c)(1) from receiving increased impairment rating for sexual dysfunction caused by removal of his prostate to treat his prostate cancer, when WCAB found that applicant’s sexual dysfunction resulted directly from physical injury to his reproductive organs (prostate removal) and was not simply derivative effect of another physical injury and, as such, was separately ratable impairment under AMA *Guides*, that in enacting Labor Code § 4660.1(c)(1), Legislature did not intend to preclude consideration of these types of injuries in determining impairment, and that rating applicant’s sexual dysfunction in this case fell under legislative exception to Labor Code § 4660.1(c)(1) as described in Labor Code § 4660.1(h), which specifically states that Legislature’s enactment of Labor Code § 4660.1, with its limitations on rating impairment, did not intend to overrule *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, where appellate court held that impairment should be assessed within four corners of AMA *Guides* to achieve most accurate rating of injured employee’s permanent disability.

**Vivian Payne, Applicant v. City of Hope, State Compensation Insurance Fund, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 131. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant data entry clerk suffered 100 percent permanent disability from industrial injuries to both upper extremities, shoulders, neck, and other body parts on 5/7/2001 and cumulatively from 4/29/96 to 8/30/2003, when both defendant’s and applicant’s vocational experts, as well as orthopedic agreed medical evaluator, concluded that applicant’s injuries precluded her from working in open labor market, that WCJ properly allowed vocational experts to testify at trial under Labor Code § 5703(j) in order to give them opportunity to clarify their opinions regarding apportionment, and that unrebutted report of applicant’s vocational expert indicating that applicant was not amenable to vocational rehabilitation was sufficient to satisfy standard in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Cecile Constantino, Applicant v. Queenscare, Alea North America, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 35. Permanent Disability—Rating—AMA *Guides*—WCAB held that WCJ erred in finding that applicant department secretary who suffered injury to her back, right shoulder and psyche on 9/24/2004 rebutted scheduled AMA Guides impairment rating for low back pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when orthopedic agreed medical examiner Richard I. Fedder, M.D., upon whose reporting WCJ relied, did not adequately explain why applicant’s impairment was not adequately reflected by strict AMA *Guides* rating, improperly used Figure 15-19 in AMA *Guides* (which provides information on how to convert whole person impairment to regional estimate of spinal impairment and is not intended for use as rating mechanism) to rate impairment, and did not specify where rating method he utilized (multiplying assessment of percentage of regional impairment by body part’s maximum impairment) was outlined in AMA *Guides*.

**Robert Podesta, Applicant v. Evening Post Publishing, Travelers Insurance Company, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 52. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s award of 100 percent permanent total disability to applicant master control operator who incurred admitted industrial back injury on 7/23/2012, and returned matter to WCJ for further development of medical record with regard to proper rating of applicant’s permanent disability, when qualified medical evaluator Thor Gjerdrum, M.D., provided 16 percent whole person impairment based upon strict application of AMA *Guides* and did not provide alternative or rebuttal rating or other basis to support award of 100 percent permanent total disability, and applicant presented no vocational evidence to rebut scheduled rating by establishing that his amenability to rehabilitation was impaired, and WCAB concluded that there was no substantial evidence in record to support WCJ’s finding of permanent total disability, and that WCJ was not permitted to undertake his own assessment of Dr. Gjerdrum’s findings to determine that description of applicant’s activities of daily living in Dr. Gjerdrum’s report was sufficient to justify award of permanent total disability.

**Maureen Hikida, Applicant v. Costco Wholesale, PSI, Defendant,** 2016 Cal. Wrk. Comp. P.D. LEXIS 72. Permanent Disability—Rating—Apportionment—WCAB, in split panel opinion, rescinded WCJ’s finding that applicant sales auditor’s industrial cumulative injury to upper extremities and in form of complex regional pain syndrome (CRPS) caused 90 percent permanent disability after apportionment, and remanded matter for further proceedings, when WCAB found that applicant also suffered psychiatric injury as result of chronic pain and impairment, that WCJ failed to address permanent disability caused by psychiatric injury, and that applicant’s psychiatric injury was separate causative source of permanent disability that needed to be considered with other causative sources to determine extent of applicant’s permanent disability; although WCAB found that WCJ erroneously failed to consider applicant’s psychiatric injury in determining extent of applicant’s permanent disability, and rescinded award on that basis, WCAB panel majority concluded that WCJ correctly apportioned 10 percent of permanent total disability caused by applicant’s CRPS to nonindustrial factors based on agreed medical examiner’s finding that CRPS resulted entirely from surgery applicant underwent to treat her carpal tunnel condition, which was found to be 10 percent nonindustrial; Commissioner Sweeney, dissenting, believed that it was error for WCJ to apportion permanent disability resulting entirely from medical treatment to treat industrial carpal tunnel injury based on causes of underlying injury being treated and not on cause of permanent disability, contrary to requirements of Labor Code § 4663 and Escobedo v. Marshalls (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), and she would find applicant 100 percent permanently totally disabled as result of her industrial CRPS.

**Julie Scheuer, Applicant v. County of Los Angeles, PSI, Adjusted by Acclamation Insurance Management Service, Defendants,** 2016 Cal. Wrk. Comp. P.D. LEXIS 80. Permanent Disability—Rating—Permanent Total Disability—WCAB dismissed applicant’s Petition for Reconsideration for failure to properly serve Petition on defendant but, even had Petition been properly served, WCAB would have denied Petition on its merits based on its finding that WCJ did not err in awarding applicant 83 percent permanent disability instead of 100 percent permanent disability to which applicant claimed she was entitled due to her psychiatric injury, when medical report of psychiatric agreed medical examiner Norman Barr, M.D., stating that applicant was not able to work in open labor market based on her psychiatric symptoms was not substantial evidence to support finding that applicant was permanently and totally disabled because Dr. Barr failed to identify how/why applicant could not return to work, neither Dr. Barr’s credible evaluation of applicant’s psychiatric permanent disability based on eight work function (which rated at 75 percent permanent disability) nor his GAF score assignment of 62 (which resulted in only 12 percent whole person impairment) supported finding of 100 percent permanent disability, and no vocational expert reporting was obtained by applicant to address her ability to compete in open labor market.

**Samuel Debone, Applicant v. Cemex, Inc., American Home Assurance Company, Inc., administered by Gallagher Bassett Services, Defendants**, 2016 Cal. Wrk. Comp. P.D. LEXIS 16. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant truck driver with admitted cumulative injury to his cervical spine, lumbar spine and hips over period ending 3/13/2009 suffered 83 percent permanent disability, after apportionment, and remanded matter for correction of rating and issuance of new award, when WCAB found that WCJ made several errors in rating applicant’s permanent disability and, to extent rating of applicant’s cervical and lumbar spine impairments were based upon Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, failed to explain why alternative method for rating was necessary.

**Hilario Gonzales, Applicant v. Derek Limas Corporation, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 753. Permanent Disability—Rating—WCAB affirmed WCJ’s determination that applicant carpenter’s 10/11/2007 industrial injury to his spine, right lower extremity, upper extremities, psyche, and in forms of headaches, cognitive disorder and sleep disorder caused 90 percent permanent disability after apportionment based on opinion of agreed medical evaluator, and, additionally, concluded that opinion of vocational expert relied upon by applicant did not support finding that applicant was 100 percent permanently disabled because vocational expert failed to consider apportionment, and her opinion was improperly premised upon consideration of a number of non-industrial factors.

**Regina Weaver, Applicant v. Los Angeles Unified School District, PSI, Federal Express, PSI, administered by Sedgwick Claims Management, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 766. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant suffered 19 percent permanent disability to both her left and right upper extremities as result of specific injuries on 4/29/2005, 2/1/2006 and 3/8/2006, and held that WCJ properly rated applicant’s permanent disability based on agreed medical evaluator David Pechman, M.D.’s, sensory and motor loss analysis rather than on Dr. Pechman’s alternate finding of impairment based on loss of use, when Dr. Pechman opined that applicant lost 50 percent use of each upper extremity due to her loss of “strength and manipulation” and assigned 60 percent whole person impairment (30 percent for each arm) but failed to explain how applicant’s partial loss of grip strength and sensory loss translated to 50 percent loss of use of entire upper extremity, and WCAB, noting that it is improper to simply estimate loss of use of body part and directly translate that number into percentage of impairment to body part or loss of activities of daily living upon which impairment is based, concluded that because Dr. Pechman did not adequately define applicant’s loss of use or properly analogize loss of use within four corners of AMA *Guides* his loss of use opinion did not constitute substantial evidence under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*.

**Judith Aten, Applicant v. County Sanitation District of Los Angeles, PSI, Administered by Adminsure, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 678. Permanent Disability—Rating—Occupational Group Numbers—Stipulation to Dual Occupations—WCAB affirmed WCJ’s finding that defendant was bound by stipulation to dual occupational codes for purposes of rating applicant secretary/administrator’s permanent disability stemming from cumulative industrial injury to her neck, low back, hands, wrists, and in forms of high blood pressure and sleep disorder, and that applicant’s impairment for different body parts was properly rated using different occupational group numbers, when WCAB found that defendant showed no good cause to be relieved of stipulation, and, with regard to rater’s use of dual occupational codes, that where there are multiple occupational groups and employee has more than one disability, employee is entitled to rating using highest occupational variant applied to each individual body part.

**Edgar Diaz, Applicant v. State of California, Corrections & Rehabilitation Parole, legally uninsured, State Compensation Insurance Fund, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 683. Permanent Disability—Rating—Combined Values Chart—WCAB, affirming WCJ in split panel decision, held that applicant parole officer suffered 93 percent permanent disability after apportionment as result of cumulative injury to multiple body parts from 2/1/98 through 2/22/2011, and that WCJ properly calculated applicant’s level of permanent disability for gastro-esophageal reflux disease (GERD) and irritable bowel syndrome (IBS) by adding impairments rather than by combining ratings using Combined Values Chart based on report of agreed medical examiner Richard Hyman, M.D., and decision in Athens Administrators v. W.C.A.B. (Kite) (2013) 78 Cal. Comp. Cases 213 (writ denied), when Dr. Hyman, while not directly opining that additive method should be used to calculate level of impairment caused by applicant’s digestive injuries, did testify that using additive approach would not be inappropriate because there was no clear overlap in impairments, and WCAB panel majority found that WCJ was within his authority to rate applicant’s permanent disability using additive method and that method he used provided accurate rating of applicant’s level of permanent disability; Commissioner Zalewski, dissenting, opined that WCJ should not have used additive method to rate applicant’s digestive permanent disability because Dr. Hyman’s opinion on issue was equivocal and was not substantial evidence, that there was no direct medical evidence supporting use of additive method, and that, under circumstances, Combined Values Chart should have been used to rate permanent disability caused by GERD and IBS.

**Lisa Ray, Applicant v. California Department of Corrections, California State Prison Los Angeles County, Legally uninsured and adjusted by State Compensation Insurance Fund, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 695. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that applicant’s spinal impairment was properly rated under AMA Guides using range of motion (ROM) method rather than diagnosis-related estimate (DRE) method based on reporting of orthopedic agreed medical examiner Mark Greenspan, M.D., when Dr. Greenspan provided DRE method of rating in his reports and also opined that applicant qualified for ROM method because her disability was caused by repetitive micro-trauma to same spinal region, and, based upon Dr. Greenspan’s finding of impairment under both DRE and ROM methods, WCJ adhered to strict application of AMA *Guides* by using ROM method to award higher impairment rating.

**Armando Robles, Applicant v. State of California, Department of Corrections & Rehabilitation, State Transportation, legally uninsured, administered by State Compensation Insurance Fund, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 697. Permanent Disability—Rating—Diminished Future Earning Capacity Factor—WCAB rescinded WCJ’s finding that applicant correctional officer suffered 97 percent permanent disability as result of cumulative heart injury through 4/22/2013, and held instead that applicant’s injury caused permanent total disability, when WCJ erroneously calculated applicant’s permanent disability using 2011 diminished future earning capacity (DFEC) factor, rather than using 2013 DFEC multiplier of 1.4, applicable to all injuries on or after 1/1/2013 pursuant to Labor Code § 4660.1(b), and WCAB found that use of 1.4 DFEC factor resulted in 100 percent permanent total disability.

**Tammy Agosta, Applicant v. Vons, A Safeway Company, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 702. Permanent Disability—Rating—Permanent Total Disability—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant grocery checker suffered 61 percent permanent partial disability as result of cumulative injury to her right shoulder, right upper extremity, psyche, and in form of chronic widespread pain, and that opinion of agreed medical evaluator Rodney Bluestone, M.D., did not rebut scheduled permanent disability rating pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that Dr. Bluestone’s prediction that applicant would fail to hold job following vocational rehabilitation was conditional on applicant actually going through vocational rehabilitation and then seeking work, but there was no evidence that applicant ever received any vocational rehabilitation or that she tried to hold job afterwards, and WCAB panel majority found that that Dr. Bluestone’s prediction was not substantial evidence of applicant’s preclusion from workplace; Commissioner Sweeney, dissenting, concluded that applicant successfully established that she was permanently totally disabled from her injuries based on uncontradicted work restrictions imposed by Dr. Bluestone and opinion of vocational expert Kenneth P. Ferra, M.S., C.R.C., that applicant was “not a candidate for any type of re-training on either a full or part time basis” and that applicant was unable to compete in open labor market.

**Anita Morris, Applicant v. AC Transit, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 721. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s award of 53 percent permanent disability, which was based on WCJ’s finding that opinion of defense vocational expert Mary Ciddio successfully rebutted diminished future earning capacity component of applicant’s scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when Court of Appeal’s decision in Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119, was issued during pendency of reconsideration proceedings and WCAB remanded case in order to afford parties opportunity to be heard on effect of Dahl decision on issues raised in this case.

**Raymond Ricken, Applicant v. County of Riverside, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 696. Permanent Disability—Apportionment—WCAB affirmed WCJ’s finding that opinion of panel qualified medical evaluator James Lineback, M.D., was not substantial evidence to support apportionment of permanent disability caused by applicant sergeant’s cardiovascular injury in form of hypertension, when Dr. Lineback, in identifying several risk factors for hypertension, did not distinguish between causation of applicant’s injury and causation of disability and failed to explain how any of risk factors caused disability, Dr. Lineback did not frame apportionment opinion in terms of reasonable medical probability, and WCAB was not persuaded that apportionment to risk factors identified by Dr. Lineback such as obesity, positive family history, diet, stress, lack of physical activity, and sleep apnea was legally proper as risk factors are not pathology and do not cause permanent impairment.

**Benjamin Mesanovic, Applicant v. Specialty Termite, National Liability and Fire Insurance Company, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 638. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant carpenter who suffered industrial injury to his low back and psyche on 7/13/2007 did not rebut diminished future earning capacity (DFEC) adjustment factor in 2005 Permanent Disability Rating Schedule consistent with holding in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624 (*Ogilvie III*), when applicant’s attempt to rebut scheduled rating through vocational expert opinion of Jeff Malmuth, M.S., did not comport with any of three methods approved in *Ogilvie III*, Mr. Malmuth’s reporting did not support applicant’s contention that he had loss of earnings, and applicant did not present evidence showing that his industrial injuries rendered him incapable of vocational rehabilitation and such evidence is necessary in order to rebut scheduled rating pursuant to Contra Costa County v. W.C.A.B. (Dahl) (2015) 240 Cal. App. 4th 746, 193 Cal Rptr. 3d 7, 80 Cal. Comp. Cases 1119.

**Rosalinda Urbano, Applicant v. County of San Diego, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 646. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s decision awarding applicant human services specialist permanent disability based on 6 percent whole person impairment found by agreed medical examiner Jeffrey Bernicker, M.D., due to grip loss caused by injury to applicant’s left ring finger, when applicant had fracture of proximal phalanx of finger which resulted in slight rotational deformity and, while range of motion was normal, Dr. Bernicker felt applicant had loss of strength that was best rated by grip loss and extensively explained his opinion, and WCAB found that although Dr. Bernicker did not rate impairment based on strict application of AMA *Guides*, his alternative rating was substantial medical evidence under Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and that WCJ did not err in relying on his opinion to support award of permanent disability.

**Lupe Chavez, Applicant v. County of Los Angeles, Tristar Risk Management, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 553. Permanent Disability—Rating—WCAB, affirming WCJ, held that applicant who suffered admitted industrial injury on 7/4/96 to her right knee, right ankle, right hip, right shoulder, and back, was 100 percent permanently totally disabled under 1978 Schedule for Rating Permanent Disabilities and under Labor Code § 4662 based on her fecal and urinary incontinence caused by psychiatric injury, and WCAB rejected defendant’s assertion that 100 percent permanent disability award was erroneous because there was no evidence of “total” incontinence, when WCAB found nothing in 1978 Schedule requiring “total” incontinence to justify 100 percent permanent disability award and, additionally, fact that applicant had bowel and bladder incontinence and wears adult diapers is indicative of applicant’s “total” inability to control bowel and bladder.

**Stephanie Moten, Applicant v. City of Los Angeles, PSI, administered by Tristar Risk Management, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 566. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s award of 19 percent permanent disability for applicant police officer’s industrial injury to her low back and left hip through 6/15/2012, and remanded matter for further proceedings on issue of permanent disability, when WCAB concluded that agreed medical examiner Mark Greenspan, M.D.’s, strict AMA *Guides* rating and rating pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, were both defective and were insufficient to support WCJ’s permanent disability award because Dr. Greenspan erroneously combined applicant’s muscle atrophy and peripheral nerve injury into same rating under strict AMA *Guides* approach and never completed proper analysis of applicant’s peripheral nerve injury, and Dr. Greenspan failed to properly analogize applicant’s lifting restriction to loss of use of her entire lumbar spine so as to support alternative rating under *Almaraz/Guzman*.

**Laura Calvillo, Applicant v. State of California, CDCR, legally uninsured, administered by State Compensation Insurance Fund/State Contract Services, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 583. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant correctional sergeant incurred 30 percent permanent disability as result of 7/8/2011 industrial injuries to her right wrist, right hand and psyche, and found, instead, that applicant incurred zero percent permanent disability from orthopedic injuries and 13 percent disability from injury to her psyche, when WCAB concluded that opinion of orthopedic agreed medical evaluator Alan Sanders, M.D., upon which WCJ relied, indicating that applicant suffered 12 percent whole person impairment as result of orthopedic injuries was insufficient under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating of zero percent whole person impairment because Dr. Sanders did not meaningfully explain how or why he concluded that applicant’s subjective complaints warranted analogy to 20 percent loss of capacity to push, pull, lift, and grasp with right upper extremity and why resulting 12 percent whole person impairment rating was more appropriate than AMA *Guides* zero percent rating, particularly when Dr. Sander’s explicitly questioned applicant’s credibility and there were no and/or minimal objective factors of disability or impairment, and Dr. Sanders’ opinion regarding 20 percent loss of capacity percentage was inconsistent with his expressed reservations as to applicant’s credibility and AMA *Guides*, which emphasizes objective assessment of impairment.

**Louis Rodriguez, Applicant v. Roto Rooter, Liberty Mutual, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 612. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant plumber who suffered admitted industrial injury to his left wrist and alleged injury to his right wrist and both hands over period 12/1/2008 to 12/1/2009 incurred 62 percent permanent disability based on impairment findings of orthopedic qualified medical evaluator Arthur Garfinkel, M.D., and psychiatric qualified medical evaluator Victoria Kuhl, Ph.D., and WCAB rejected defendant’s assertions that Dr. Garfinkel’s impairment findings were deficient because he failed to explain his reasons for deviating from strict AMA *Guides* impairment, improperly combined grip loss/strength with carpal tunnel impairment and erroneously included one percent add-on for pain with grip loss impairment, when WCAB concluded that (1) Dr. Garfinkel’s finding of 38 percent whole person impairment for applicant’s wrist under chapter 16 (upper extremities) of AMA *Guides* was not deviation from AMA *Guides* as described in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and, therefore, defendant’s argument that deviation was not explained had no merit, (2) grip strength may be rated separately in rare cases under chapter 16, section 16.8 of AMA *Guides* if grip loss results in impairment that has not been considered adequately by other methods in AMA Guides, and Dr. Garfinkel adequately explained that he rated grip loss separately from carpal tunnel impairment based on muscle wasting caused by delay in authorizing carpal tunnel surgery, and (3) Dr. Garfinkel’s use of one percent pain add-on did not invalidate strength measurements for grip loss impairment, when Dr. Garfinkel explained that add-on was for effect of pain on applicant’s activities of daily living.

**Ulrich Skibbe, Applicant v. Sonoma State University, legally uninsured, administered by Sedgwick CMS, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 615. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s award of permanent disability based on impairment finding of panel qualified medical evaluator consistent with principles in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when panel qualified medical evaluator clearly explained why he believed strict AMA *Guides* rating did not accurately reflect applicant’s impairment of activities of daily living and why pinch and grip strength loss should be added to applicant’s ratings, and rating provided was within four corners of AMA Guides.

**Mark Dreher, Applicant v. Alliance Residential, Travelers Casualty & Surety Company, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 519. Permanent Disability—Rating—Permanent Total Disability—WCAB, denying removal, affirmed its prior decision [see Dreher v. Alliance Residential, 2015 Cal. Wrk. Comp. P.D. LEXIS 345 (Appeals Board noteworthy panel decision)] rescinding WCJ’s finding that applicant suffered 77 percent, and not 100 percent, permanent disability, and its determination that medical record required further development to clarify agreed medical examiner’s opinion regarding applicant’s employability.

**Gary Whitley, Applicant v. East Bay Municipal Utility District, PSI, Adjusted by Athens Administrators, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 512. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant instrument technician suffered permanent total disability, without basis for apportionment, as result of 4/10/2006 injury to his back and compensable consequence psychiatric injury, based on opinions of orthopedic and psychiatric agreed medical examiners indicating that applicant was unemployable due to orthopedic injuries resulting in five surgeries, use of narcotic pain medication and psychiatric impairment, coupled with opinion of applicant’s vocational expert that applicant was unemployable, when WCAB found that opinions of agreed medical examiners were substantial evidence under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut strict AMA *Guides* rating, and that opinion of defendant’s vocational expert regarding applicant’s potential employability in some occupations was not substantial evidence when considered together with applicant’s testimony and opinions of agreed medical examiners.

**James Kovash, Applicant v. California Department of Consumer Affairs Health and Safety, administered by State Compensation Insurance Fund, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 529. Permanent Disability—Rating—WCAB, affirming WCJ’s finding that applicant supervising investigator suffered 73 percent permanent disability as result of pulmonary, cognitive, psychological, and sleep disorders, held that WCJ properly instructed rating specialist to utilize AMA *Guides* Table 13-2 Class I at 10 percent for cognitive impairment as recommended by agreed medical examiner David Freeman, M.D., rather than AMA Guides Table 13-4 Class 2 at 10 percent for arousal disorder as recommended by agreed medical evaluator Jeffrey Hirsch, M.D., to rate applicant’s permanent disability, because even though both disorders rated at 10 percent, utilizing impairment for cognitive disorder produced higher overall permanent disability rating after apportionment to nonindustrial factors.

**Joe Navarro, Applicant v. McClarty Farms and State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 537. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant tractor foreman suffered 85 percent permanent disability, after apportionment, as result of 6/8/2015 industrial injury to his left elbow, right ear, right shoulder, neck, back, and heart, and that opinion of vocational expert P. Steve Ramirez did not constitute substantial evidence to support finding of 100 percent permanent disability “in accordance with the fact” under Labor Code § 4662(b) and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when vocational expert’s assumptions regarding medical residuals of applicant’s industrial injury were not supported by agreed medical examiner’s conclusions, and vocational expert did not show why diminished future earnings capacity adjustment in scheduled rating was insufficient as required under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624.

**Elisa Simone, Applicant v. G4S Secure Solutions (USA), Inc., National Union Fire Insurance, Administered By Gallagher Bassett Services, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 449. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, awarded applicant armed security officer 100 percent permanent total disability, without apportionment, for right hip and lumbar spine injuries, based on applicant’s credible testimony and opinions of orthopedic agreed medical evaluator, Kenneth Sabbag, M.D., who initially provided opinions regarding applicant’s impairment under AMA Guides but later reported that there was medical basis to conclude that applicant had total loss of earning capacity and was unable to compete in the open labor market due to complications stemming from failed surgeries, when WCAB concluded that Dr. Sabbag’s opinions and applicant’s credible testimony constituted substantial evidence to support 100 percent permanent disability award “in accordance with the fact” pursuant to Labor Code § 4662, that formal rating under Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), and Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, was unnecessary, given application of Labor Code § 4662, and that vocational expert evidence was not necessary to support award of permanent total disability when there was adequate medical evidence to support award [Note: Defendant’s petition for writ of review was subsequently denied on July 15, 2015, sub nom. G4S Secure Solutions, Inc. v. Workers’ Comp. Appeals Bd. (Simone), 2015 Cal. Wrk. Comp. LEXIS 96].

**Yolanda Gutierrez, Applicant v. American Career College, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 433. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s award of 95 percent permanent disability to applicant admissions evaluator for 6/3/2003 industrial injuries resulting in diagnosis of gastritis and fibromyalgia, and rejected applicant’s assertion that she was entitled to award of 100 percent permanent total disability based on opinions of agreed medical examiners Andrew Roth, M.D. (orthopedics), Gerald Windler, M.D. (psychiatry), and Stanley Majcher, M.D. (internal medicine), when WCAB found that opinions of agreed medical examiners were insufficient to support rebuttal of 1997 Schedule for Rating Permanent Disabilities or finding of 100 percent permanent total disability because opinions of Drs. Roth and Windler were conclusory, without reasonable discussion of factors of total disability, or significant apportionment evidence, Dr. Majcher’s opinion was based on significantly varying assignments of disability, was conclusory regarding permanent total disability as it was premised on areas outside his area of expertise, and lacked discussion with respect to his own apportionment analysis as it related to applicant’s fibromyalgia, and applicant did not obtain any vocational expert reporting to support finding of permanent total disability.

**Stephanie Hobbs, Applicant v. County of Los Angeles, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 436. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s award of 61 percent permanent disability to applicant custody assistant who suffered cumulative injury to her neck, psyche and in form of headaches during period ending 3/28/2008 and, while finding that WCJ was correct in rejecting alternative analysis of orthopedic agreed medical examiner Steven Silbart, M.D., with regard to applicant’s cervical spine impairment, returned matter to trial level to afford Dr. Silbart opportunity to offer medical opinion compliant with standards set forth in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB reasoned that, in keeping with its duty to develop record and Dr. Silbart’s role as agreed medical examiner, Dr. Silbart should be afforded opportunity to further explain why he believes scheduled AMA *Guides* rating does not accurately reflect applicant’s impairment, and should be given chance to provide rating method within four corners of AMA *Guides* which more accurately describes applicant’s impairment level.

**Steven Thompson, Applicant v. County of Tulare, National Union Fire Insurance Company, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 451. Permanent Disability—Rating—Vocational Expert Evidence—WCAB rescinded WCJ‘s finding that applicant maintenance worker who suffered industrial injury to his knees, left hip, left shoulder, and psyche on 10/21/2000 was 100 percent permanently totally disabled based on vocational expert testimony of Judith Najarian pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and, in split panel opinion, held that, based on medical evidence, applicant was entitled to 74 percent permanent disability, when WCAB found that Ms. Najarian’s vocational analysis was unreliable because Ms. Najarian failed to account for apportionment of applicant’s physical disability and took into account impermissible factors prohibited pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, including applicant’s lack of computer and educational skills, in determining that applicant was not vocationally feasible, and did not consider opinion of orthopedic agreed medical examiner that 15 percent of applicant’s orthopedic permanent disability was due to non-industrial factors; Chairwoman Caplane, dissenting from majority panel, opined that WCJ should have ordered further development of record to allow applicant to procure updated medical reports and vocational expert evidence complying with principles in *Ogilvie*.

**Luis Trujillo, Applicant v. Waste Management, ACE, administered by Gallagher Bassett, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 452. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s award of 84 percent permanent disability to applicant garbage collector who suffered industrial injury to his spine, abdomen, psyche, and in forms of bladder dysfunction, erectile dysfunction and GERD on 2/11/2009, and rejected applicant’s assertion that he should have received 100 percent permanent total disability award based on report of vocational expert Laura Wilson indicating that applicant was unemployable, when WCAB found vocational expert’s report unpersuasive as it failed to discuss applicant’s transferrable skills as tax preparer and notary public, for which jobs applicant was previously certified, and WCAB concluded that report, which was not reviewed by any physicians, failed to rebut scheduled diminished future earning capacity factor pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624.

**Victoria Wright, Applicant v. Michael’s, Gallagher Bassett, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 455. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant seasonal sales supervisor was 100 percent permanently totally disabled due to her 1/28/2008 industrial back injury, based on applicant’s testimony and reports of vocational expert Frank Diaz indicating that applicant had total loss of earning capacity due to pain and effects of medication, which were supported by agreed medical evaluators’ reports and contemporaneous records of primary treating physician, and WCAB found no basis to apportion applicant’s permanent disability to nonindustrial psychological problems based on opinion of agreed medical examiner Dr. Petrakis as suggested by defendant because, while Dr. Petrakis noted that he may have apportioned 30 percent of applicant’s permanent disability to nonindustrial factors, he clearly concluded that applicant was currently unemployable due to effects of numerous different medications in conjunction with her psychiatric injury.

**Willie Sanchez, Applicant v. California Department of Corrections & Rehabilitation, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 482. Permanent Disability—Rating—Combined Values Chart—WCAB, affirming WCJ, held that there was good cause to reopen applicant youth counselor’s prior stipulated award of 67 percent permanent disability for new and further disability caused by left atrial enlargement, and that WCJ did not err by adding additional 21 percent permanent disability (based on 10 percent whole person impairment described by agreed medical examiner Gerald Markovitz, M.D.) caused by left atrial enlargement, rather than combining permanent disability ratings using Combined Values Chart, when WCAB reasoned that, while strict application of Combined Values Chart is prima facie evidence of level of disability, evidence may be rebutted by substantial evidence showing that different method of combining multiple impairments results in more accurate rating of disability, and WCAB believed that in this case finding of 88 percent permanent disability by adding impairments was supported by substantial medical evidence consisting of Dr. Markovitz’s opinions regarding combined effect of applicant’s medical conditions on his future, including increased risk of sudden death, and WCAB was persuaded that adding ratings for final rating of 88 percent most accurately reflected applicant’s true level of permanent disability.

**Ricardo Perez, Applicant v. Coachella Valley Printing Group, Preferred Employers Insurance Company and State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 477. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s award of 23 percent permanent disability for applicant printer’s 9/15/2010 specific injury to his cervical spine, lumbar spine, shoulders, knees, and digestive tract and 23 percent permanent disability for admitted cumulative injury to same body parts, and remanded matter for further development of record, when WCJ declined to adopt whole person impairment assigned by agreed medical examiner Michael Luciano, M.D., for applicant’s knee impairment into final permanent disability ratings, having concluded that Dr. Luciano did not adequately justify using Table 15 gait derangement to rate applicant’s impairment, but WCAB, citing Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and noting that AMA *Guides* are to be liberally, rather than mechanically, applied by evaluating physician using his or her expertise, believed that Dr. Luciano’s expert opinion in capacity as agreed medical examiner should have been given deference, and that rather than provide no permanent disability rating for applicant’s knee injury, WCJ should allow Dr. Luciano opportunity through supplemental report or deposition to provide more detailed explanation as to why he used gait derangement to find impairment.

**Mario Cortez, Applicant v. The Regents of the University of California Riverside, PSI, administered by Sedgwick Claims Management Services, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 377. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant police officer who incurred industrial injury in form of skin cancer (basal cell carcinoma) to his face/right cheek while employed by defendant between 12/31/94 and 3/5/2012 suffered 25 percent permanent disability, with 90 percent apportioned to industrial cause and 10 percent to other factors, based upon reporting of applicant’s treating physician, Samer Alaiti, M.D., when Dr. Alaiti relied on AMA Guides criteria for dermatologic disorders in Table 8-2 and determined that applicant fell within criteria for Class 2 impairment, which includes “Skin disorder signs and symptoms present or intermittently present and limited performance of some activities of daily living and may require intermittent to constant treatment,” and WCAB found that although panel qualified medical evaluator Howard Sofen, M.D., concluded that applicant fell within Class 1 (which includes “no or few” limitations of activities of daily living), Dr. Alaiti disagreed given that applicant was limited in some activities of daily living based on many prophylactic conditions imposed on applicant as result of injury and need for applicant to avoid undue exposure to sunlight, that Dr. Alaiti and Dr. Sofen agreed that applicant would require intermittent treatment in form of yearly dermatology examinations and may require intermittent biopsy of suspicious lesions, and that Dr. Alaiti set forth sufficient reasoning for his impairment finding pursuant to AMA Guides and Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), and his opinion constituted substantial evidence.

**Betoel Gomez, Applicant v. United Pallet Services and CIGA by its servicing facility Sedgwick CMS for Ullico Casualty Company, in liquidation, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 381. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant laborer suffered 21 percent permanent disability as result of admitted injury to his right hand and alleged injury to both hands and wrists on 10/11/2011 and concluded that applicant’s injury caused 6 percent whole person impairment (10 percent permanent disability) based on qualified medical evaluator Christopher Chen, M.D.’s, initial application of AMA *Guides* rating applicant’s impairment due to grip loss, when Dr. Chen’s analogy to hernia impairment using Table 6-9, Class 2 to find 13 percent impairment in his supplemental report was insufficient under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Dr. Chen did not explain how Table 6-9 more accurately reflected applicant’s impairment than grip loss, and that although WCJ raised defendant’s failure to seek clarification of Dr. Chen’s opinion, applicant carried burden of proof to justify rebuttal of strict rating using AMA *Guides*, and applicant also declined to seek clarification from Dr. Chen.

**Orin Hipsher, Applicant v. State of California Department of Corrections & Rehabilitation, California Correctional Institute-Tehachapi, lawfully uninsured, administered by State Compensation Insurance Fund, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 387. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant correctional officer who suffered industrial injury to his left arm, left shoulder, neck, and psyche was permanently totally disabled based on his psychological disability notwithstanding possibility that he would have spinal surgery on some future date, when WCAB found that applicant’s condition was permanent and stationary despite certification for spinal surgery which applicant may undergo at future time, that any orthopedic impairment applicant may have suffered was subsumed by applicant’s permanent and total psychological impairment, that there was no evidence that even successful spinal surgery would improve applicant’s mental health to point of reducing his permanent disability, and that substantial medical evidence supported finding that no work restrictions could accommodate applicant’s psychological disability and that he was permanently totally disabled on that basis.

**Sung Lee, Applicant v. Physicians Associates of Greater San Gabriel, Everest National Insurance, adjusted by Sedgwick, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 389. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant claims examiner who suffered industrial injury to her left thumb, left shoulder and spine during period 10/24/2000 through 10/6/2006 incurred 19 percent permanent disability based on DEU rating which, at WCJ’s request, was calculated using diagnosis-related estimate (DRE) method of assessing spinal disability rather than range of motion (ROM) method, when WCAB concluded that WCJ did not err in requesting use of ROM method because there was no evidence of “multi-level” spinal involvement (such as fractures, disc herniations, stenosis) within meaning of AMA Guides or clear finding of radiculopathy so as to justify application of ROM method over DRE method, reporting of agreed medical examiner Thomas Shery, M.D., did not constitute substantial evidence to support application of ROM method, and application of DRE method was supported by reporting of applicant’s treating physician, Peter Lee, M.D., who determined that DRE method of calculating disability was appropriate, and, additionally, WCAB found that WCJs have authority under Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), to use their independent assessment in determining what method of rating to use and to ask that expert rater use specific rating method selected in rating permanent disability, and that, here, rater’s memorandum to WCJ listing four criteria supporting use of ROM method was not persuasive because there were no identifiable factors found by Dr. Shery which triggered use of ROM method based on criteria listed by rater.

**Kathryn Moss, Applicant v. Vivendi/Universal (Universal Music Group), American Home Assurance Company, Administered by Chartis, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 394. Permanent Disability—Rating—WCAB, in split panel opinion, concluded that evidentiary record did not support WCJ’s finding that applicant manager who suffered industrial injury to her knees, left shoulder, left elbow, cervical spine, skin, left arm, right hand, wrist, forearm, and in forms of fibromyalgia, headaches and irritable bowel syndrome on 3/23/2003 incurred permanent total disability, without apportionment, pursuant to 1997 Schedule for Rating Permanent Disabilities, and awarded applicant 80 percent permanent disability, when WCAB found no basis to disregard opinions of agreed medical examiners with respect to permanent disability and apportionment, and none of reporting physicians, including those upon whom WCJ relied, found applicant to be 100 percent permanently disabled or unemployable and totally precluded from open labor market, and there was no vocational expert testimony or report indicating that applicant was unemployable or otherwise precluded from open labor market; WCAB also granted applicant’s motion to strike rating instruction’s and DEU rating expert’s recommended rating of 70 percent permanent disability, when WCAB found that, while rater correctly omitted orthopedic disability from rating to extent it overlapped with disability caused by applicant’s fibromyalgia and that distinct nature of applicant’s disabilities as described by agreed medical examiner in rheumatology did not preclude overlap because disabilities precluded same activities such that rating for one of disabilities was sufficient, rater should have increased rating for applicant’s headache disability based on subjective factors precluding applicant from exposure to bright light and noise and should have included additional rating for applicant’s left shoulder disability as set forth in WCAB’s rating instructions; Commissioner Lowe, dissenting from majority panel, would have affirmed rating of 70 percent as recommended by DEU rating specialist based on her finding that applicant’s subjective factors of disability for her headache condition and her left shoulder were already included within recommended rating and that applicant’s orthopedic, headache and irritable bowel syndrome work preclusion did not reduce applicant’s ability to compete in open labor market beyond her fibromyalgia work restriction.

**Ernesto Ortega, Applicant v. SBM Site Services, LLC, CCMSI, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 396. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant’s industrial injury to his lumbar, thoracic and cervical spine caused 49 percent permanent disability, without justification for apportionment, based upon opinion of panel qualified medical evaluator Dr. Dawdy, and despite defendant’s assertion that Dr. Dawdy’s reporting was insufficient to support permanent disability award, WCAB concluded that his reporting constituted substantial evidence and was more persuasive than other medical evidence in record, when Dr. Dawdy utilized AMA Guides DRE Lumbar Category III, DRE Thoracic Category II and DRE Cervical Category II, respectively, to rate applicant’s lumbar, thoracic and cervical disabilities, and testified that he conducted three independent measurements in assessing disability, Dr. Dawdy examined applicant and thoroughly reviewed medical records and diagnostic reports and discussed results of EMG study, although defendant argued that radiculopathy found by Dr. Dawdy was not verifiable by EMG, Dr. Dawdy explained that injured workers often report radicular symptoms but test normal on electrodiagnostic tests, Dr Dawdy’s opinions were consistent with applicant’s testimony describing pain and discomfort he experienced along his spine, and, after describing applicant’s EMG and MRI results and his familiarity with Labor Code §§ 4663 and 4664, Dr. Dawdy testified that apportioning applicant’s disability in this case would be speculative.

**Rolando Ibarra, Applicant v. C.W. Brower, Inc., Intercare Insurance Services, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 417. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant order selector who suffered admitted industrial right shoulder injury on 11/29/2011 incurred 34 percent permanent disability based on opinion of panel qualified medical evaluator, Jerome Robson, M.D., when Dr. Robson found shoulder impairment under AMA *Guides* using range of motion method combined with grip loss, and WCAB concluded that Dr. Robson’s opinion constituted substantial evidence pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and under Escobedo v. Marshalls (2005) 70 Cal. Comp. Cases 604 (Appeals Board en banc opinion), to support permanent disability finding, as Dr. Robson examined applicant, took accurate history and framed his opinion in terms of reasonable medical probability based upon his expertise, Dr. Robson was able to stay within four corners of AMA *Guides* and explained that applicant had grip loss related to his shoulder and elbow instability, and defendant did not produce any evidence that applicant’s prior hand injury caused any grip loss or permanent disability.

**Bill Mumma, Applicant v. State of California, Department of Justice, Legally Uninsured, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 420. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s permanent disability findings in connection with claims filed by applicant special agent for 6/1/2009 industrial injury to his knees and in forms of gastro-esophageal reflux disease and diabetes, and for cumulative injury to his left shoulder, left knee, feet, and in forms of hypertension, gastro-esophageal reflux disease, diabetes, sleep disorder, and headaches, and remanded matter for further development of medical record to clarify issues raised by rater with regard to agreed medical examiners’ impairment findings, when WCAB concluded that WCJ’s findings could not be affirmed because agreed medical examiners’ assessments were undermined by permanent disability rater’s suggestion that assessments were inconsistent with AMA *Guides*, and WCJ disregarded rater’s opinion, without explanation, although he had specifically asked for it, WCJ’s approach for determining permanent disability was not consistent with requirements in Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), and, other than general reference to opinions of agreed medical examiners and stating that he applied his own expertise, WCJ did not specifically explain why he disregarded rater’s opinion, why he determined that agreed medical examiners’ assessment of impairment were valid under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), aff’d sub nom. *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and how he rated permanent disability.

**William Van-Hattem, Applicant v. City and County of San Francisco, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 426. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s award of 82 percent permanent disability and awarded applicant deputy sheriff 100 percent permanent disability for 2/5/2002 industrial right knee injury, when WCAB concluded that (1) in awarding permanent disability based on sedentary work restriction provided by agreed medical examiner David Chittenden, M.D., WCJ improperly disregarded Dr. Chittenden’s deposition testimony regarding applicant’s restrictions as to days, hours, necessity for frequent breaks and pain which exceeded criteria for sedentary work and which, when coupled with finding of applicant’s vocational expert that applicant was unable to compete in open labor market, constituted substantial evidence to support award of permanent total disability “according to the fact” under Labor Code § 4662(b), (2) WCJ’s finding that applicant could but was unwilling to work was not supported by substantial evidence considering entire record, which indicated that applicant would have continued working but was medically unable to work for more than a decade due to his industrial injury and its effects, (3) applicant’s failure to look for work after his industrial injury or to seek job accommodation from his employer and his expression of desire to vacation in Mexico with his wife after enduring significant trauma for many years was reasonable and did not demonstrate unwillingness to return to work as found by WCJ, and (4) reporting of defense vocational expert upon which WCJ relied did not constitute substantial evidence to support sedentary work limitation because vocational expert discounted significant work restrictions imposed by Dr. Chittenden and improperly substituted his own opinion regarding applicant’s limitations for Dr. Chittenden’s medical opinion.

**Mark Dreher, Applicant v. Alliance Residential, Travelers Casualty & Surety Company, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 345. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant live-in maintenance supervisor who suffered 10/19/2009 industrial injury to his neck, right shoulder, right leg, right hip, right knee, and in forms of gait impairment, headaches and sleep disorder suffered 77 percent permanent disability, when applicant claimed that he suffered 100 percent permanent disability pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, based on opinion of vocational expert Malcolm Brodzinsky and orthopedic agreed medical examiner Andrew Burt, M.D., and, although WCJ disregarded Dr. Burt’s opinion that applicant was rendered unable to participate in gainful employment and was not good candidate for vocational rehabilitation because of his profound level or orthopedic impairment because WCJ found opinion to be outside Dr. Burt’s area of expertise, WCAB believed that physician may be qualified to provide expert medical opinion as to injured employee’s ability to participate in vocational rehabilitation, and that record needed further development in order to clarify Dr. Burt’s opinion regarding whether applicant rebutted scheduled rating in 2005 Permanent Disability Rating Schedule, and as to whether Dr. Burt’s opinion with respect to applicant’s employability constituted substantial evidence.

**David Law, Applicant v. Sierra Pacific Industries, PSI and Self-Administered, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 355. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant suffered permanent total disability as result of admitted injuries to his neck, low back and in form of headaches on 1/7/2000, as well as injuries to other body parts, based upon reports of applicant’s treating physician, which were most recent reports in record and were most consistent with applicant’s credible testimony, and agreed with WCJ’s determination that reporting of orthopedic surgeon Andrew Burt, M.D., which met new apportionment standards, constituted substantial evidence to support finding that there was no basis for apportionment of applicant’s disability under Labor Code §§ 4663 and 4664.

**Tim Hager, Applicant v. County of Santa Clara Central Fire District, PSI, administered by County of Santa Clara Employee Services Agency Risk Management, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 254. Permanent Disability—Rating—WCAB, amending WCJ’s finding to correct technical rating error, held that applicant firefighter incurred 70 percent permanent disability as result of cumulative trauma to his upper extremities (bilateral carpal tunnel and cubital tunnel syndromes) and to his heart during period 2/23/87 through 1/9/2011, and that rating of orthopedic agreed medical examiner Mark Anderson, M.D., with respect to applicant’s upper extremities constituted substantial evidence and was properly relied upon by WCJ in rating applicant’s permanent disability, when Dr. Anderson found applicant’s whole person impairment based on grip loss and explained rationale for using grip loss to find impairment pursuant to requirements in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, due to impacts of applicant’s upper extremity injury on his activities of daily living, including use of computer, driving and basic self-care, and WCAB distinguished this case from cases cited by defendant in which agreed medical examiners who used grip loss to rate impairment failed to explain why they departed from strict application of AMA *Guides* and why use of grip loss more accurately reflected injured worker’s impairment, and concluded that use of Table 16-34 to rate impairment based on grip loss is squarely within “four corners” of AMA *Guides* as contemplated by *Almaraz/Guzman*, that Dr. Anderson’s reporting was sufficient to rebut AMA *Guides* impairment rating of zero, and that AMA *Guides*, 5th Edition, appears to preclude zero whole person impairment ratings where injury limits performance of common activities of daily living reflected in Table 1-2, such as experienced by applicant.

**Heidi Kirkwood, Applicant v. Verizon California, Inc., American Home Assurance Company, Administered By Sedgwick Claims Management Services, Inc., Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 257. Permanent Disability—Rating—Permanent Total Disability—WCAB, denying applicant’s petition for reconsideration, upheld its prior decision [see Kirkwood v. Verizon California, Inc., 2015 Cal. Wrk. Comp. P.D. LEXIS 134 (Appeals Board noteworthy panel decision)], in which it rescinded WCJ’s unapportioned award of 100 percent permanent disability and returned matter to WCJ to determine how much of applicant’s overall disability was attributable to preexisting, non-industrial left arm injury, how much was attributable to industrial cumulative injury and whether or not Subsequent Injuries Benefit Trust Fund had any liability, when WCAB found that even though applicant lost use of both hands, conclusive presumption of 100 percent permanent disability in Labor Code § 4662 did not apply because applicant’s preexisting disability caused by non-industrial left arm amputation could not be combined with current industrial injury to justify application of conclusive presumption of permanent total disability.

**Doris Noble, Applicant v. VEC Farms, LLC, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 260. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant was permanently totally disabled from admitted industrial injury to her knees based upon reporting of orthopedic agreed medical examiner, Henry Edington, M.D., and vocational expert, Bob Rehm, whose opinions were sufficient to rebut scheduled permanent disability rating pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when Mr. Rehm concluded that there were no jobs that applicant could perform and that applicant was not amenable to vocational rehabilitation due to applicant’s severe chronic pain, sleep difficulties, medication intake and need to ambulate with four-point cane, Dr. Edington confirmed Mr. Rehm’s findings and also determined that applicant was significantly restricted in her activities of daily living, and WCAB rejected defendant’s contention that there was no expert evidence on effect of applicant’s industrial pain medication on her future earning capacity when Mr. Rehm found that side effects of applicant’s pain medication impaired her ability to work and engage in vocational rehabilitation and WCAB found that, as vocational expert, Mr. Rehm was uniquely qualified to gauge effect medication will have on injured worker’s ability to compete for work or benefit from vocational rehabilitation, and that is why Dr. Edington deferred consideration of effect of applicant’s medication to other experts.

**Gregory Greene, Applicant v. Central Parking Systems, PSI, adjusted by Sedgwick CMS, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 283. Permanent Disability—Rating—AMA Guides—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant incurred 75 percent permanent disability after apportionment as result of 5/14/2008 industrial injuries to his ankles, right foot, pelvis, psyche, bladder, and in form of erectile dysfunction, and that reporting of applicant’s primary treating physician, William Mouradian, M.D., constituted substantial evidence under principles in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA Guides impairment rating, when majority WCAB panel, while noting that strict reading of AMA Guides (particularly Table 17-2 at p. 526) precludes combination of gait impairment with other impairment for lower extremities in determining overall impairment, concluded that Dr. Mouradian’s combination of gait derangement with range of motion, ankle strength and sensory loss ratings on lower extremities most accurately reflected applicant’s overall impairment within four corners of AMA Guides and was supported by reporting of panel qualified medical evaluator Barry Braiker, M.D., who also combined gait derangement with other lower extremity impairments, and with applicant’s credible testimony; Commissioner Zalewski, dissenting from majority panel, concluded that neither Dr. Mouradian’s reports nor reports of Dr. Braiker constituted substantial evidence to rebut strict application of AMA Guides prohibiting combination of gait derangement with other lower extremity impairments, because both doctors combined applicant’s gait derangement with other impairments of his lower extremities without explaining why they departed from strict application of AMA *Guides* or why their impairment findings more accurately depicted applicant’s level of disability, and Commissioner Zalewski believed that since there was insufficient medical evidence upon which to base permanent disability finding, WCAB had duty to further develop medical record on *Almaraz/Guzman* issue notwithstanding that defendant filed declaration of readiness to proceed.

**Deborah Berndt, Applicant v. Correctional Training Facility, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 178. Permanent Disability—Rating—Vocational Evidence—WCAB, affirming WCJ, held that applicant supervising dental assistant who suffered cumulative psychiatric injury during period 6/1/2008 through 6/15/2011incurred 22 percent permanent disability based upon opinion of psychiatric panel qualified medical evaluator, and that reporting of applicant’s vocational expert indicating that applicant had 40 percent diminished future earning capacity was insufficient to rebut scheduled rating in 2005 Permanent Disability Rating Schedule and, in fact, was so defective as to be incapable of supporting any award such that costs related to report were properly denied, when vocational expert based his opinion upon false belief that applicant was required to change occupations and seek work outside department of corrections, there was no indication that vocational expert reviewed applicant’s psychiatric reports, work restrictions or medical conditions, vocational expert did not discuss applicant’s transferable skills or potential effect of vocational rehabilitation on his earnings, and vocational expert utilized earnings data from location of applicant’s home rather than from his employment location.

**Mary Smith, Applicant v. County of Sacramento, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 205. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant nurse with cumulative injury to her shoulders during period through 1/6/2011 suffered 79 percent permanent disability based on analysis under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, provided by agreed medical examiner, when WCAB found that agreed medical examiner’s opinion constituted substantial evidence to rebut strict AMA Guides rating as agreed medical examiner explained why strict application of range of motion impairments in AMA *Guides* did not accurately reflect applicant’s shoulder impairment, did not improperly rely on language from 1997 Schedule for Rating Permanent Disabilities to “achieve desired result,” used his clinical judgment to evaluate applicant’s impairment most accurately, and used Table 16-3 at p. 439 (conversion table) of AMA *Guides* appropriately to obtain impairment that accounted for significant problems applicant experienced with both upper extremities.

**Arshed Qazi, Applicant v. The Boeing Company, ACE American Insurance Company, administered by Sedgwick Claims Management Services, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 233. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant precision parts inspector was permanently and totally disabled as result of 4/18/2005 industrial injury to his lumbar spine, thoracic spine, and in forms of hypertension, diabetes, GERD and obstructive sleep apnea, based upon evidence of applicant’s total loss of future earning capacity and inability to return to open labor market, which WCJ found rebutted scheduled rating, when WCAB determined that vocational expert evidence upon which WCJ relied raised issues regarding whether his findings were based upon impermissible factors as described in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and whether he failed to consider non-industrial apportionment found in prior 66 percent permanent disability award, and, additionally, that further proceedings were required as to whether vocational expert inappropriately relied upon applicant’s lack of cognitive function, which was not supported by medical evidence, as basis for his finding of applicant’s non-employability, whether applicant retired due to his industrial injury, and whether applicant decided to limit his employment search to Los Angeles area or whether such limitation was based on job market considerations.

**Arlene Zendel, Applicant v. County of Los Angeles, PSI, Adjusted By Intercare Insurance Services, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 244. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that agreed medical examiner Richard Siebold, M.D., did not act improperly by determining applicant’s whole person impairment using range of motion (ROM) rather than diagnostic-related estimate method, and that Dr. Siebold’s report constituted substantial evidence, when Dr. Siebold discussed his reasoning for changing to ROM method to evaluate applicant’s impairments after reviewing additional studies, including cervical and lumbar spine MRI which revealed changes and protrusions at multiple levels, and stated in his deposition that applicant had multiple levels of involvement and positive EMG testing for both upper and lower extremities, and in light of MRI and EMG test results revealing involvement at multiple levels, Dr. Siebold believed that it was appropriate to determine impairment using ROM method.

**Patrick Conen, Applicant v. Blue Star Ready Mix, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 97. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s award of 100 percent permanent disability to applicant heavy equipment operator who suffered 7/17/2008 industrial injury to his low back, urological system and psyche, based upon opinions of orthopedic agreed medical examiner Chester Hasday, M.D., and psychiatric agreed medical examiner Burton Wixen, M.D., who both concluded that applicant was precluded from returning to gainful employment due to combination of failed back surgery, opiate dependence, level of depression, and chronic pain, and WCAB found that, even without vocational analysis, agreed medical examiners’ expertise in discerning applicant’s inability to engage in full-time employment given physical and mental disabilities caused by his injury justified WCJ’s reliance upon their opinions to find that applicant was totally permanent disability “in accordance with the fact” under Labor Code § 4662, absent evidence of vocational feasibility.

**David Lopez, Applicant v. Patterson Lift Trucks, Sparta Insurance Company, administered by Gallagher Bassett Services, Inc., Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 137. Permanent Disability—Rating—Vocational Evidence—WCAB, denying defendant’s petition for removal, affirmed WCJ’s order deferring issue of whether applicant road mechanic’s scheduled permanent disability rating stemming from injury to right leg and foot was rebutted, when WCAB found that (1) neither opinion of applicant’s vocational expert, Jeff Malmuth, nor opinion of defense vocational expert, Emily Tincher, constituted substantial evidence on issue of permanent disability because neither Mr. Malmuth nor Ms. Tincher ever viewed applicant’s right foot or ankle, medical reports provided to vocational experts did not provide image of applicant’s right foot and ankle, and having viewed applicant’s right foot and ankle at trial, WCJ determined that observation was relevant to making decision regarding disability, (2) since record was devoid of substantial evidence on rebuttal of scheduled rating, record required further development regarding this issue, and (3) WCAB was not persuaded that substantial prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be adequate remedy if matter ultimately proceeds to final decision adverse to defendant.

**Heidi Kirkwood, Applicant v. Verizon California, Inc., American Home Assurance Company, Administered By Sedgwick Claims Management Services, Inc., Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 134. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s award of 100 percent permanent disability, without apportionment, to applicant operator who suffered industrial injury to her right upper extremity and psyche from 8/1/2006 to 8/1/2007, and returned matter to WCJ to determine how much of applicant’s overall disability was attributable to preexisting, nonindustrial left arm injury, how much was attributable to industrial cumulative injury and whether or not Subsequent Injuries Benefit Trust Fund (SIBTF) had any liability (which WCAB determined, in interest of judicial economy, should be considered contemporaneously with permanent disability and apportionment to avoid later re-litigation of issues by SIBTF), when WCAB found that even though applicant lost use of both hands, conclusive presumption of 100 percent permanent disability in Labor Code § 4662(a) did not apply because applicant did not suffer injury to both of her hands as result of industrial injury, that applicant’s left arm injury (amputation below elbow) predated cumulative industrial injury in this case and preexisting disability cannot be combined with current industrial injury to justify application of conclusive presumption of permanent total disability, that holdings in **Kaiser Foundation Hospitals v. W.C.A.B. (Dragomir-Tremoureux)** (2006) 71 Cal. Comp. Cases 538 (writ denied) and Regents of the Univ. of Calif. v. W.C.A.B. (Siegel) (2011) 76 Cal. Comp. Cases 1237 (writ denied), as relied upon by applicant, did not apply here, and that vocational expert evidence was insufficient to rebut scheduled rating for applicant’s right upper extremity injury or support finding of 100 percent permanent disability “in accordance with the fact” pursuant to Labor Code § 4662(b) and analysis in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, because vocational expert disregarded impact of applicant’s preexisting, nonindustrial amputation in analyzing applicant’s diminished future earning capacity and vocational feasibility.

**Ronald Aima, Applicant v. Buestad Construction, Inc., State Compensation Insurance Fund, Defendants,** *2015 Cal. Wrk. Comp. P.D. LEXIS 62*. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant construction laborer incurred 100 percent permanent disability from industrial cumulative injury to his back, psyche and in form of sleep and sexual dysfunction during period ending 12/26/2006, without justification for apportionment, based on applicant’s credible testimony and opinions of agreed medical examiners, Drs. Taylor (orthopedic) and Lerchin (psychiatric) and opinion of vocational expert selected by applicant, Malcolm Brodzinsky, which WCAB found more persuasive than reporting of defendant’s vocational expert, Eugene Van de Bittner, when WCAB found that work restrictions imposed by Drs. Taylor and Lerchin combined with applicant’s cognitive impairments suffered as side effect of medication he took, including Percocet, Trazodone, Lyrica, Flexoril, Synecot and Pristiq, made it impossible for applicant to compete in labor market and caused total loss of future earning capacity pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, that opinions of Drs. Taylor and Lerchin, as well as reporting of Mr. Brodzinsky, were sufficient to rebut strict AMA Guides impairment under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, that Mr. Van de Bittner’s opinion that there were some areas of labor market in which applicant could perform was not plausible in light of varied and significant work restrictions and limitations, both physical and cognitive, that were applicable to applicant according to agreed medical examiners, that Mr. Van de Bittner unduly minimized effects of applicant’s medication-related cognitive and attention limitations in asserting that there were jobs applicant could perform within physical restrictions imposed by Dr. Taylor, and that Mr. Van de Bittner did not adequately explain how applicant, who Dr. Taylor opined would need to be absent from work an average of three days per month because of his continuing pain, could satisfy production and scheduling required of any employer.

**Randal Delao, Applicant v. State of California, Department of Mental Health, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 748. Permanent Disability—Rating—Apportionment—WCAB, reversing WCJ, held that applicant custodian who suffered two industrial injuries to his spine, internal systems, and psyche, one on 6/13/96 and another on 7/31/96, incurred permanent total disability and that disability was apportionable as between applicant’s two injuries under Labor Code § 4663, but majority of WCAB panel remanded matter to WCJ for rating of applicant’s orthopedic and psychiatric disabilities and apportionment of permanent disability between applicant’s two injuries, with consideration of combining disabilities using multiple disabilities table [Note: Applicant’s petition for writ of review was subsequently denied on February 6, 2015, sub nom. Delao v. Workers’ Comp. Appeals Bd., 80 Cal. Comp. Cases 287].

**John More, Applicant v. SEMA Construction, Zurich North America, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 25. Permanent Disability—Rating—AMA *Guides*—Use of Cane—WCAB affirmed WCJ’s finding that applicant crane operator incurred 41 percent permanent disability as result of 8/2/2009 industrial right knee injury, based on reports of applicant’s primary treating physician wherein physician found gait disturbance impairment under Table 17.5(e) of AMA *Guides* due to applicant’s use of cane “25% of the time” to “full time,” when Table 17.5(e) describes 20 percent impairment in terms of “routine use” of cane, and WCAB found that “routine use” falls within parameters identified by primary treating physician’s reports, that primary treating physician’s reports were substantial evidence to justify finding of permanent disability, and that fact that applicant admitted that he did not use cane “every moment of every day” did not disprove “routine use” of cane.

**Barbara Joberg, Applicant v. Illuminations, Inc., Arrowood Indemnity Co., Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 717. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s unapportioned award of 100 percent permanent disability to applicant customer service representative for 2/2/2001 industrial orthopedic injuries, and remanded matter for further proceedings on issue of apportionment, when orthopedic agreed medical examiner, Eugene Harris, M.D., and defense psychiatric qualified medical evaluator, Myron Nathan, M.D., found significant apportionment and WCAB determined that their apportionment opinions constituted substantial evidence, that substantial evidence did not support WCJ’s reasoning that applicant was permanently totally disabled pursuant to Labor Code § 4662 based on testimony of vocational expert, even if apportionment of Drs. Harris and Nathan is applied, that while there is authority stating that permanent disability conclusively presumed to be total under Labor Code § 4662 cannot be apportioned, apportionment is applicable to permanent total disability determined “in accordance with the fact,” and apportionment under Labor Code §§ 4663 and *4664* is not precluded when permanent total disability is determined pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and that record did not establish good cause for vocational expert testifying at trial in lieu of issuing written report under Labor Code § 5703(j) and 8 Cal. Code Reg. § 10606.5, and there was no showing that applicant exercised due diligence in attempting to obtain written report or that defendant’s instruction not to provide report precluded applicant from obtaining report.

**Jesse Martinez, Applicant v. Linda Vista Farms, Zenith Insurance Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 721. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s finding that applicant was 45 percent permanently disabled as result of 7/3/2010 admitted industrial injury to his lumbar spine and urologic system, and remanded matter to trial level for further development of record with regard to whether there was substantial evidence to rebut scheduled permanent disability rating based upon applicant’s diminished future earning capacity, when applicant asserted that combination of medical reports and opinion of his vocational expert established that he was 100 percent permanently disabled because effects of his industrial injury precluded him from competing in open labor market, but WCAB found that neither applicant’s nor defendant’s vocational expert adequately addressed medical evidence to support determination as to whether there was basis to rebut diminished future earning capacity adjustment factor pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, as defense vocational expert accepted that applicant’s physical limitations caused by his industrial injury would place some limitations on his ability to engage in subsequent employment, but offered no opinion as to whether such limitations would be greater than rating provided by permanent disability rating schedule, albeit less than 100 percent, and reporting of applicant’s expert lacked necessary medical evidence to substantiate her conclusion that applicant was unfit to return to labor market based upon her perceptions of physical limitations caused by applicant’s industrial injury and, although applicant’s expert found that applicant’s physical limitations prevented him from transferring his existing skills to new employment, she acknowledged that applicant had aptitude to learn new skills for jobs that existed in local labor market.

**Javier Ramirez, Applicant v. Space Lok, Inc., Republic Underwriters Insurance, administered by Sedgwick, Defendants**, 2015 Cal. Wrk. Comp. P.D. LEXIS 9. Permanent Disability—Rating—AMA Guides—WCAB rescinded WCJ’s finding that applicant machine operator incurred 36 percent permanent disability as result of 7/23/2012 industrial injury to his left shoulder, left wrist, left thumb, neck, and psyche, and held that applicant’s injuries caused 51 percent permanent disability in accordance with opinion of panel qualified medical evaluator, Dr. Clive Segil, who rejected strict AMA Guides whole person impairment (WPI) of 1 percent for applicant’s left thumb and found 18 percent WPI based on applicant’s loss of grip strength, and WCAB concluded that, because Dr. Segil found 18 percent WPI utilizing four corners of AMA Guides, it was error for WCJ to instruct rater to use 1 percent WPI, and that Dr. Segil’s reporting was sufficient to rebut strict AMA *Guides* WPI pursuant to principles in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, as Dr. Segil adequately explained that applicant’s disability was best described by grip loss due to extent of thumb disfigurement following surgery and serious joint problem.

**Armand La Count, Applicant v. Los Angeles County Metropolitan Transit Authority, PSI, Defendant,** 2015 Cal. Wrk. Comp. P.D. LEXIS 20. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that applicant cash/relief vault truck driver incurred permanent total disability as result of 11/16/2004 admitted industrial injury to his neck, back, left shoulder, left wrist, right hip, psyche, gastrointestinal system, and in forms of diabetes, hypertension and sleep disorder, when WCAB found that (1) unrebutted opinions of agreed medical examiners in orthopedics, psychiatry and internal medicine, and opinion of agreed vocational evaluator constituted substantial evidence to support finding of 100 percent permanent disability, (2) contrary to defendant’s assertion, WCJ properly considered findings of non-industrial apportionment and still found applicant to be permanently totally disabled even after apportionment, by adding applicant’s impairment rather than using Combined Values Chart pursuant to opinion of orthopedic agreed medical examiner that there was synergistic effect to applicant’s orthopedic injuries so that they should be added rather than combined, and opinion of internal medicine agreed medical examiner that applicant would be 100 percent permanently disabled even after apportionment, and (3) alternatively, applicant was permanently totally disabled “in accordance with the fact” under Labor Code § 4662, based upon his inability to compete in open labor market.

**Maria Varguez, Applicant v. I/O Controls Corporation, Employers Compensation Insurance Company, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 30. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s award of permanent disability to applicant test technician/quality control worker/warehouse worker with industrial injuries to her cervical and lumbar spines, right shoulder, upper extremities, right lower extremity, and psyche, when WCJ used description of AMA Guides impairment contained in 8/6/2011 report of orthopedic panel qualified medical evaluator to calculate permanent disability for applicant’s neck, right and left wrist and low back, description provided by panel qualified medical evaluator in psychiatry to find psychiatric disability, and found right shoulder permanent disability based on range of motion measurements contained in 4/21/2011 report of applicant’s treating physician, and WCAB determined that WCJ properly awarded permanent disability under AMA Guides within “range of evidence.”

**Sharon Walter, Applicant v. International Capital Group, State Compensation Insurance Fund, Defendants,** 2015 Cal. Wrk. Comp. P.D. LEXIS 32. Permanent Disability—Rating—Vocational Expert Evidence—WCAB rescinded WCJ’s award of 57 percent permanent disability to applicant bookkeeper who suffered industrial injury to her neck, right shoulder, psyche, lower back, and in form of headaches on 4/25/2007, and returned matter to trial level to provide parties with opportunity to select agreed vocational expert or, failing that, for WCJ to appoint independent vocational expert to provide analysis pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when applicant sought to establish permanent total disability based upon expert vocational evidence of Frank Diaz, who concluded that applicant was unable to return to gainful employment due to combined effects of her industrial injuries, and WCAB found that Mr. Diaz’s report was not substantial evidence and was properly rejected by WCJ because Mr. Diaz failed to consider apportionment of applicant’s permanent disability pursuant to determinations of agreed medical examiner in orthopedics, that opinion of defendant’s vocational expert, Blair Hunt, was also not substantial evidence for failure to consider opinion of consulting psychiatrist, and that since there was no substantial evidence upon which to base decision, record required further development in form of vocational expert evidence.

**Josephine Zaragoza, Applicant v. Lowe’s Home Centers, LLC, Sedgwick Claims Management Services, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 745. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant suffered injury to his lumbar spine and psyche from 2/1/2006 to 12/4/2008 and on 12/4/2008, causing 56 percent permanent disability after apportionment, based on agreed medical examiners’ opinions, and that opinions of vocational experts did not constitute substantial evidence of permanent total disability or sufficient evidence to rebut scheduled permanent disability rating, when agreed medical examiners found that applicant had tendency to exaggerate her symptoms and that her level of disability was not near total, vocational reports indicated that applicant had ability to find jobs in open labor market within her range of restrictions, and WCAB found that applicant’s failure to search for work in open labor market, as noted by vocational experts, did not equate with incapability of returning to open labor market, and that there was insufficient evidence in medical reporting to support diminished future earning capacity (DFEC) greater than DFEC reflected in 2005 Permanent Disability Rating Schedule.

**Lynda Myers, Applicant v. Pomona Unified School District and CIGA for California Compensation, in liquidation, administered by Broadspire, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 691. Permanent Disability—Rating—WCAB, in split panel opinion, affirmed its prior finding [see *Myers v. Pomona Unified School District*, 2013 Cal. Wrk. Comp. P.D. LEXIS (Appeals Board noteworthy panel decision)] that applicant’s industrial injury to her right upper extremity, neck, back, pancreas, psyche and in form of sleep disorder, caused 93 percent permanent disability (rather than 100 percent as asserted by applicant), based on recommended rating, when Disability Evaluation Unit rater issued recommended rating of 88 percent after apportionment, both parties cross-examined rater, who testified that spine consists of both back and neck and that, in rating applicant’s disability, she used subjectives for lumbar spine (75 percent standard), which are higher than subjectives for cervical spine (50 percent standard), and WCAB found that rating for applicant’s “constant moderate” pain in cervical spine was subsumed within applicant’s “constant moderate to severe” pain in her lumbar spine, and that if ratings for lumbar and cervical spines were considered separately, as urged by applicant, applicant would effectively get same rating twice.

**Carol Gannon, Applicant v. Hallmark Marketing Company, Arrowhead Indemnity Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 679. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant incurred 100 percent permanent disability as result of 12/13/2000 industrial injury to her low back, neck and in form of carpal tunnel syndrome, causing rectal incontinence and sexual dysfunction, when WCAB found that applicant was unemployable outside home based on opinion of agreed medical examiner in neurology because of her variable ability to work continuously and her need to rest, take breaks and spread workday out how she liked, and Disability Evaluation Unit rating specialist’s testimony that limitation to working only from inside home, without regard to any other facts presented, was basis for her rating determination that applicant was permanently totally disabled, as this limitation alone was analogous to sheltered workshop which justified 100 percent rating, that testimony of vocational expert indicating that applicant could compete for jobs from home did not change fact that applicant was limited to home work environment, and that because DEU rater’s unrebutted testimony analogized limitation to working from home to sheltered workshop (100 percent permanent disability), applicant’s ability to compete for jobs within sheltered home environment was irrelevant to issue of applicant’s level of permanent disability.

**Kurt Kostka, Applicant v. V. Dolan Trucking, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 684. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s finding that applicant was 60 percent permanently disabled as result of industrial injury to his right knee and psyche and returned matter to trial level for further proceedings on issue of permanent disability, when WCJ improperly relied upon Disability Evaluation Unit consultative rating in finding permanent disability and erroneously rejected opinion of vocational expert based on fact that applicant received more money in Social Security benefits than he would receive in new occupation and on his belief that work preclusions were not factor in determining permanent disability, and WCAB clarified that Social Security payments are not “earnings” for purposes of determining earning capacity, and that under **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, employee’s work preclusions are directly relevant to issue of whether employee is amenable to rehabilitation as described in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624; WCAB found that, although WCJ’s bases for rejecting vocational expert’s opinion were erroneous, vocational reporting was nonetheless insufficient because expert, in concluding that applicant had 84 percent diminished future earning capacity, relied upon applicant’s subjective complaints which WCJ did not find to be credible and which were not corroborated by medical evidence.

**Edgar Diaz, Applicant v. State of California, Corrections & Rehabilitation Parole, legally uninsured, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 560. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s unapportioned award of 100 percent permanent disability to applicant police officer who suffered industrial injury to multiple body parts on 1/20/2011 and during period 2/1/98 through 2/22/2011, and returned matter to trial level, when WCAB found that reporting of agreed vocational expert relied upon by WCJ did not constitute substantial evidence to support finding of permanent total disability pursuant to analysis in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, because applicant’s personal financial circumstances and level of symptoms described by agreed vocational expert were contradicted by other evidence in record and vocational expert did not have applicant’s complete employment history, as indicated by absence of any reference to material fact that applicant had experience as part-time security guard.

**Gene Freitas, Applicant v. The Kroger Company dba Ralphs Grocery Company, PSI, and administered and adjusted by Sedgwick CMS, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 564. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s determination that applicant meat cutter who claimed industrial injury to his low back on 9/24/2003 and to his right hand, arm and shoulder from 1/1/99 to 9/24/2003 failed to rebut 31 percent permanent disability rating based on 2005 Permanent Disability Rating Schedule, when WCAB reasoned that to rebut scheduled rating under third prong of **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, applicant was required to demonstrate that he was not amenable to rehabilitation due to his industrial injury and, therefore, suffered greater loss of future earning capacity than reflected in scheduled rating, that application of principles in *Ogilvie* and *LeBoeuf* are limited to situations where employee’s diminished future earnings are directly attributable to employee’s work-related injury and not to nonindustrial factors such as general economic conditions, illiteracy, proficiency in speaking English, or employee’s lack of education, that, here, applicant’s vocational expert concluded that applicant was unable to participate in formal job retraining and was permanently totally disabled based on physical injury to his right upper extremity combined with nonindustrial factors, including lack of education and intellectual ability, and that because nonindustrial factors contributed to his inability to be rehabilitated, applicant did not demonstrate that his diminished future earning capacity was due to his industrial injury as required to rebut scheduled rating.

**Marlena Shore, Applicant v. Michael Hopkins, DDS, Zenith Insurance Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 607. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s finding that applicant dental hygienist suffered 9 percent permanent disability as result of industrial injury to her right thumb and wrist from 6/19/2006 to 6/19/2007, and returned matter to trial level for parties to obtain supplemental reports from vocational experts, when opinion of defense expert that applicant had no diminished future earning capacity was based on incorrect annual earnings calculation, and his finding that applicant could pursue position in dental equipment sales was not based on adequate vocational testing, finding of applicant’s vocational expert which estimated 65 percent diminished future earning capacity was based on incorrect assumption that applicant was only able to work part-time, and, in later report, vocational expert failed to explain why her opinion of 65 percent diminished future earning capacity had not changed even though applicant reported that her condition had improved, and WCAB found that neither applicant’s nor defendant’s vocational expert reports constituted substantial evidence and that record required further development pursuant to McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion).

**Alfred Rasgado, Applicant v. State of California Department of Corrections, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 624. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s determination that applicant correctional officer suffered 55 percent permanent disability from 8/9/2005 industrial injury to multiple body parts, and that applicant sufficiently rebutted scheduled permanent disability rating based on reporting of vocational experts regarding applicant’s diminished future earning capacity, when WCAB found that, contrary to defendant’s assertions, vocational experts did not consider impermissible factors in assessing diminished future earning capacity, that it is WCAB, not vocational expert, that should determine apportionment since such determination is outside expertise of vocational expert, that applicant’s stipulated average weekly wage did not define applicant’s earning capacity for purposes of determining permanent disability, and that social security payments and pension payments are not earnings and should not be factor in analysis of applicant’s earning capacity.

**Gerald Reese, Applicant v. Microdental Laboratories, American Home Assurance, Adjusted by AIG Claims Services, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 625. Permanent Disability—Rating—AMA Guides—Deconditioning—WCAB rescinded WCJ’s finding that applicant suffered 45 percent permanent disability from 1/5/2006 industrial injury to his lumbar spine, knees, right ankle, and in form of sleep disorder, and remanded matter to WCJ to issue new rating instructions, when WCJ rated applicant’s permanent disability without including 10 percent whole person impairment (WPI) assigned by panel qualified medical evaluator for applicant’s 75 percent loss of exercise capacity/deconditioning, based on panel qualified medical evaluator’s analogy of applicant’s “deconditioning” to Class II cardiovascular impairment, and WCAB concluded that, because AMA *Guides* do not assess functional classifications of conditioning except in cardiovascular disease chapter, panel qualified medical evaluator was permitted under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and pursuant to express language in 2005 Permanent Disability Rating Schedule, to assess applicant’s WPI by analogy to cardiovascular impairment if such analogy most accurately reflected applicant’s level of impairment and was within “four corners” of AMA Guides, and, although WCJ found that loss of physical fitness or “deconditioning” is not a “body part” for purposes of finding ratable permanent disability under AMA *Guides* or *Almaraz/Guzman* analysis, WCAB determined that neither Labor Code § 4664, which requires assignment of permanent disability to body region, nor any other Labor Code provision mandates that permanent disability be assigned only to particular “body part.”

**Cindy Kenzy, Applicant v. Flour Creations, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 527. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB, in split panel opinion, affirmed WCJ’s finding that applicant baker with 5/17/2006 industrial injury to her neck, right upper extremity, left upper extremity, gastrointestinal system, psyche, and in form of headaches, was not precluded from receiving 100 percent permanent disability award based on her receipt of $500.00 per month to provide in-home care for her disabled adult son, when majority WCAB panel concluded that vocational expert’s opinion that applicant incurred total loss of earning capacity constituted substantial evidence to support WCJ’s award of permanent total disability, and that receipt of monthly $500.00 was not evidence of applicant’s ability to work in open labor market so as to bar 100 percent permanent disability finding, because $500.00 payment was not due to any type of competitive employment which would support determination that applicant could compete in open labor market since payment was derived from performing minimal care or supervision for her son in her home, and, if viewed as employment, caring for applicant’s son would constitute limited or sheltered employment.

**Marco Taracena, Applicant v. Northrop Grumman Corporation, Chartis Claims, Inc., Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 546. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant incurred 65 percent permanent disability from industrial injury to his spine, right shoulder, right wrist, left knee, and in forms of hypertension and GERD on 5/23/2008 and from 4/10/2008 through 4/10/2009, and returned matter to WCJ to include loss of grip strength as factor of permanent impairment in determining extent of applicant’s permanent disability, when agreed medical examiner included grip loss in applicant’s right hand and wrist as impairment factor and, contrary to WCJ, WCAB found that limitation on application of grip strength in section 16.8a of AMA *Guides* did not apply because there was no evidence of painful condition in applicant’s wrist and hand that would prevent application of maximal force upon grip strength testing, that assessment pursuant to loss of grip strength by agreed medical was accurate assessment of applicant’s right hand and wrist condition pursuant to principles in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and that loss of grip strength should have been included in overall assessment of applicant’s permanent disability; WCAB affirmed WCJ’s finding that agreed medical examiner’s assessment of applicant’s left knee impairment as gait and station order, after he had already assessed impairment based on left knee weakness, was prohibited under Table 17-2 of AMA *Guides* indicating that assessment of gait derangement shall not be combined with assessment of muscle strength.

**Tracie Sweetman, Applicant v. Bank of America, ACE American Insurance, administered by Gallagher Bassett Services, Inc., Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 510. Permanent Disability—Rating Multiple Disabilities—Combined Values Chart—WCAB affirmed WCJ’s finding that applicant mortgage loan officer suffered 40 percent permanent disability from 4/27/2010 admitted industrial injury to her low back and wrist, in addition to compensable consequence sleep disorder, and held that WCJ did not err in calculating extent of permanent disability by adding applicant’s spinal disability and wrist disability, and then using Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule to combine sleep disability with added orthopedic disabilities, when WCAB found that, although 2005 Permanent Disability Schedule provides that impairments and disabilities are generally combined using CVC (or reduction formula), combining impairments by simple addition is permissible means of rebutting strict application of 2005 Schedule, and that even though qualified medical evaluator here opined that simply adding disabilities from all three of applicant’s injuries (low back, wrist and sleep) would be most accurate method of measuring her overall permanent disability due to absence of overlap of disability from all three injuries, WCJ did not violate principles in Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), by appropriating role of medical expert in using CVC to combine sleep disability rather than using simple addition as suggested by qualified medical evaluator, because WCJ, properly acting to adjust permanent disability based on medical reporting, disagreed with qualified medical evaluator’s assessment of overlap and determined that sleep injury, as entirely derivative of applicant’s physical injury, would, in fact, overlap with impairment and disability caused by wrist and low back injuries and was most equitably combined using CVC.

Permanent Disability—Rating—Occupational Group Number—WCAB affirmed WCJ’s assignment of occupational group number 110, rather than 212, in rating permanent disability caused by applicant mortgage loan officer’s 4/27/2010 admitted industrial injury to her low back and wrist and compensable consequence sleep disorder, when WCAB found that group 110 falls into category of “very light” and includes title of “loan officer,” and concluded that use of higher occupational group number was not supported by fact that applicant did some driving to and from clients’ locations because, with exception of some driving, applicant’s job duties met description of “loan officer,” and, in addition, other jobs listed in group 110 (e.g. “lawyer” and “urban planner”) also could involve driving.

**Debera Sineath, Applicant v. Wells Fargo Bank, PSI, Administered by Specialty Risk Services, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 508. Permanent Disability—Rating—Panel Qualified Medical Evaluator’s Refusal to Apply Almaraz/Guzman—Issuance of Replacement Panel—WCAB affirmed WCJ’s finding that there was good cause to remove Dr. John Batcheller as panel qualified medical evaluator and order issuance of replacement qualified medical evaluator panel in orthopedic surgery, when Dr. Batcheller refused to consider principles under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, in evaluating permanent disability incurred by applicant project manager as result of cumulative industrial injury to her upper extremities and alleged psychiatric injury, when WCAB concluded that, although medical evaluator is not required to apply *Almaraz/Guzman* analysis in all cases, Dr. Batcheller indicated that he would not apply *Almaraz/Guzman* procedures even if appropriate, and, on that basis, WCAB found that Dr. Batcheller’s evaluation of applicant’s permanent disability could not constitute substantial evidence and that he could not provide “complete medical evaluation” as required by 8 Cal. Code Reg. § 31.5(a)(15)(A), such that issuance of replacement panel was required, and, additionally, WCAB reasoned that defendant did not demonstrate that it would sustain substantial prejudice and/or irreparable harm if new qualified medical panel issues as required by 8 Cal. Code Reg. § 10843 to justify removal, because it is possible that new panel qualified medical evaluator who understands his or her obligations under Almaraz/Guzman will ultimately decide that strict AMA Guides rating is appropriate and that alternative procedure is not required in this case.

**Janice Jablonski, Applicant v. Covina Valley Unified School District, York Risk Services Group, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 499. Permanent Disability—Rating—Range of Evidence—WCAB rescinded WCJ’s finding that applicant administrative assistant suffered 72 percent permanent disability as result of 8/2/2005 admitted industrial injury to her right shoulder, hand and fingers, lumbar spine, knees, psyche, and in form of brachial flexopathy, when WCJ found permanent disability based upon stipulated rating of orthopedic agreed medical examiner’s report and range of evidence between psychiatric reports of psychiatric panel qualified evaluator, Dr. Justice, and applicant’s treating psychiatrist, Dr. Windman, but WCAB concluded that report of Dr. Windman did not rise to level of substantial medical evidence because Dr. Windman was unaware of applicant’s medical history including prior psychiatric diagnosis and treatment, that, contrary to WCJ’s finding, fact that there were areas of “general agreement” between Dr. Justice and Dr. Windman could not cure inadequacies in Dr. Windman’s reporting, that since Dr. Windman’s report did not constitute substantial medical evidence, WCJ should not have used range of evidence to determine applicant’s overall level of permanent disability, that, although determination of permanent disability may, in some cases, be based on range of evidence, where range is based upon unsubstantial report, range of evidence rating is not appropriate, and that WCJ must issue new permanent disability rating based upon report of Dr. Justice.

**Kari Moulthrop, Applicant v. Sutter Medical Foundation/Palo Alto Medical Foundation, PSI, adjusted by Sutter Health Support Services, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 466. Permanent Disability—Rating—Opioid Medications—WCAB held that there was sufficient evidence to support WCJ’s finding that applicant incurred permanent total disability as result of 4/24/2008 industrial injuries to her lumbar spine, right knee and left ankle, based upon applicant’s testimony regarding her physical condition in conjunction with opinions of orthopedic agreed medical examiner Dr. Jeffrey Holmes, pain management specialist Dr. James Weiss (applicant’s primary treating physician) and vocational expert Bob Rehm indicating that applicant’s reliance on high levels of narcotic pain medication, including Norco, caused strong and unpredictable side effects that would make applicant unable to compete in open labor market, and WCAB found that medical evidence and vocational reporting constituted substantial evidence under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut 16 percent scheduled rating, and that deposition testimony of Dr. Weiss clearly established that applicant’s need for pain medication was causally related to industrial injury, notwithstanding that applicant’s orthopedic injury was comparatively minor given extent of medication applicant was taking.

**Maria Lino, Applicant v. Macy’s, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 433. Permanent Disability—Rating—AMA Guides—WCAB found that applicant’s industrial right elbow injury caused 16 percent permanent disability without apportionment, based on opinion of agreed medical examiner (as supported by applicant’s testimony and other evidence in record), who diagnosed lateral epicondylitis and opined that strict AMA Guides rating of 3 percent whole person impairment due to difficulties with activities of daily living was not accurate reflection of applicant’s disability caused by objective factors of atrophy in upper extremity, decreased grip strength and other symptoms, that pursuant to Chapter 16, Section 16.8a of AMA Guides, applicant’s loss of grip strength could be rated separately as it “represents an impairing factor that has not been considered adequate by other methods,” and that applicant’s 50 percent grip loss (20 percent upper extremity impairment) rated at 12 percent whole person impairment, which Disability Evaluation Unit properly rated at 16 percent permanent disability.

**Juan Cortez, Applicant v. State of California Department of Corrections and Rehabilitation, legally uninsured, State Compensation Insurance Fund, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 314. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, found that agreed medical examiner’s reporting constituted substantial evidence to support WCJ’s award of 20 percent permanent disability to applicant/correctional officer for 3/1/2012 industrial low back injury, and 7 percent permanent disability for cumulative low back injury during period 10/29/2007 through 12/22/2012, when agreed medical examiner indicated that strict application of AMA *Guides* did not accurately reflect effect of applicant’s impairment on activities of daily living and that applicant’s whole person impairment was more accurately described by analogizing it to impairment caused by hernia, and WCAB found that doctor’s explanation of applicant’s whole person impairment was well-reasoned and consistent with principles in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, that defendant did not provide any factual or legal basis for its contention that agreed medical examiner’s analysis of applicant’s impairment was an attempt “to simply achieve a desired result” and did not seek supplemental report or request to take doctor’s deposition, and that there was no evidence submitted at trial to rebut doctor’s opinion.

**Ronald Duplessis, Applicant v. Network Appliance, Inc., Safety National Casualty Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 316. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant/lab technician’s admitted industrial back injuries on 3/18/2002 and 3/3/2003 caused 69 percent orthopedic permanent disability, before apportionment, and 15 percent psychiatric disability, as rated under 1997 Schedule for Rating Permanent Disabilities, and that vocational expert evidence did not successfully rebut scheduled rating or support finding of 100 percent permanent disability under Labor Code § 4662, when WCAB found that applicant’s disability was apportionable between his two industrial injuries and to nonindustrial factors pursuant to Labor Code § 4663, that neither applicant’s nor defendant’s vocational expert apportioned among various causes of applicant’s disability as discussed by medical evaluators upon whose opinions WCJ relied, and that vocational evidence was insufficient to support finding that one of applicant’s industrial injuries, standing alone, caused 100 percent permanent disability as necessary to support finding of permanent total disability.

**Euwanda Sexton, Applicant v. American Red Cross, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 335. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s determination that applicant/family services supervisor suffered 41 percent permanent disability as result of admitted cumulative industrial injury to her bilateral wrists during period ending 8/22/2005, when WCAB found that WCJ’s permanent disability award was supported by reporting of applicant’s vocational expert, which WCAB found was sufficient to rebut scheduled rating, and WCAB was not persuaded by defendant’s assertion that vocational expert opinion was not substantial evidence because applicant was “amenable to rehabilitation,” when WCAB concluded that term “amenable to rehabilitation” does not have only one meaning but rather involves range of possible rehabilitation from returning to exact same job to retraining for completely different job, that applicant’s condition fell within that rehabilitation range because she has transferrable skills but with reduced earning capacity, that WCJ based applicant’s permanent disability award upon effect of reduced earning capacity, that WCJ’s determination of permanent disability based upon reporting of applicant’s vocational expert was in conformity with second method of rebutting scheduled rating described in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and that under Ogilvie injured worker does not need to show complete inability to rehabilitate to rebut scheduled rating but may rebut scheduled rating by showing that injury “impairs” his or her rehabilitation, causing loss of future earning capacity that is greater than reflected in scheduled rating, as in this case.

**Robert Belmont, Applicant v. County of San Mateo, PSI, adjusted by Northern Claims Management, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 673. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that applicant/deputy sheriff was entitle to 100 percent permanent total disability as result of industrial cumulative trauma in form of stomach cancer, notwithstanding that agreed medical examiner’s report rated at 97 percent permanent disability under AMA *Guides*, when WCAB found that opinion of applicant’s vocational expert indicating that applicant was unemployable due to multiple limitations that would affect his ability to perform essential job functions and that could not be reasonably accommodated constituted substantial evidence to rebut scheduled rating pursuant to principles in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989 and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, that opinion of applicant’s vocational expert was more persuasive than opinion of defendant’s vocational expert who determined that applicant could perform certain part-time jobs with appropriate accommodations, and that, together, opinion of applicant’s vocational expert, opinion of agreed medical examiner, and applicant’s credible testimony describing his fatigue, memory and cognitive impairment, eating difficulty, pain, and fecal/urinary urgency supported finding of permanent total disability [Note: Defendant’s petition for writ of review was subsequently denied on May 14, 2014, sub nom. County of San Mateo v. Workers’ Comp. Appeals Bd. (Belmont), 2014 Cal. Wrk. Comp. LEXIS 72].

**Juan Pinzon, Applicant v. RC Gramer Construction, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 271. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s finding that applicant/carpenter suffered 100 percent permanent disability as result of 11/1/2007 industrial injury to his feet, right ankle, right leg, back, and psyche, and returned matter to WCJ for further proceedings, when WCAB found that opinion of vocational expert offered by applicant did not constitute substantial evidence to support WCJ’s finding of permanent total disability because vocational expert disregarded opinions of both orthopedic and psychiatric agreed medical examiners in determining that applicant incurred 100 percent permanent total disability, that opinions of agreed medical examiner should ordinarily be followed unless there is good reason to find them unpersuasive, and that vocational expert in this case acknowledged during his testimony that he is not physician and provided no good reason for not following agreed medical examiners’ opinions regarding applicant’s capabilities.

**Sheriee Borela, Applicant v. State of California, Department of Motor Vehicles, Legally Uninsured, State Compensation Insurance Fund/State Contract Services, Adjusting Agency, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 217. Permanent Disability—Rating Multiple Disabilities—Combined Values Chart—WCAB rescinded WCJ’s finding that applicant/licensing examiner sustained 73 percent permanent disability as result of 5/29/2009 industrial injury to her neck, back, chest, face, knees, and psyche, and returned matter to WCJ for new permanent disability rating utilizing Combined Values Chart (CVC) in 2005 Permanent Disability Rating Schedule, when WCAB found that (1) WCJ abused her discretion by not applying CVC to rate applicant’s permanent disability and, instead, simply adding orthopedic and psychiatric impairments to find permanent disability without evidence from agreed medical examiner indicating that additive method provided more accurate measure of applicant’s overall level of permanent disability than combining disabilities using CVC, (2) this case was distinguishable from cases where medical evidence indicates that adding separate disabilities is best way to combine impairment, (3) although 2005 Permanent Disability Rating Schedule provides that methods other than “generally” applicable CVC may be used to combine multiple disabilities, WCJ did not provide reasoning for declining to follow rating schedule, (4) absent medical evidence to justify alternative approach, there was no basis for WCJ’s rating instruction instructing rater to add applicant’s disabilities, (5) WCJ violated principles in Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), by appropriating role of medical expert in making medical determination as to how to combine applicant’s separate impairments in absence of specific medical evidence to substantiate using additive method, and (6) defendant’s failure to move to strike rating instructions did not preclude defendant from challenging ultimate rating, as final permanent disability rating must be based on substantial evidence and must be subject to review on reconsideration.

**Wayne Brewer, Applicant v. California Department of Corrections High Desert State Prison, Legally Uninsured, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 218. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/correctional officer who incurred 8/5/2007 industrial injuries to his bilateral shoulders, bilateral knees, bilateral feet, lumbar spine, thoracic spine, cervical spine, psyche, and in forms of high blood pressure, GERD, deep vein thrombosis, sleep disorder, and aggravation of coagulation disorder, suffered 92 percent permanent disability, after apportionment, and that, contrary to applicant’s assertion, opinions of orthopedic agreed medical examiner and applicant’s vocational expert were not sufficient to rebut scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when orthopedic agreed medical examiner apportioned applicant’s permanent total disability 10 percent non-industrial causation for spinal disability, 25 percent non-industrial causation for right knee disability, and 30 percent non-industrial causation for bilateral shoulder disability, and WCAB found that (1) when attempting to rebut scheduled permanent disability rating, burden is on injured employee to establish what portion of his or her diminished future earning capacity is due to injury and what portion is due to non-industrial factors, (2) applicant misinterpreted orthopedic agreed medical examiner’s deposition testimony in asserting that non-industrial portion of orthopedic disability was “not a significant factor” in applicant’s overall non-employability, (3) agreed medical examiner’s deposition testimony demonstrated his conclusions that applicant was permanently totally disabled only when all of his disability was factored in (i.e., he did not believe that applicant’s orthopedic disability, standing alone, rendered him permanently totally disabled), and that in assessing applicant’s employability (and, therefore, DFEC) from strictly orthopedic standpoint, applicant could perform sedentary work, (4) although agreed medical examiner testified that non-industrial component of applicant’s spinal disability “is not really significant” to applicant’s overall employability, he did not state that picture of applicant’s overall employability (or DFEC) was completely unchanged by non-industrial aspects of applicant’s spinal disability, (5) applicant could not rely on his vocational expert’s opinion to establish that his permanent total disability was entirely due to industrial injury because vocational expert formed opinion based on misinterpretation of agreed medical evaluator’s statements, and also improperly rejected psychiatric agreed medical examiner’s 10 percent apportionment of psychiatric disability to non-industrial causes, and (6) testimony of defendant’s vocational expert was insufficient to rebut scheduled rating because he did not find any apportionment of overall permanent disability “because the doctors did not describe any specific prior work limitations,” and WCAB found that it was applicant’s burden to develop record with regard to work restrictions in order to establish causation and burden could not be shifted to defendant to prove that post-injury work restrictions were not due to injury.

**Cheryl McMillin, Applicant v. Monsanto Company-Seminis, ACE American Insurance Company, administered by Sedgwick Claims Management Services, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 672. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that applicant/administrative assistant who sustained cumulative trauma to her psyche, bilateral upper extremities, lower extremities, and in the forms of cognitive disorder, gastrointestinal disorder, sleep disorder, and complex regional pain syndrome (CRPS), suffered permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662 from combined effects of all of her impairments, based on entirety of record, including opinions of four medical evaluators whose combined impairment findings rated at 93 percent permanent disability, in conjunction with opinion of panel qualified medical evaluator in neurology indicating that applicant’s injury effectively caused her to lose use of both hands and become unemployable, triggering application of conclusive presumption of permanent total disability in Labor Code § 4662(b) [Note: Defendant’s petition for writ of review was subsequently denied on May 1, 2014, sub nom. Mansanto Co.-Seminis v. Workers’ Comp. Appeals Bd. (McMillin), 2014 Cal. Wrk. Comp. LEXIS 68].

**Belinda Burton, Applicant v. San Luis Obispo Child Development Center, Redwood Fire and Casualty Insurance Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 144. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s findings that applicant/program director incurred 28 percent permanent disability as result of 3/17/2009 industrial right shoulder and knee injury, and 14 percent permanent disability as result of 6/30/2009 industrial injury to her left shoulder and left knee, and WCJ’s determination that applicant did not rebut scheduled diminished future earning capacity (DFEC) factor, when WCJ denied applicant opportunity to submit vocational expert report in rebuttal to defendant’s DFEC on basis that discovery was left open at mandatory settlement conference solely for defendant’s DFEC report, and WCAB found that all parties have full due process rights in workers’ compensation proceedings which include right to rebut evidence first presented after discovery is closed at mandatory settlement conference, and that while right to present rebuttal evidence does not necessarily include right to have last word, thereby allowing submission of case to be endlessly delayed, allowing applicant right to rebut vocational rehabilitation report not previously served is not unreasonable under circumstances; WCAB remanded matter for further proceedings and new decision, and gave applicant 15 days to obtain rebuttal report from vocational expert and defendant 15 days to submit response.

**Maria Adonican, Applicant v. County of Los Angeles/General Hospital, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 142. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/medical case worker suffered 100 percent permanent disability as result of 4/14/93 industrial injury to her back, right knee and psyche, notwithstanding Disability Evaluation Unit’s recommended rating of 99 ¼ percent permanent disability for 4/14/93 injury, after apportionment to subsequent industrial injuries pursuant to **Benson v. W.C.A.B.** (2009) 170 Cal. App. 4th 1535, 89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases 113, and after applying multiple disabilities table (MDT) to apportioned disabilities, when WCJ independently determined that applicant was totally permanently disabled as result of 4/14/93 injury “in accordance with the fact” pursuant to Labor Code § 4662, and, while WCAB did not adopt WCJ’s reasoning that 99 ¼ percent permanent disability essentially equated to permanent total disability, WCAB found that WCJ was not bound to issue finding in conformity with rating instructions or recommended rating, and was permitted to independently arrive at permanent disability rating based upon substantial evidence, that multiple disabilities table in 1988 Schedule for Rating Permanent Disabilities, under which applicant’s 1993 injury was rated, only provides a guide for rating permanent disability but is not necessarily determinative of ultimate rating, that WCJ reasonably concluded that 99 ¼ percent permanent disability rating did not accurately reflect applicant’s disability and its effect on her employability, that WCJ’s finding of 100 percent permanent disability was supported by substantial medical evidence, and that 100 permanent disability award for 4/14/93 injury did not cause accumulation of permanent disability awards for applicant’s spinal region to exceed 100 percent and, therefore, was not precluded by Labor Code § 4664(c)(1).

**Charles Hines, Applicant v. 3T 3C Transportation, State Compensation Insurance Fund, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 150. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant/truck driver sustained 46 percent permanent disability, without apportionment, as result of admitted industrial cumulative trauma to his cervical spine and wrists over period 1/3/2005 through 7/27/2005, and held that WCJ correctly determined that vocational expert’s report did not constitute substantial evidence to rebut 2005 Permanent Disability Rating Schedule pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that vocational expert relied, in part, upon impermissible non-industrial factors in reaching his conclusions and, therefore, applicant did not meet his burden of demonstrating that his diminished future earning capacity was directly attributed to his work-related injury rather than due to non-industrial conditions.

**Alberto Barbosa, Applicant v. Greenhart Farms, Pacific Compensation Insurance Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 166. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s order striking diminished future earning capacity (DFEC) testimony of applicant’s vocational expert on basis that applicant did not disclose proposed permanent disability rating at mandatory settlement conference, and returned matter to WCJ for further proceedings, when WCAB found that applicant’s failure to disclose proposed rating was not grounds to strike vocational expert’s testimony, especially given that issue was not raised at trial; WCAB also found that Labor Code § 5703(j) (effective 1/1/2013), which provides for evidence by vocational expert in form of report, but also allows for direct examination upon showing of good cause, applies to any reports and testimony by vocational experts where no final decision has issued by 1/1/2013, and that, therefore, Labor Code § 5703(j) will apply to issue of vocational expert reporting and testimony on remand for further proceedings in this matter.

**Efrain Cazares, Applicant v. Consolidated Disposal Services, ACE/USA and administered by Cannon Cochran Management Services, Inc., Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 670. Permanent Disability—Rating—WCAB awarded applicant 76 percent permanent disability, after apportionment, for 3/7/2003 specific industrial injury, and 35 percent permanent partial disability, after apportionment, for cumulative trauma injury ending 2/2004, based on applicant’s testimony as to ongoing physical and mental difficulties and opinions from orthopedic agreed medical examiner and “regular physician” appointed under Labor Code § 5701 [Note: Defendant’s petition for writ of review was subsequently denied on March 21, 2014, sub nom. Consolidated Disposal Service v. Workers’ Comp. Appeals Bd. (Cazares), 2014 Cal. Wrk. Comp. LEXIS 43].

**Kerri Larsen, Applicant v. Modesto Irrigation District, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 170. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/senior account technician suffered 20 percent permanent disability as result of 2/1/2008 industrial injury to her right arm and right elbow, and held, instead, that applicant incurred 18 percent permanent disability, when agreed medical examiner diagnosed applicant with lateral/medial epicondylitis that resulted in 12 percent whole person impairment, with corresponding impairment number 16.01.02.04, but WCJ incorrectly used impairment number for nerve entrapment/compression (16.01.02.03) in permanent disability rating string, and WCAB found that WCJ’s calculation of 20 percent permanent disability did not follow agreed medical examiner’s reporting, that agreed medical examiner’s diagnosis and evaluation of applicant’s condition was substantial evidence and should have been followed by WCJ, and that using correct impairment number based upon substantial reporting of agreed medical examiner yielded permanent disability rating of 18 percent.

**Ted Martinez, Applicant v. City of Bakersfield, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 172. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/police officer’s internal injury in form of Valley Fever and psychiatric injury during period 7/30/2001 to 6/27/2011, caused 41 percent permanent disability, and remanded case for further development of record pursuant to McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), when WCAB determined that opinion of agreed medical examiner upon which WCJ relied did not constitute substantial evidence under principles in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because, while agreed medical examiner explained that GAF score of 58 did not adequately reflect applicant’s impairment and that 25 percent whole person impairment was best assessment of applicant’s psychological permanent disability, agreed medical examiner did not sufficiently explain why departure from strict application of AMA *Guides* was necessary, state how he arrived at different rating, identify supporting evidence he relied upon, or give reasons why alternative rating more accurately reflected applicant’s impairment.

**Cathleen Porter, Applicant v. Coldwater Creek, Zurich North America, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 178. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/store manager who suffered 6/21/2009 industrial injury to right lower extremity (iliotibial band tendinitis), right hip (trochanteric bursitis), and in forms of complex regional pain syndrome (CRPS)/regional sympathetic dystrophy (RSD), and hypertension, incurred 72 percent permanent disability, and that, contrary to defendant’s contention, WCJ did not improperly award lower extremity permanent disability greater than amputation value for lower extremity as set forth in 2005 Permanent Disability Rating Schedule, when WCAB found that rating for CRPS/RSD should not be considered part of composite rating for right lower extremity, because AMA Guides and 2005 Schedule recognize CRPS/RSD as central nervous system disorder, not lower extremity impairment, and CRPS/RSD can result in impairment greater than 40 percent allowed for loss of lower extremity, that instructions on page 1-11 of 2005 Schedule indicating that composite rating for extremity may not exceed amputation value of that extremity are intended to apply to impairments within extremity category, that WCJ correctly combined ratings for iliotibial band tendinitis and trochanteric bursitis pursuant to instructions on page 1-11 of 2005 Schedule and then combined lower extremity rating with rating for CRPS and hypertension using Combined Values Chart to arrive at 72 percent rating, and that, even if CRPS-related impairment were considered part of overall lower extremity impairment, agreed medical examiner’s reporting regarding applicant’s CRPS-related pain and limited activities of daily living was sufficient to rebut scheduled rating.

**Lalita Chand, Applicant v. Bank of America, Gallagher Bassett Services, Inc., Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 189. Permanent Disability—Rating—WCAB affirmed WCJ’s finding that applicant suffered 100 percent permanent disability as result of 1/7/2008 admitted industrial injuries to her left knee, left shoulder, mouth, head, and psyche, based on reports of agreed medical examiner, panel qualified medical evaluator, and vocational expert, when (1) agreed medical examiner found that applicant suffered from chronic pain syndrome with major psychiatric co-morbidity, and that strict AMA Guides whole person impairment of 0 percent based on physical pathology did not accurately reflect applicant’s disability, and WCAB found that agreed medical examiner’s finding of 25 percent whole person impairment under Table 13-15, Class 3, of AMA Guides based on limitation to semi-sedentary work with use of cane constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), to rebut strict AMA *Guides* rating, (2) panel qualified medical evaluator found applicant permanently totally disabled on psychiatric basis despite GAF score of 45, based upon psychiatric symptoms including anxiety and agoraphobia, and adequately explained why he considered GAF score to be inadequate, and (3) vocational expert conducted diminished future earning capacity evaluation and, based on results of evaluation and reviewing medical reports/records, found that applicant was unemployable.

**Peter Zirkle, Applicant v. United Parcel Service, Liberty Mutual Insurance, adjusted by Helmsman Insurance Services, Inc., Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 211. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant sustained 87 percent permanent disability as result of 3/2009 industrial injury to his neck, back, spine, and right lower extremity, when WCAB found that WCJ properly relied upon assessment of applicant’s diminished future earning capacity (DFEC) provided by applicant’s vocational expert, rather than assessment provided by defendant’s vocational expert, to find that applicant rebutted scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and held that defense expert demonstrated lack of understanding regarding how to calculate DFEC by improperly including social security and loan from applicant’s son as “earned income” for purpose of calculating DFEC and using that to defeat applicant’s claim for loss of earning capacity, and determined that defense expert’s calculations were based upon incorrect facts regarding applicant’s post-injury attempts to return to work.

**Man N. Nguyen, Applicant v. California Department of Corrections, legally uninsured, Defendant**, 2013 Cal. Wrk. Comp. P.D. LEXIS 667. Permanent Disability—Rating—WCAB held that applicant/registered nurse with industrial heart injury established good cause to reopen stipulated award of 54 percent permanent disability, and awarded 64 percent permanent disability based on agreed medical examiner’s substantial supplemental reporting as to applicant’s actual current permanent disability resulting from cardiovascular condition and compensable consequence renal failure, when original stipulated award was based on agreed medical examiner’s mistaken reporting regarding applicant’s level of impairment for hypertensive heart disease, and WCAB found that (1) although defendant never filed timely petition to reduce original stipulated permanent disability award and, consequently, award could not be rescinded or altered, WCJ was permitted to re-rate applicant’s current disability using agreed medical examiner’s new impairment findings, rather than rating disability by adding new and further permanent disability for ischemic heart disease and renal failure to original 54 percent permanent disability awarded for hypertensive heart disease, (2) applicant’s heart disability, after accounting for ischemic condition, rated at 52 percent based on agreed medical examiner’s new findings of impairment, but because original stipulated award for heart disease could not be reduced, WCJ correctly combined 54 percent permanent disability for heart condition with renal disability to find 64 percent permanent disability, and (3) issuance of award known to be higher than applicant’s actual current industrial permanent disability would be contrary to Labor Code § 4664(a) and provide inequitable windfall to applicant [Note: Applicant’s petition for writ of review was subsequently denied on February 13, 2014, sub nom. Nguyen v. Workers’ Comp. Appeals Bd., 2014 Cal. Wrk. Comp. P.D. LEXIS 24].

**Pope Powell, Applicant v. City and County of San Francisco, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 105. Permanent Disability—Rating—Occupational Group Number—WCAB, in split panel opinion, held that WCJ properly utilized occupational code 212, rather than occupational group 112, in finding permanent disability caused by applicant/fleet operations manager’s 9/26/2011 industrial injury to his bilateral upper extremities, including shoulders and elbows, when WCAB found that, although majority of applicant’s work (80-85 percent) was spent using computer keyboard, his job duties and salary were managerial in nature for purposes of applying occupational group 212, that applicant’s job required use of computer to fulfill managerial responsibilities inherent in his position, that clerical functions described in occupational group 112 were not at core of applicant’s job, and that “dual occupation rule” (providing that if two group numbers are applicable to worker’s job, worker is entitled to application of group number which carries highest factor in computation of permanent disability) did not apply here because occupational code 212 contemplated use of computer by professional or managerial employee and, while applicant used computer daily, nature of his use was not at “highest demand” for keyboarding as contemplated by occupational group 112.

**Victor Tallent, Applicant v. Infinite Resources, Inc., Amtrust North America, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 141.Permanent Disability—Rating—Evaluation of Impairment by Chiropractic Panel Qualified Medical Evaluator—WCAB, affirming WCJ, held that defendant was not denied due process by WCJ’s reliance on opinion of chiropractic panel qualified medical evaluator to rate permanent disability caused by applicant/mechanic’s 6/8/2008 back, neck and psyche injuries, despite defendant’s assertion that panel qualified medical evaluator, as licensed chiropractor, was not qualified to provide opinions on any impairment regarding neurological or sensory disorders, sleep, chronic pain, scarring or effects of medication usage, and was limited solely to commenting on AMA *Guides* impairments that fall strictly within scope of chiropractic treatment, when WCAB found that chiropractic panel qualified medical evaluator was competent and statutorily bound to utilize all sections of AMA *Guides* to provide opinion on impairment that most accurately described applicant’s condition, that all panel qualified medical evaluators, to obtain licensure, must undertake testing and formal training in use of AMA *Guides* and preparation of evaluation reports, and, to provide expert opinion using appropriate section of AMA *Guides*, must in some cases utilize areas of AMA *Guides* that are not specifically within their area of practice, that to bar licensed qualified medical evaluator from use of certain sections of AMA *Guides* solely because he is a chiropractic practitioner would be discriminatory and in conflict with case law interpretations that injured workers are due most accurate depictions of their impairment within AMA *Guides*, and that chiropractic panel qualified medical evaluator’s opinions regarding applicant’s impairments were adequately described within four corners of AMA *Guides* and consistent with medical record, and constituted substantial evidence to support WCJ’s permanent disability determination.

**Jami Mallin, Applicant v. California Department of Correction, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 126. Permanent Disability—Rating—AMA Guides—WCAB, affirming WCJ, held that applicant/inmate firefighter’s 5/30/2007 admitted industrial injuries to her left hip and back caused 63 percent permanent disability, based upon entire record, including applicant’s credible testimony and opinion of agreed medical examiner, and determined that agreed medical examiner correctly applied AMA *Guides* to find impairment by utilizing ROM method, rather than DRE method, with consideration given to applicant’s two-level fusion, effect fusion would have on activities of daily living, functional loss, degenerative disc disease and facet joint arthritis, and then converting ROM impairment to regional spine impairment as described in Section 15.3 of AMA *Guides*, when WCAB found that agreed medical examiner provided proper analysis under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, in applying Section 15.3 of AMA *Guides*, and adequately explained why converting ROM to regional spine impairment provided most accurate reflection of applicant’s impairment.

**Michelle Hallie, Applicant v. Pacific Bell and Telephone (AT&T successor in interest), PSI, Defendant**, 2013 Cal. Wrk. Comp. P.D. LEXIS 668. Permanent Disability—Rating—Sleep Impairment—WCAB, reversing WCJ, held that applicant customer service representative did not suffer separate, ratable sleep disorder/insomnia in addition to stipulated cumulative internal, orthopedic, and psychiatric injuries, when only evidence on causation of sleep disorder was agreed medical evaluator’s report in which he stated that applicant’s insomnia was related to her orthopedic symptoms, and WCAB found that, because applicant’s insomnia was related to her orthopedic injury, and permanent disability rating for orthopedic injuries would account for sleep impairment, it was inappropriate to include sleep disorder as separately ratable injury [Note: Applicant’s petition for writ of review was subsequently denied on March 3, 2014, sub nom. Hallie v. Workers’ Comp. Appeals Bd., 2014 Cal. Wrk. Comp. LEXIS 27].

**Mayra Apac, Applicant v. Deutsch Metal Company, Travelers Insurance Company, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 6. Permanent Disability—Rating—WCAB rescinded WCJ’s finding that applicant/machine operator sustained 100 percent permanent disability as result of 8/19/2004 industrial injury to her low back, neck, psyche, internal system, jaw, buttocks, head, bilateral shoulders, arms, feet, and legs, and remanded matter for further development of record, when WCAB found that record was insufficient to support award of total permanent disability, because (1) reporting of applicant’s vocational expert indicating that applicant was unable to participate in open labor market did not constitute substantial evidence, as vocational expert did not show comprehensive understanding of applicant’s education and employment history or transferrable job skills, did not perform work evaluation and skills testing and did not provide sufficient analysis of applicant’s situation to justify his conclusions, (2) there were no medical reports establishing permanent total disability, (3) WCJ did not adequately address issue of apportionment to non-industrial factors described by agreed medical examiner in psychiatry, and improperly substituted his own non-medical opinion that it would be unfair to incorporate non-industrial factors of disability set forth by agreed medical examiner into apportionment, and (4) record required further clarification to determine extent of overlap between factors of disability caused by applicant’s injuries.

**Belita Rigoli Betancourt, Applicant v. Vons, A Safeway Company, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 36. Permanent Disability—Rating—Apportionment—WCAB affirmed WCJ’s unapportioned award of 100 percent permanent disability to applicant/cashier/checker with cumulative industrial injury to her neck, back, bilateral hands and upper extremities, bilateral lower extremities, gastrointestinal system, psyche and in forms of headaches, hypertension and fibromyalgia from 1/97 through 4/9/2002, when WCAB held that injury to applicant’s psyche was caused by and inextricably intertwined with applicant’s fibromyalgia, that with inclusion of psychiatric injury substantial evidence supported finding of permanent total disability, and that that defendant could not re-litigate final discovery order allowing amendment of applicant’s claim to include psychiatric injury for purpose of reducing permanent disability award.

**Teresa Edge, Applicant v. Ralph’s Grocery Store, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 17. Permanent Disability—Rating—Vocational Evidence—WCAB, denying reconsideration, affirmed its prior determination [See Edge v. Ralph’s Grocery Store, PSI, 2013 Cal. Wrk. Comp. P.D. LEXIS 485], that (1) reporting of vocational expert did not constitute substantial evidence to support finding that applicant/deli manager’s 2/3/2004 neck, shoulder, hand, and wrist injuries resulted in permanent total disability, when, in assessing applicant’s permanent disability, vocational expert relied upon nonindustrial, individualized factors (such as general economic conditions, illiteracy, proficiency in speaking English, and employee’s lack of education) as described in **Argonaut Ins. Co. v. I.A.C. (Montana)** (1962) 57 Cal. 2d 589, 21 Cal. Rptr. 545, 27 Cal. Comp. Cases 130, 371 P.2d 281, that are not allowed to be considered under to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut scheduled diminished future earning capacity (DFEC) adjustment, (2) weight of evidence in light of entire record did not support permanent total disability based on **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and “in accordance with the fact” under Labor Code § 4662, and (3) substantial opinion of agreed medical examiner supported finding of 45 percent permanent disability without apportionment.

**Kathleen Nutt, Applicant v. Tehachapi Valley Health Care District, Alpha Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 33. Permanent Disability—Rating—AMA *Guides*—Fibromyalgia—WCAB, affirming WCJ, held that applicant/medical records clerk II who suffered cumulative industrial injury to her back, psyche, and in forms of hypertension, fibromyalgia, sleep and arousal disorder, and irritable bowel syndrome, incurred 52 percent permanent disability, after apportionment, with 30 percent of disability allocated to sleep and arousal disorder as consequence of fibromyalgia based upon opinion of agreed medical examiner in rheumatology that sleep/arousal disorder arising from applicant’s fibromyalgia resulted in stand-alone Class II impairment under Table 13-4 of AMA *Guides* and his use of Chapter 13 to rate sleep/arousal disorder by analogy pursuant to *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that AMA *Guides* do not provide specific method for rating fibromyalgia, that because AMA *Guides* do not have rating for fibromyalgia, agreed medical examiner was permitted to use clinical judgment and analyze ratable impairment by analogy in order to assess appropriate level of impairment within four corners of AMA *Guides*, and that panel qualified medical evaluator’s opinion that applicant’s consequential sleep/arousal disorder was subsumed by psychiatric GAF score of 53 assigned by agreed medical examiner in psychiatry was not substantial evidence, as her opinion was based on misunderstanding of rating given by psychiatric agreed medical examiner and did not adequately reflect permanent disability caused by applicant’s fibromyalgia.

**Darlene Conklin, Applicant v. Runaway Tours, State Compensation Insurance Fund, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 640. Permanent Disability—Rating—Apportionment—Multiple Body Parts—WCAB rescinded WCJ’s finding that applicant/travel agency manager suffered 70 percent permanent disability, after apportionment, as result of 11/9/98 industrial injury to her neck, shoulders and arms, and ordered that applicant’s permanent disability be re-calculated in accordance with 1997 Schedule for Rating Permanent Disabilities, when WCAB found that, although agreed medical examiner’s opinion that 30 percent of applicant’s cervical spine disability was apportionable to disability from prior multi-level cervical fusion but only 25 percent of applicant’s left upper extremity disability was attributable to her pre-existing degenerative joint disease constituted substantial evidence, WCJ erred by simply subtracting 30 percent disability from applicant’s 100 percent overall permanent disability to determine permanent disability using 1997 Permanent Disability Rating Schedule and, instead, should have rated each injured body part separately and then combined rating using Multiple Disabilities Table.

**Marc Smoot, Applicant v. Bayou, Inc./Helen’s Cycles, State Farm Insurance, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 651. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/bicycle salesman who suffered industrial injury to his head, psyche, neck, internal system, and in form of sleep disorder after being struck in head by golf ball on 6/1/2005, suffered permanent total disability “in accordance with the fact,” without basis for apportionment, pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989 and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that WCJ’s finding of 100 percent permanent disability was supported by applicant’s credible testimony regarding his inability to function in workplace, opinion of agreed medical examiner confirming applicant’s symptoms, including severe mood swings and anger, and imposing significant work restrictions due to deterioration of applicant’s mental state such that it would be difficult for applicant to find employment, and vocational reports offered by both parties indicating that applicant was so impaired by work restrictions and psychiatric problems that he was unable to compete in labor market, and that opinions of agreed medical examiners did not constitute substantial evidence to justify apportionment to pre-existing condition under Labor Code § 4663.

**Balgovind Sharma, Applicant v. Lam Research Corporation, Matrix Absence Management, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 650. Permanent Disability—Rating—WCAB awarded applicant/research scientist 100 percent permanent disability, without apportionment, for industrial injury to cervical and thoracic spines and head/brain, based on applicant’s credible testimony, opinions from three agreed medical evaluators, ratings on reports from these three agreed medical evaluators, and multiple disabilities table, when WCAB found that industrial injury occurred when applicant was standing in aisle of airplane, airplane experienced sudden drop in altitude, and applicant struck his head on ceiling of airplane, that reports from three agreed medical evaluators rated disability at 83 percent, that agreed medical evaluator in neuro-psychology gave opinions that applicant gradually decompensated and that symptoms included depression, fatigue, and dizziness, that this agreed medical evaluator considered brain MRIs and other tests and gave opinion that applicant’s level of impairment made him unable to function at work, that this agreed medical evaluator was medically qualified to make such determination about applicant’s ability to function with his level of impairment, that this agreed medical evaluator did not express any conclusions about open labor market, and that this agreed medical evaluator’s opinions were substantial evidence sufficient to support award of 100 percent permanent disability [Note: Defendant’s petition for writ of review was subsequently denied on December 17, 2013, sub nom. SNCC for Lam Research Corp. v. Workers’ Comp. Appeals Bd. (Sharma) (2013) 79 Cal. Comp. Cases 100].

**Ron Davis, Applicant v. Walt Disney Company, Liberty Mutual, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 52. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant suffered 62 percent permanent disability from 1/3/2008 industrial injury to her cervical spine, psyche, sleep, and internal system (in form of GERD), and that opinion of orthopedic agreed medical examiner did not constitute substantial evidence to rebut strict AMA Guides rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when agreed medical examiner attempted to rebut AMA *Guides* by rating cervical spine factors of disability by reference to Figure 15-19 of AMA *Guides*, but failed to provide sufficient explanation as to why rating applicant’s whole person impairment using Figure 15-19 was more appropriate than using ROM or DRE method in spinal chapter for rating impairment, other than to achieve desired result of providing disability rating consistent with rating achieved under 1997 Schedule for Rating Permanent Disabilities, and WCAB found that agreed medical examiner’s rejection of AMA *Guides* rating on basis that he believed AMA *Guides* did not sufficiently account for work functions and his attempt to produce permanent disability rating indirectly based on pre-2005 rating schedule, by itself, was improper and not sufficient rebuttal of AMA *Guides*, and that Figure 15-19 does not provide rating methodology under *Almaraz/Guzman II*, as Figure is not “chapter, table or method in the AMA *Guides*” for purposes of determining impairment.

**Trixy Lobdell, Applicant v. California Department of Corrections & Rehabilitation, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 65. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/accounting officer suffered 13 percent permanent disability, without apportionment, from cumulative injury to her right wrist and upper extremity ending on 6/10/2012, based on agreed medical examiner’s opinion that applicant suffered 9 percent whole person impairment under AMA Guides, when agreed medical examiner indicated that strict interpretation of AMA *Guides* would provide no ratable impairment for applicant’s right elbow, forearm and hand/wrist condition because Section 16.7d of AMA *Guides* states that no impairment rating is to be given for tendinitis, fasciitis or epicondylitis unless there is “some other factor” that must be considered, agreed medical examiner opined that applicant’s pain was “factor that must be considered” in assessing impairment and utilized Table 13-22 in AMA *Guides*, which provides criteria for rating chronic pain in one upper extremity, to assign 9 percent whole person impairment, and WCAB found that Section 16.7d in AMA *Guides* does not limit what can be considered as “other factor” or limit use of other sections within AMA *Guides* to find impairment, that agreed medical examiner provided detailed summary of applicant’s complaints regarding pain and recorded significant grip loss in applicant’s right upper extremity, that agreed medical examiner adequately explained that strict AMA *Guides* rating would not accurately reflect applicant’s disability given complexity of applicant’s symptoms and effects of symptoms on applicant’s activities of daily living, including ability to do repetitive gripping, grasping and pinching, and that agreed medical examiner’s opinion was better reasoned and more persuasive than treating physician’s opinion assigning 2 percent whole person impairment, and constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating.

**Kathleen Villalobos, Applicant v. State of California, Dept. of Food and Agriculture, PSI, administered by State Compensation Insurance Fund, Defendants**, 2014 Cal. Wrk. Comp. P.D. LEXIS 84. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/agricultural tech suffered 63 percent permanent disability, after apportionment, as result of industrial injury to her upper extremities and psyche from 1/20/93 through 11/28/2005, and remanded matter to trial level, when WCJ, based upon 6/19/2007 report of orthopedic agreed medical examiner, issued rating instructions stating that applicant suffered 11 percent whole person impairment to each wrist, with additional 3 percent impairment to right wrist for pain, but WCAB found that agreed medical examiner’s subsequent supplemental report and deposition testimony, indicating that applicant had 30 percent impairment to each upper extremity based on analogy to amputation, constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating, because (1) agreed medical examiner thoroughly explained why comparison to amputation was appropriate given applicant’s decreased sensation, loss of function, failed surgeries and limitations of activities of daily living, (2) since loss of one upper extremity is 60 percent impairment and agreed medical examiner determined that applicant lost half capacity of each upper extremity, agreed medical examiner correctly reasoned that applicant had 30 percent impairment to each extremity, and (3) agreed medical examiner’s opinion was supported by applicant’s testimony regarding her difficulty with grasping and holding objects.

**William Slagle, Applicant v. State of California, PSI, Defendant**, 2014 Cal. Wrk. Comp. P.D. LEXIS 81. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s award of 10 percent permanent disability for 6/25/2009 industrial injury to applicant/lab technician’s right knee, and held that applicant failed to rebut scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that opinion of vocational expert regarding applicant’s loss of earnings was “illogical, nonsensical, and insufficient” to overcome scheduled rating, because vocational expert erroneously assumed, in determining loss of earning capacity, that applicant’s right hip disability was industrially-related, failed to consider non-industrial apportionment of right knee disability in earning capacity estimates, incorrectly determined applicant’s pre-injury earning capacity, and did not adequately demonstrate any loss of earning capacity.

**Kari Taro, Applicant v. Atascadero State Hospital, Department of Mental Health, State Compensation Insurance Fund, Defendants,** 2014 Cal. Wrk. Comp. P.D. LEXIS 82. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s award of 7 percent permanent disability for injury to applicant’s right wrist and 25 percent permanent disability (after apportionment) for psychiatric injury, and held that applicant failed to rebut scheduled ratings pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that vocational reports related to applicant’s wrist injury indicating that applicant could not perform her job as psychiatric technician were insufficient because applicant’s work restrictions for her wrist did not interfere with her ability to perform her job and, therefore, did not cause lost earning capacity, and vocational reports pertaining to applicant’s psychiatric injury were not substantial evidence, as diminished future earning capacity (DFEC) analysis included loss not related to applicant’s industrial injury, contrary to apportionment provisions.

**Ceicel Moussa (Ceicel Moussa Andramos), Applicant v. NBC Universal Media, LLC, American Home Assurance Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 662. Permanent Disability—Rating—Substantial Evidence—WCAB, affirming WCJ, awarded applicant/sales clerk 71 percent permanent disability, after apportionment, for specific and cumulative industrial injuries to both knees, low back, and psyche, based on “range of evidence,” including orthopedic reports of primary treating physician and panel qualified medical evaluator, when WCJ found that portions of medical reports issued by both physicians constituted substantial evidence, while other portions of each of their reports were inadequate, and WCAB held that WCJ properly considered orthopedic reporting of both physicians in making his findings, that, rather than requiring further development of record, WCJ was permitted to rely on portions of each physician’s report to determine permanent disability and apportionment with respect to different body parts, while rejecting portions that were not substantial evidence, and that WCJ properly calculated permanent disability and apportionment, based on spinal impairment found by panel qualified medical evaluator and knee impairment and apportionment determinations reflected in reports of primary treating physician [Note: Defendant’s petition for writ of review was subsequently denied on January 13, 2014, sub nom. NBC Universal Media, LLC v. Workers’ Comp. Appeals Bd. (Moussa), 2014 Cal. Wrk. Comp. LEXIS 4].

**Robert Voeltz, Applicant v. The Kroger Company dba Ralph’s Grocery Company, PSI and administered by Sedgwick, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 655. Permanent Disability—Rating—Apportionment—WCAB held that applicant/clerk suffered 89 percent permanent disability, after apportionment, as result of cumulative industrial injury to his back and psyche, when WCAB found that substantial medical evidence, including reports from applicant’s treating physicians and reporting of qualified medical evaluators in orthopedics and psychiatry, established that applicant was permanently totally disabled on orthopedic basis, that reporting of defense qualified medical evaluator, which WCAB found more persuasive than opinion of applicant’s qualified medical evaluator, supported 40 percent apportionment of orthopedic disability to pre-existing degenerative changes under Labor Code § 4663, that opinion of applicant’s psychiatric qualified medical evaluator was sufficient to support 10 percent apportionment of applicant’s psychiatric disability to diagnosis of non-industrial prostate cancer and related surgery, and that applicant’s psychiatric disability after apportionment was 57 percent, which, when combined with his 60 percent orthopedic disability using Multiple Disabilities Table, yielded overall disability of 89 percent.

**Donald Maghuyop, Applicant v. Hull’s Walnut Creek Chapel, Mid-Century Insurance Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 613. Permanent Disability—Rating—Formal Ratings—WCAB held that WCJ did not abuse his discretion by rating applicant/mortician’s permanent disability without first obtaining formal rating from Disability Evaluation Unit, when parties stipulated to adjusted ratings warranted by factors of disability described by agreed medical examiners for each of multiple parts of applicant’s body for which factor of disability was applicable, and WCJ was permitted, without formal rating, to determine combined rating for disability based upon adjusted ratings as stipulated by parties.

**Doreen Dahl, Applicant v. Contra Costa County, PSI, Defendant,** 2014 Cal. Wrk. Comp. P.D. LEXIS 2. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant/medical records technician incurred 79 percent permanent disability as a result of industrial cumulative injury to her neck and right shoulder over period ending 3/14/2005, and held that applicant successfully rebutted diminished future earning capacity (DFEC) factor in 2005 Permanent Disability Rating Schedule with regard to right shoulder injury by showing, through substantial expert vocational testimony, that effect of such injury on earning capacity of similarly situated workers was greater than DFEC factor in 2005 Schedule, when WCAB found that (1) contrary to defendant’s assertion, analysis under **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, may be applied even if injured employee’s DFEC, or inability to compete in labor market, is not total [see Dahl v. Contra Costa County, PSI, 2012 Cal. Wrk. Comp. P.D. LEXIS 173] as injured employee’s permanent disability rating should reflect as accurately as possible employee’s diminished ability to compete in open labor market, and (2) approach utilized by applicant’s vocational expert was not contrary to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624 (*Ogilvie III*) because, in undertaking LeBoeuf analysis, vocational expert did not consider any impermissible individualized factors identified by court of appeal in *Ogilvie III*, such as general economic conditions, lack of education, proficiency in English and illiteracy, but instead focused on effect such injury would have upon DFEC of similarly situated workers, thereby reconciling apparent contradiction between Ogilvie III statement that individual factors not arising from industrial injury cannot be considered in post-SB 899 DFEC analysis, with Supreme Court’s view in **Argonaut Ins. Co. v. I.A.C. (Montana)** (1962) 57 Cal. 2d 589, 21 Cal. Rptr. 545, 27 Cal. Comp. Cases 130, 371 P.2d 281, that individual’s willingness and ability to work, age, health, skill and education along with general condition of labor market and employment opportunities for persons similarly situated are relevant in determining individual’s future earning capacity.

**Shon Lee, Applicant v. Mitrant U.S.A. Corp., Castlepoint National Insurance Company, administered by Tower Group Companies, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 610. Permanent Disability—Rating—Permanent Total Disability—WCAB upheld WCJ’s finding that applicant/glass door installer incurred 100 percent permanent disability as result of industrial cumulative injury in form of fibromyalgia, based upon substantial reporting of regular physician and independent vocational expert indicting that applicant was unable to participate in open labor market due to effects of his fibromyalgia and that applicant was not amenable to vocational rehabilitation because of his condition.

**Charles Lemley, Applicant v. Placer County Sheriff and Intercare Holdings Insurance Services, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 611. Permanent Disability—Rating—Headaches—WCAB affirmed WCJ’s finding that applicant/correctional officer incurred 46 percent permanent disability as result of 2/15/2005 industrial injury to his neck, right elbow, right forearm, right knee, psyche, and in form of headaches, and held that headaches were properly rated as part of applicant’s psychiatric impairment rather than as separate, ratable injury, when agreed medical examiner in neurology opined, based upon applicant’s subjective complaints regarding frequency and severity of headaches, that AMA *Guides* rating of 3 percent for headache pain did not accurately reflect applicant’s impairment and recommended 18 percent whole person impairment based on analogy to trigeminal nerve dysfunction in Class II of Table 13-11 at page 331 of AMA *Guides*, but WCAB found that (1) evaluating psychiatrist properly considered headaches, including impact of headaches on applicant’s activities of daily living, in assigning GAF score of 54 (24 percent whole person impairment), and opined that *Almaraz/Guzman* analysis was unnecessary, (2) although analogy to trigeminal nerve dysfunction would be appropriate, formal assessment of pain-related impairment was necessary to support analogy, and (3) because record did not support rating permanent disability for GAF of 54 and, additionally, adding 18 percent impairment for headaches, combining impairments would result in duplication.

**Hilda Bonilla, Applicant v. Cameo Cleaners, Tower Select Insurance Co., administered by Illinois Midwest Insurance Agency, LLC, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 594. Permanent Disability—Rating—AMA *Guides*—WCAB held that there was substantial evidence to support WCJ’s finding that applicant/presser incurred 12 percent permanent disability as result of 10/14/2009 industrial burn injuries to her left hand and left thigh based upon entirety of record, including opinions of applicant’s treating physician and panel qualified medical evaluator, when WCAB concluded that, although treating physician found 15 percent whole person impairment under Chapter 8 of AMA *Guides* and panel qualified medical evaluator assigned 10 percent whole person impairment, both physicians agreed that applicant sustained class II impairment, which requires skin disorder signs combined with limited performance of some activities of daily living, and may include intermittent to constant treatment, and that WCJ faced with divergent views as to extent of disability may find disability within range of evidence.

**Tommie Fields, Applicant v. Interim, Inc., Everest National Insurance Company, administered by Gallagher Bassett Services, Inc., Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 603. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/counselor/case manager suffered 100 percent permanent disability, with 65 percent disability attributable to 2008 industrial psychiatric injury and 35 percent caused by 2010 industrial psychiatric injury, based upon reports and deposition testimony of agreed medical examiner in psychiatry indicating that applicant was permanently disabled and unable to work due to major depression and psychotic disorder, when WCAB found that agreed medical examiner’s analysis of applicant’s disability pursuant to criteria in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, constituted substantial evidence, and rejected defendant’s contention that *Almaraz/Guzman* analysis cannot be utilized to evaluate psychiatric injury.

**Alva Valdivieso, Applicant v. Harman Management (KFC), Tristar Risk Enterprise Management, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 632. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/kitchen worker incurred 60 percent permanent disability as result of 7/9/2009 injuries to her right hand/wrist, psyche, digestive system, and neck, and remanded matter to trial level for further development of record pursuant to McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), when WCAB held that panel qualified medical evaluator’s opinion that applicant had 22 percent whole person impairment as result of right upper extremity injury, upon which WCJ relied in determining permanent disability, did not constitute substantial evidence to rebut strict AMA *Guides* rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because panel qualified medical evaluator did not explain why applicant’s right upper extremity was not covered by strict application of AMA *Guides*, he did not indicate why applicant qualified for class II upper extremity impairment rather than class I or III impairment or how he determined applicant should be at top of impairment range within class II, did not make clear whether three percent add-on for chronic pain applied only to “strict” AMA *Guides* rating or whether it should also be added to rebuttal rating, and made error in calculation of whole person impairment.

**Michael Gallagher, Applicant v. Barrett Business Services, Inc., PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 605. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB awarded applicant/production worker 100 percent permanent total disability, without apportionment, for admitted industrial injury to lumbar spine and psyche, notwithstanding agreed medical evaluator’s reporting that applicant had 35 percent whole person impairment under AMA *Guides*, when agreed medical evaluator opined that applicant was unable to compete in open labor market, based on three failed back surgeries, unlikelihood that further back surgery would be beneficial, and effects of pain medication, agreed medical evaluator’s opinion was supported by conclusion of vocational expert that applicant was not feasible for retraining and had no future earning capacity, and WCAB found that opinions of agreed medical evaluator and vocational expert constituted substantial evidence, that WCAB has authority to independently rate employee’s permanent disability, based on substantial medical evidence, and that analysis of combined factors from **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, or “Ogilboeuf,” supported finding that applicant was permanently totally disabled. [Note: Defendant’s petition for writ of review was subsequently denied on November 14, 2013, sub nom. Barrett Business Services, Inc. v. Workers’ Comp. Appeals Bd. (Gallagher), 2013 Cal. Wrk. Comp. LEXIS 187].

**John Randle, Applicant v. Seattle Seahawks, PSI, Administered By CCMSI, Minnesota Vikings, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 621. Permanent Disability—Substantial Evidence—WCAB rescinded WCJ’s finding that applicant incurred 89 percent permanent disability, with no apportionment, as result of multiple injuries suffered during his career as professional football player, and returned matter to WCJ to issue new rating instructions, when WCAB found that opinions of agreed medical examiners in neurology and orthopedics constituted substantial evidence on issue of permanent disability and apportionment, but that opinion of agreed medical examiner in internal medicine that applicant suffered from hypertension and hypertensive heart disease and that 50 percent of resulting disability was industrial and 50 percent attributable to other factors was not substantial evidence because agreed medical examiner gave no explanation regarding how applicant’s heart condition was related to his employment. Timothy

**Ballantyne, Applicant v. L&S Hallmark Construction Co. and Zurich American Insurance Co., Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 529. Permanent Disability—Rating—WCAB affirmed arbitrator’s finding that applicant/carpenter sustained 44 percent permanent disability as result of 5/27/2008 industrial injury to his right hand and left lower extremity, when WCAB found that opinion of agreed medical examiner assigning 15 percent whole person impairment under AMA Guides constituted substantial evidence pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), to rebut strict AMA *Guides* impairment rating, and that arbitrator properly determined applicant’s loss of earning capacity and permanent disability based upon vocational rehabilitation expert’s earning capacity calculations utilizing applicant’s pre-injury overtime earnings to determining applicant’s post-injury earning capacity, as this was more accurate reflection of applicant’s loss of earning capacity than permanent disability rating calculated without consideration of applicant’s pre-injury overtime earnings.

**Michael Burton, Applicant v. Coleman Burke, dba Pride & Joy, Uninsured Employers Benefits Trust Fund, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 535. Permanent Disability—Rating—Vocational Evidence—WCAB affirmed WCJ’s finding that applicant/musician suffered 85 percent permanent disability as result of cumulative industrial injury to his hearing and compensable consequence psychiatric injury during his employment as musician over period ending on 7/7/2006, based upon range of evidence, including applicant’s credible testimony regarding his symptoms and limitations and on testimony of vocational rehabilitation expert, which WCAB found was more accurate reflection of applicant’s actual disability than 53 percent scheduled rating for impairments described by agreed medical examiner and qualified medical evaluator in psychiatry, when vocational expert found that combination of applicant’s hyperacusis, tinnitus aurium, misophonia, medication side effects, sleep problems and psychiatric conditions rendered applicant completely unemployable, and, although WCAB found that vocational rehabilitation expert’s opinion constituted substantial evidence to rebut scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, WCAB did not accept vocational expert’s determination of permanent total disability, as vocational rehabilitation expert did not sufficiently consider opinions of medical experts indicating that despite applicant’s inability to tolerate sound, applicant was capable of working in environment where noise level was consistently, but not always, below 60 decibels and where sound levels could usually be controlled by applicant, nor did vocational expert adequately consider applicant’s ability to maintain part time employment.

**Steven Deuel, Applicant v. City of Torrance, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 539. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/firefighter sustained cumulative industrial injury to his “sleep” in addition to admitted industrial injury to bilateral shoulders, cervical spine and in forms of hypertension and hypertensive heart disease, and concluded that applicant did not sustain “sleep” injury but rather suffered injury in form of insomnia based upon agreed medical examiner’s opinion, and that agreed medical examiner’s determination that insomnia caused six percent permanent disability did not constitute substantial evidence under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), because agreed medical examiner did not rely on any section within four corners of AMA *Guides* in determining level of applicant’s insomnia impairment but instead impermissibly relied on what he referred to as “going convention” without further explanation to find six percent impairment; WCAB determined that applicant’s injuries caused 75 percent permanent disability as calculated by omitting 11 percent rating attributable to insomnia and recalculating remaining permanent disability using Combined Values Chart.

**Paul Eugenio Feliciano, Applicant v. Forward Air, Inc., Great West Casualty Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 544. Permanent Disability—Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s finding that applicant/warehouseman incurred 100 percent permanent disability as result of 1/17/2003 industrial amputation of left foot up to mid-calf and consequential psychiatric injury, based upon opinion of applicant’s vocational rehabilitation expert that applicant could not return to work nor undergo vocational rehabilitation due to both his orthopedic and psychological conditions, when WCAB found that vocational rehabilitation expert’s opinion constituted substantial evidence as expert relied on results of psychological testing and his own in-person impressions of applicant in formulating his opinion, that expert’s assessment that applicant was “angry, uncompromising, with a hair trigger temper, and fairly resistant” was corroborated by WCJ’s perception of applicant’s demeanor and testimony at trial, and that, although defendant’s vocational rehabilitation expert’s opinion also constituted substantial evidence, opinion of applicant’s expert was more persuasive in rebutting 90 percent permanent disability established by medical evidence, especially when coupled with traumatic nature of applicant’s injury.

**Cynthia Lotspike, Applicant v. J Jill, Travelers Insurance Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 564. Permanent Disability—Rating—Combined Values Chart—WCAB rescinded WCJ’s finding that applicant’s orthopedic and psychiatric injuries combined to produce 59 percent permanent disability based upon WCJ’s assessment of medical evidence and without utilizing Combined Values Chart to combine disabilities, when WCAB found that, although both orthopedic and psychiatric agreed medical examiners noted interplay between applicant’s psychiatric and orthopedic conditions, neither physician provided opinion as to whether adding orthopedic and psychiatric permanent disability would be more accurate measure of applicant’s overall level of permanent disability than combining orthopedic and psychiatric permanent disability under Combined Values Chart, and that because there was no substantial evidence on issue of permanent disability, record required further development pursuant to McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), in form of supplemental reporting from agreed medical evaluators with regard to correct method of combining or adding psychiatric and orthopedic permanent impairments consistent with *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*.

**Daniel Ortiz, Applicant v. Travelodge Motel, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 570. Permanent Disability—Rating—New and Further Disability—WCAB, deferring issue of permanent disability, held that WCJ erred in rating applicant/hotel clerk’s increased permanent disability using 25 percent standard for two specific injuries and in issuing separate permanent disability awards for each injury despite fact that applicant had previously received single, combined stipulated award of 21 percent permanent disability for both injuries based upon 30 percent standard rating, when WCAB found that (1) WCJ was not permitted to change prior stipulated award in determining extent of new and further disability, (2) given stipulated award, 30 percent standard must be starting point for any increased permanent disability arising from stipulated injuries, (3) because stipulated award for applicant’s two injuries was combined, it was not appropriate to issue separate awards for increased permanent disability, and (4) any apportionment to non-industrial factors found by WCJ must be based solely on increased permanent disability as new apportionment provisions cannot be used to revisit prior stipulated award.

**William Burdine, Applicant v. Cemex, Inc., Gallagher Bassett Services, Inc., Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 475. Permanent Disability—Rating—Apportionment—WCAB awarded applicant/heavy equipment operator 100 percent permanent total disability, without apportionment, for cumulative trauma injury AOE/COE to his neck, back, upper extremities, left thumb, and psyche during period 10/1/2000 to 10/1/2001, based on applicant’s testimony, opinions from agreed medical evaluators, rating of 91 percent permanent disability from multiple disabilities table, and opinions from vocational expert that applicant was unemployable in open labor market [Note: Defendant’s petition for writ of review was subsequently denied on July 2, 2013, sub nom. Cemex, Inc. v. Workers’ Comp. Appeals Bd. (Burdine) (2013) 78 Cal. Comp. Cases 780 (writ denied)].

**Teresa Edge, Applicant v. Ralph’s Grocery Store, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 485. Permanent Disability—Rating—Vocational Evidence—WCAB, reversing WCJ, held that applicant/deli manager failed to establish that his 2/3/2004 neck, shoulder, hand and wrists injuries resulted in permanent total disability, when WCAB found that (1) opinion of applicant’s vocational expert was insufficient to rebut diminished future earning capacity (DFEC) adjustment in 2005 Permanent Disability Rating Schedule pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, because in assessing applicant’s disability expert relied upon nonindustrial, individualized factors (such as general economic conditions, illiteracy, proficiency in speaking English, and employee’s lack of education) as described in **Argonaut Ins. Co. v. I.A.C. (Montana)** (1962) 57 Cal. 2d 589, 21 Cal. Rptr. 545, 27 Cal. Comp. Cases 130, 371 P.2d 281, that are not allowed to be considered under *Ogilvie*, (2) applicant’s lack of work since leaving employment with defendant did not prove permanent total disability as applicant’s prior work history was sporadic, and there was no finding by either agreed medical examiner or defense vocational expert that applicant could not be rehabilitated or was unable to compete in open labor market, (3) weight of evidence in light of entire record did not support total permanent disability based on **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and “in accordance with the fact” under Labor Code § 4662, and (4) substantial opinion of agreed medical examiner supported finding of 45 percent permanent disability without apportionment.

**Joel Cortez, Applicant v. Westfield American, Fireman’s Fund Insurance Companies, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 699. Permanent Disability—Rating—WCAB awarded applicant/accountant 68 percent permanent disability, after apportionment, for industrial cumulative injuries to his back, psyche, and internal/cardiovascular system during period 12/13/2001 to 12/13/2002, based on opinions of agreed medical evaluators in orthopedics, internal medicine, and psychiatry, as well as recommended rating from Disability Evaluation Unit that was determined utilizing WCJ’s rating instructions and 1997 Schedule for Rating Permanent Disabilities, when WCAB found that rating included three components, (1) 11 percent permanent disability for injury to psyche, (2) 20 percent permanent disability for heart/cardiovascular injury, based on preclusion from emotionally stressful environment and no overlap with disability from injury to back and psyche, and (3) 51 percent permanent disability for back injury, for limitation to light work and no prolonged sitting, standing, or walking, which resulted in 68 percent permanent disability, and that any factors of disability related to applicant’s sleep disorder or daytime fatigue were not ratable under 1997 Schedule because, as indicated by applicant, they did not exist after he began using CPAP machine [Note: Applicant’s petition for writ of review was subsequently denied on May 2, 2013, sub nom. Cortez v. Workers’ Comp. Appeals Bd. (2013) 78 Cal. Comp. Cases 709 (writ denied)].

**Roy Crocker, Applicant v. Warner Bros. Studios, Inc., PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 481. Permanent Disability—Rating—WCAB, affirming WCJ, held that applicant motion picture laborer sustained cumulative trauma injury AOE/COE to his back, right shoulder, left wrist, lumbar spine, psyche, urologic dysfunction, cervical spine, bladder and bowel incontinence, impotence, sleep disorder, neurogenic bladder, and peripheral neuropathy, from repetitive work moving sets and furniture, and WCAB awarded applicant 100 percent permanent disability for this injury, based on applicant’s testimony and opinions from agreed medical evaluators in orthopedics and urology and vocational rehabilitation expert that applicant could not work in open labor market and had totally diminished future earning capacity, when WCAB found that these opinions provided rebuttal to rating schedule under LeBoeuf analysis, as allowed under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624 [Note: Defendant’s petition for writ of review was subsequently denied on September 25, 2013, sub nom. Warner Bros. Studios, Inc. v. Workers’ Comp. Appeals Bd. (Crocker) (2013) 78 Cal. Comp. Cases 1198 (writ denied)].

**Manuel Flores, Applicant v. City of Stockton, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 486. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant incurred 12 percent permanent disability as result of 5/14/2008 low back and right knee injury, and that opinion of agreed medical examiner did not constitute substantial evidence under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to justify alternative rating, when agreed medical examiner provided no reasoning or explanation for his opinion that applicant’s right knee impairment should be rated using table 15-6, Class I of AMA *Guides*, applicable to station and gait impairments, and there was no indication in agreed medical examiner’s report that applicant had significant difficulties with standing or walking or with elevations or grades, as required for utilization of Table 15-6, Class I.

**Edward Frazier, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, adjusted by State Compensation Insurance Fund, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 487. Permanent Disability—Rating—AMA *Guides*—WCAB, on its own motion, rescinded its prior order [see Frazier v. State of California, 2013 Cal. Wrk. Comp. P.D. LEXIS 365] affirming WCJ’s findings and award, and returned matter to WCJ for new decision on issues of permanent disability and attorney’s fees, when majority WCAB panel held that agreed medical examiner’s opinion relied upon by WCJ in awarding 44 percent permanent disability was insufficient as matter of law because agreed medical examiner impermissibly utilized AMA *Guides* Sixth Edition, rather than AMA *Guides* Fifth Edition, to determine whole person impairment caused by applicant/peace officer’s hypertensive heart disease and mild left ventricular hypertrophy, and WCAB concluded that use of AMA *Guides* Sixth Edition is contrary to mandatory language in Labor Code § 4660(b)(1), stating that impairments “shall” be rated utilizing whole person impairments reflected in AMA Guides Fifth Edition, that there is no support in any case law suggesting that impairment ratings from AMA *Guides* Sixth Edition may be used to rate permanent disability even if physician believes, as did agreed medical examiner here, that AMA Guides Sixth Edition more accurately reflects whole person impairment pursuant to analysis in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, that Almaraz/Guzman and its progeny clearly indicate that, in rating permanent disability, whole person impairments must come from within “four corners” of AMA *Guides* Fifth Edition, and that Legislature’s continued intent to utilize impairment ratings in AMA *Guides* Fifth Edition to determine permanent disability is demonstrated by Legislature’s provision for use of AMA *Guides* Fifth Edition in statutory amendments and additions enacted under SB 863, notwithstanding prior publication of AMA *Guides* Sixth Edition.

**Juan Gonzalez, Applicant v. William McCullock, State Compensation Insurance Fund, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 489. Permanent Disability—Rating—Vocational Evidence—WCAB rescinded WCJ’s finding of 73 percent permanent disability and returned matter to trial level for further proceedings regarding whether applicant who incurred three industrial low back injuries and alleged increased permanent disability after receiving stipulated award, successfully rebutted scheduled rating pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when WCAB found that vocational expert’s opinion upon which WCJ relied did not constitute substantial evidence to rebut scheduled rating because vocational expert testified that applicant “would be amenable to vocational rehabilitation if it were offered to him,” that availability of vocational rehabilitation is immaterial, that to rebut scheduled rating applicant is required to show that he or she is not amenable to rehabilitation and that non-amenability is directly attributable to injury, that vocational expert did not address extent of applicant’s amenability to vocational rehabilitation without consideration of any non-industrial factors limiting his employability as required under Ogilvie, and WCAB further determined that there was no other substantial evidence in record upon which to base permanent disability finding.

**Linda S. Maggard, Applicant v. Kings Canyon Unified School District, Tristar Risk Management, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 497. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/school bus driver with 1/4/2005 left knee injury, 3/30/2005 injury to both knees and left shoulder, and cumulative injury to both knees, left shoulder and low back from 1990 through 5/4/2005, rebutted presumption of correctness of AMA *Guides* with regard to whole person impairment (WPI) based upon opinion of agreed medical evaluator, when WCAB found that agreed medical evaluator’s opinion constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut AMA *Guides* rating, and that, contrary to defendant’s assertion, *Almaraz/Guzman* does not require evaluating physician to determine that medical case is “complex or extraordinary” to support alternate rating.

**Vernon Maxwell, Applicant v. The Los Angeles Rams, National Union Fire Insurance Company of Pittsburgh Pennsylvania, administered by Chartis, Seattle Seahawks, Phoenix Cardinals, TIG Insurance Company, administered by, Tristar Risk Enterprise Management, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 498. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that applicant who incurred industrial injuries to his head, brain, spine, upper and lower extremities, internal organs, psyche, teeth, neurological system and in form of sleep disorder while playing professional football for Seattle Seahawks and Los Angeles Rams from 7/29/89 to 7/31/91, sustained permanent total disability pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, without justification for apportionment, based on medical evidence that applicant suffered severe degree of psychological and neuropsychological symptoms, including dementia, due to repeated closed head trauma, and psychologist’s opinion that applicant could not compete in open labor market because applicant could not maintain normal work pace, tolerate supervision or interact appropriately with others given his progressively deteriorating condition.

**Kay Rodriguez, Applicant v. State of California, Department of Social Services, Legally Uninsured, Administered By State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 704. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/licensed program analyst incurred 31 percent permanent disability as combined result of cumulative trauma industrial injuries to her right wrist, right hand, right shoulder, neck, and back from 7/15/97 through 1/30/2006, with 11 percent permanent disability attributable to her hand/wrist injuries based on agreed medical evaluator’s 6/27/2007 report assigning five percent whole person impairment for carpal tunnel syndrome under AMA *Guides*, and held that agreed medical evaluator’s subsequent report dated 8/17/2011, in which physician changed his opinion to indicate that applicant’s loss of grip strength was most accurate measurement of her impairment, did not constitute substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support whole person impairment finding based on grip loss rather than “standard” AMA *Guides* rating for carpal tunnel syndrome because agreed medical evaluator failed to explain why grip loss provided more accurate measurement of applicant’s impairment [Note: Applicant’s petition for writ of review was subsequently denied on March 29, 2013, sub nom. Rodriguez v. Workers’ Comp. Appeals Bd. (2013) 78 Cal. Comp. Cases 502 (writ denied)].

**Janie Seymour-Jackson, Applicant v. Rancho Los Amigos National Rehab Center, Tristar, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 708. Permanent Disability—Rating—WCAB, affirming WCJ, held that WCJ correctly rated permanent disability incurred by applicant/intermediate clerk as result of left knee and back injuries, based on opinions of orthopedic and psychiatric agreed medical evaluators and rating issued by Disability Evaluation Unit rating specialist, and held that opinion of applicant’s vocational expert that applicant was unable to compete in open labor market was insufficient to establish permanent total disability, when vocational expert failed to explain why applicant’s need to stand for eight minutes after sitting for 15 minutes could not be accommodated by utilizing “sit-stand” station, and defendant’s vocational expert found that applicant had extensive experience performing clerical and general office tasks, which were particularly amenable to, and within, applicant’s work restriction [Note: Applicant’s petition for writ of review was subsequently denied on March 18, 2013, sub nom. Seymour-Jackson v. Workers’ Comp. Appeals Bd. (2013) 78 Cal. Comp. Cases 352 (writ denied)].

Permanent Disability—Rating—Overlap—WCAB affirmed WCJ’s instruction to Disability Evaluation Unit rater to consider overlap between applicant’s back and knee disabilities in rating applicant’s permanent disability, when WCAB found that rating instructions were based on agreed medical evaluator’s report, that applicant had restriction of semi-sedentary work for left knee and restriction of light work and other restrictions for low back, that light work restriction was subsumed in semi-sedentary restriction, and that rater correctly rated applicant’s additional low back restrictions.

**Adam Truitt, Applicant v. County of San Diego, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 522. Permanent Disability—Rating—AMA *Guides*—Development of Medical Record—WCAB, affirming WCJ in split panel decision, held that applicant who sustained industrial injury in form of Lyme disease while working as deputy sheriff, incurred zero percent permanent disability, when panel qualified medical evaluator and treating physician opined that applicant was able to perform his work duties without restriction, panel qualified medical evaluator rated applicant’s whole person impairment as zero percent under AMA *Guides*, and WCAB determined that panel qualified medical evaluator’s finding of 24 percent whole person impairment using alternative approach under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, did not constitute substantial evidence because panel qualified medical evaluator did not adequately explain his use of Table 8-2 in AMA *Guides*, applicable to skin disorders, to assess applicant’s whole person impairment, that applicant had burden of proving alternative rating, and that it was not WCAB’s obligation to further develop medical record when applicant failed to meet burden of proof [Note: Applicant’s petition for writ of review was subsequently denied on September 6, 2013, sub nom. Truitt v. Workers’ Comp. Appeals Bd. (2013) 78 Cal. Comp. Cases 1193 (writ denied)].

**Reginald Slater, Applicant v. Minnesota Timberwolves, Federal Insurance Co./Chubb Group, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 517. Permanent Disability—Occupational Group—WCAB rejected defendant’s assertion that applicant/professional basketball player’s occupational group number should be governed by applicant’s permanent and stationary date, and held that date of injury dictates occupational group number based on language in 2005 Permanent Disability Rating Schedule, utilized to rate applicant’s permanent disability, and Labor Code § 4660(a).

**Mike Johnson, Applicant v. State of California—Department of Transportation, Defendant**, 2013 Cal. Wrk. Comp. P.D. LEXIS 428. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed its prior decision [see *Johnson v. State of California*—Department of Transportation, 2013 Cal. Wrk. Comp. P.D. LEXIS 312] in which it held that applicant who incurred industrial back injuries on 6/23/2004 and during cumulative period to 6/21/2005, sustained 13 percent permanent disability overall, with one-half of that (7 percent after rounding up) apportioned to each injury in accordance with **Benson v. W.C.A.B.** (2009) 170 Cal. App. 4th 1535, 89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases 113, when WCAB found that reporting of Agreed Medical Examiner did not constitute substantial evidence under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support 17 percent permanent disability for each injury as found by WCJ, because Agreed Medical Examiner incorrectly added whole person impairment (WPI) for a hernia lifting restriction taken from Table 6-9 of AMA *Guides* to WPI for spinal disability calculated by using DRE method provided in Chapter 15.3 of AMA *Guides*, which already implicitly accounts for restrictions on lifting.

**Virginia Martinez, Applicant v. Able Building Maintenance, Zurich North America, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 439. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/janitor incurred 41 percent permanent disability, after apportionment, as a result of 6/30/2010 lumbar spine and left knee injuries, based upon opinion of applicant’s treating physician and applicant’s credible testimony regarding her symptoms and limitations, when WCAB found that treating physician’s evaluation of applicant’s antalgic gait impairment utilizing Table 17.5 of AMA *Guides* constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to justify departure from strict application of AMA *Guides* because physician provided sufficient rationale for his conclusion that Table 17.5 was most accurate method for determining applicant’s knee disability, particularly with regard to analysis of effect of applicant’s disability on her ability to perform activities of daily living.

**Richard Meza, Applicant v. Perma Steel, Zurich, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 441. Permanent Disability—Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s determination that applicant/iron worker sustained 83 percent permanent disability as a result of 1/29/2005 injuries to his back, psyche, internal systems, and in forms of sleep disorder and sexual dysfunction, based upon medical reports and opinion of defense vocational rehabilitation expert indicating that there were several available jobs applicant could perform, and concluded that applicant did not sustain burden of proving 100 percent permanent disability, when WCAB found opinion of applicant’s vocational expert unpersuasive for purposes of establishing applicant’s total loss of future earning capacity, especially given expert’s lack of relevant credentials and prior court experience, mere recitation of medical reports in evidence, and opinion based solely on subjective factors regarding applicant’s efforts in work evaluation.

**Christopher Rubio, Applicant v. General Atomics, Zenith Insurance Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 449. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant with 5/5/2011 industrial left shoulder injury incurred 17 percent whole person impairment (WPI) (25 percent permanent disability after adjustment) based on deposition testimony of applicant’s orthopedic treating physician, when WCAB found that treating physician’s deposition testimony, in which he first testified that applicant had 3 percent WPI and later indicated that her WPI was 17 percent under AMA *Guides*, and treating physician’s reports stating that applicant had a 2 percent WPI were “too inconsistent and confusing to render just and reasoned decision” and, therefore, did not constitute substantial evidence upon which to base permanent disability finding.

**Marlene Peiper, Applicant v. FPI Management, Inc., Employers Insurance of Wausau, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 391. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s award of 46 percent permanent disability to applicant with 9/10/2008 industrial injuries to her back and psyche, and held that applicant sustained 60 percent permanent disability based upon opinion of orthopedic Panel Qualified Medical Evaluator, when Panel Qualified Medical Evaluator combined applicant’s orthopedic whole person impairment (WPI) from Chapter 13 and Chapter 15 of AMA *Guides* and opined that applicant’s WPI pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837* was 41 percent, and WCAB found that, given that Panel Qualified Medical Evaluator utilized four corners of AMA *Guides* in finding WPI and adequately explained his opinion that applicant’s disability was best described by combining WPIs from Chapters 13 and Chapter 15, it was error for WCJ to instruct rater to use 30 percent WPI, rather than 41 percent WPI, in rating applicant’s permanent disability.

**Edward Frazier, Applicant v. State of California, CDCR—Correctional Training Facility, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 365. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/peace officer with industrial hypertensive heart disease and left ventricular hypertrophy incurred 44 percent permanent disability based upon Agreed Medical Examiner’s finding of 24 percent whole person impairment (WPI) under AMA *Guides*, and held that Agreed Medical Examiner’s analysis of WPI was appropriate pursuant to *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Agreed Medical Examiner opined that 30 percent WPI reflected in Table 4-2 for hypertensive cardiovascular disease in AMA *Guides*, 5th Edition, was too high to accurately represent applicant’s impairment, and, instead, concluded that 24 percent WPI most accurately described applicant’s impairment based upon his consideration of analysis of research and data utilized by writers of AMA *Guides*, 6th Edition, his clinical judgment and assessment of applicant’s mild left ventricular hypertrophy, and analogy of applicant’s condition to Coumadin paragraph 9.6 of AMA *Guides*, 5th Edition, which provides a lower WPI for asymptomatic conditions with serious health risks such as applicant’s mild left ventricular hypertrophy.

**Oscar Carter, Applicant v. County of Fresno, PSI, Administered by American All-Risk Loss Administrators, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 298. Permanent Disability—Rating—Conclusive Presumption of Permanent Total Disability—WCAB, rescinding WCJ’s finding, held that medical evidence upon which WCJ relied, including Agreed Medical Examiner’s conclusion that applicant/correctional officer’s 11/14/2007 stroke resulted in substantial cognitive and behavioral deficits and treating physician’s finding of “persistent slight dementia” and “slight left hemiparesis” was insufficient to support WCJ’s finding that Labor Code § 4662(d) created a conclusive presumption that applicant incurred 100 percent permanent disability based on “incurable mental incapacity or insanity.”

Permanent Disability—Rating—Formal Ratings—WCAB held that, although WCJ had authority to personally rate applicant/correctional officer’s permanent disability resulting from injury to left hand, heart and cardiovascular system from 11/14/2006 to 11/14/2007, in a complex case such as this one, which involves multiple body parts and medical evaluators, rating instructions and formal rating should be utilized to minimize chance of error and allow parties to object to rating instructions and to cross-examine rater.

**Oscar Huerta, Applicant v. Higgins & Lovett Construction, Tower Select Insurance Co., adjusted by The Tower Group Companies, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 311. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/laborer suffered 51 percent permanent disability as a result of 11/2/2010 neck and back injuries, and remanded matter for further development of record pursuant to McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), when WCAB concluded that opinion of Panel Qualified Medical Evaluator on which WCJ relied in finding permanent disability did not constitute substantial evidence because Panel Qualified Medical Evaluator rated applicant’s lumbar impairment using DRE category III in AMA *Guides*, which requires radiculopathy with objective verification, and WCAB found that, while normal EMG/NVC does not, by itself, demonstrate that DRE category III is inappropriate and although “radicular complaints” could constitute clinical evidence of radiculopathy, it was unclear whether applicant’s unspecified “non-verifiable radicular complaints,” as noted by Panel Qualified Medical Evaluator, satisfied requirements of DRE category III for lumbar spine.

**Mike Johnson, Applicant v. State of California—Department of Transportation, Defendant**, 2013 Cal. Wrk. Comp. P.D. LEXIS 312. Permanent Disability—Rating—AMA *Guides*—WCAB, rescinding WCJ’s finding, held that applicant/equipment operator II who incurred industrial back injuries on 6/23/2004 and during cumulative period to 6/21/2005 sustained 13 percent permanent disability overall, with one-half of that (7 percent after rounding up) apportioned to each injury in accordance with **Benson v. W.C.A.B.** (2009) 170 Cal. App. 4th 1535, 89 Cal. Rptr. 3d 166, 74 Cal. Comp. Cases 113, when WCAB found that reporting of Agreed Medical Examiner upon which WCJ relied did not constitute substantial evidence under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support 17 percent permanent disability for each injury as found by WCJ, because Agreed Medical Examiner incorrectly added whole person impairment (WPI) for a hernia lifting restriction taken from Table 6-9 of AMA *Guides* to WPI for spinal disability calculated by using DRE method provided in Chapter 15.3 of AMA *Guides*, which already implicitly accounts for restrictions on lifting.

**Miguel Jordan, Applicant v. Able Engineering Services, Zurich North America, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 314. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that opinion of orthopedic Agreed Medical Examiner did not constitute substantial evidence under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support use of hernia chapter in AMA *Guides*, rather than DRE method for lumbar spine injuries, to rate lumbar spine impairment incurred by applicant/maintenance worker with 2/4/2011 admitted industrial back, left shoulder and psyche injuries, when Agreed Medical Evaluator opined that strict 8 percent whole person impairment (WPI) for lumbar spine injury did not accurately reflect applicant’s level of disability and that lumbar spine injury affected applicant’s activities of daily living (ADLs) “to a greater extent,” but Agreed Medical Examiner failed to explain level of ADL impact applicant would expect for a strict DRE method impairment rating or how applicant’s lumbar spine injury impacted his ADLs “to a greater extent” so as to support 30 percent WPI obtained by analogizing lumbar spine impairment to impairment in hernia chapter.

**John Kanalakis, Applicant v. County of Monterey and Intercare Holdings Insurance Services, Inc., Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 315. Permanent Disability—Rating—AMA *Guides*—WCAB held that opinion of Agreed Medical Examiner constituted substantial evidence under analysis in *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support WCJ’s finding that applicant/peace officer who incurred 93 percent permanent disability as a result of cumulative injury to his heart, cardiovascular system, lumbar spine and hearing through 12/31/2010, suffered 15 percent lumbar spine impairment, when Agreed Medical Examiner concluded that AMA *Guides* DRE Category I, producing a zero percent whole person impairment (WPI), did not accurately reflect applicant’s impairment, and that most reasonable assessment of impairment within four corners of AMA *Guides* was described in hernia Table 6-9 based upon applicant’s subjective reports of discomfort with heavy lifting as supported by subsequent objective findings of impaired function indicated in x-rays and clinical evaluation.

**Lynda Myers, Applicant v. Pomona Unified School District and CIGA for California Compensation, in liquidation, administered by Broadspire, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 324. Permanent Disability—Rating—Substantial Evidence—WCAB, in a split panel opinion, rescinded WCJ’s award of 100 percent permanent disability to applicant/teacher who suffered 4/3/98 industrial injury to her right upper extremity, neck, back, pancreas, psyche and in form of sleep disorder, and held that applicant’s injury caused 93 percent permanent disability based upon report of Agreed Medical Examiner, when WCAB disagreed with WCJ’s finding that Agreed Medical Examiner’s report was not substantial evidence regarding applicant’s level of permanent disability, and WCAB accepted Agreed Medical Examiner’s conclusion that applicant was precluded from sedentary work and found that (1) subjective factors of permanent disability set forth by Agreed Medical Examiner satisfied criteria of reasonable medical probability because they accurately reflected applicant’s actual level of permanent disability given mechanics of her injury, (2) nowhere did Agreed Medical Examiner conclude that applicant was permanently totally disabled or unable to compete in open labor market, (3) there was no substantial evidence in record to support a finding that applicant was permanently totally disabled “in accordance with the fact” as contemplated under Labor Code § 4662, and *(4)* by disregarding both Agreed Medical Examiner’s opinion and rating by expert rater, WCJ relied solely upon applicant’s lay testimony and reliance solely upon such testimony is erroneous.

**Miguel Ramos, Applicant v. State of California, CDCR-Correctional Training Facility, Legally Uninsured, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 332. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that Agreed Medical Examiner’s unrebutted opinion constituted substantial evidence to support a finding that applicant/correctional officer incurred 18 percent permanent disability as a result of 3/29/2011 industrial injury to second and third metatarsals of his foot, when Agreed Medical Examiner utilized Section 8.7 of AMA *Guides* to determine whole person impairment (WPI) resulting from transverse scar on applicant’s foot, and WCAB found that because Agreed Medical Examiner did not give any alternative method for ascertaining WPI for transverse scar and since Agreed Medical Examiner was selected by parties based upon his expertise, Agreed Medical Examiner’s opinion constituted prima facie evidence of applicant’s WPI for scarring.

**Robert Rice, Applicant v. Procut, LLC, Zenith Insurance Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 334. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant incurred 45 percent permanent disability as a result of industrial injuries to his neck, back and right upper extremity, and remanded matter for further development of record on issue of permanent disability, when WCAB found that opinion of Panel Qualified Medical Evaluator upon which WCJ relied in finding permanent disability did not constitute substantial evidence under analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Panel Qualified Medical Evaluator failed to explain why a strict AMA *Guides* rating did not reflect nature and extent of applicant’s disability, and provided almost no rationale for how he calculated applicant’s whole person impairment (WPI).

**Robert Steck, Applicant v. Anning Johnson, Old Republic Insurance Company, administered by Sedgwick Claims Management Services, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 340. Permanent Disability—Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s finding that opinion of vocational rehabilitation expert that applicant/iron worker with 11/2/2002 injuries to his rib, pelvis, right ankle/foot and tailbone could not return to work based on limited physical capacities, medication intake, urinary incontinence, and orthopedic restrictions, did not constitute substantial evidence to support a finding of 100 percent permanent disability, when vocational expert’s assessment of applicant’s condition was based upon interview of applicant and not on medical findings, and examination performed by vocational expert was done when applicant’s weight had reached a maximum of 425 pounds but applicant’s weight subsequently dropped to 237 pounds.

**Carolyn Williams, Applicant v. Long Beach Unified School District, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 344. Permanent Disability—Rating—Vocational Expert Evidence—WCAB affirmed WCJ’s finding that applicant/school counselor incurred 57 percent permanent disability as a result of 2/23/2005 industrial injuries to her spine, right hip, jaw, and psyche, when WCAB concluded that opinion of vocational rehabilitation expert was insufficient to rebut diminished future earning capacity (DFEC) adjustment in 2005 Permanent Disability Rating Schedule based on analysis in Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, because vocational expert improperly addressed applicant’s “access to the labor market” in assessing her permanent disability rather than her “diminished future earning capacity” as required under Labor Code § 4660(a), and relied upon inaccurate assumptions in forming her opinions.

**Desmond Bailey, Applicant v. Iron Mountain, Zurich North America, Defendants, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 242. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/record center lead incurred 61 percent permanent disability as a result of cumulative injuries to his back and bilateral shoulders over period 10/22/2009 to 10/22/2010, when Agreed Medical Examiner’s opinion upon which WCJ relied in determining permanent disability did not constitute substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Agreed Medical Examiner did not adequately justify departure from DRE method of rating applicant’s spine impairment, in that he failed to explain how his use of Section 15.13 of AMA *Guides*, producing a 50 percent whole person impairment (WPI), more accurately reflected applicant’s impairment than DRE lumbar category II, from which he assigned 8 percent WPI, Agreed Medical Examiner inappropriately relied upon applicant’s subjective “perception” of significant impairment in activities of daily living (ADLs), rather than objective findings of nerve impingement and radiculopathy, and Agreed Medical Examiner’s deposition testimony indicated that he impermissibly used alternative rating method based on a desire to increase overall rating to reach an intended result commensurate with applicant’s work restrictions as rated under 1997 Schedule for Rating Permanent Disabilities.

**Edward Lopes, Applicant v. Hilton Construction, Inc., CIGA, By Its Servicing Facility Broadspire, A Crawford Company, For Legion Insurance Company, In Liquidation, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 263. Permanent Disability—Rating—WCAB, rescinding WCJ’s finding, held that applicant/laborer with 7/12/2000 admitted orthopedic injury was entitled to an unapportioned award of 86 percent permanent disability based upon Qualified Medical Evaluator’s permanent disability findings, without consideration of vocational experts’ opinions that applicant was 100 percent permanently disabled due to his inability to compete in open labor market, when vocational experts failed to differentiate between permanent effects of applicant’s injury and nonindustrial factors such as applicant’s economic condition and limited education, experts did not establish that applicant’s inability to participate in open labor market was solely related to his industrial disability or that limitations imposed by nonindustrial factors, such as applicant’s aptitude were directly attributable to industrial injury, and WCAB found that without having established a proper connection between applicant’s disability and his inability to participate in open labor market, WCAB could not rely on their conclusions to increase applicant’s permanent disability beyond that found by the Qualified Medical Evaluator.

**Debra Nickell, Applicant v. PKB Investments, Inc., dba Home Instead, Care West Insurance Company, administered by Pegasus Risk Management, Defendants**, 2013 Cal. Wrk. Comp. P.D. LEXIS 274. Permanent Disability—Rating—AMA *Guides*—WCAB, while affirming WCJ’s finding that opinions of Agreed Medical Examiner constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837* to support a finding that applicant with industrial back injury suffered 15 percent whole person impairment (WPI), disagreed with WCJ’s discussion of basis for Agreed Medical Examiner’s reports, and found that defendant did not bear burden to prove that strict application of AMA *Guides* was appropriate because the AMA *Guides* are prima facie evidence of disability pursuant to Labor Code § 4660(c).

**Sharon Angell, Applicant v. Marymount Academy, Inc., Sedgwick, Environmental Defense Center, State Compensation Insurance Fund, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 139. Permanent Disability—Rating—Formal Ratings—WCAB rescinded WCJ’s finding that applicant incurred 98 percent permanent disability as a result of industrial injuries to her bilateral shoulders, elbows, wrists, hands, neck, back and in form of fibromyalgia during period 7/11/97 through 4/10/2000, and 9 percent permanent disability as a result of injuries to same body parts from 7/12//2000 through 1/2/2001, when WCAB found that WCJ erroneously rated applicant’s cases himself rather than issuing formal rating instructions, and that although, under Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), a WCJ may personally rate a case, in a complex case such as this involving two interrelated but not separately ratable injuries to multiple body parts as well as issues of overlap and apportionment, rating instructions should be issued to help minimize chance of error and allow parties to object to rating instructions and cross-examine rater; WCAB returned matter to WCJ with a directive to obtain and serve a formal rating from Disability Evaluation Unit.

**Heghine Baghdasaryan, Applicant v. County of Los Angeles, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 141. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/clerk incurred 15 percent permanent disability as a result of 12/17/2009 injury to his low back and coccyx, adopting “strict” WPI determination of Agreed Medical Examiner under AMA *Guides*, plus 3 percent add-on for pain, and held that it was not improper for WCJ to reject Agreed Medical Examiner’s alternate rating based upon *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Agreed Medical Examiner improperly arrived at alternate impairment determination based on applicant’s loss of activities of daily living (ADLs) as applied to Figure 15-19 of AMA *Guides* (which does not allow impairment based on ADLs), rather than on a loss of functionality of a body part, and did not explain how he assessed applicant’s loss of ADLs given lack of objective evidence.

**Starla Jones, Applicant v. Gallo Glass Co., PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 158. Permanent Disability—Rating—AMA *Guides*—WCAB held that WCJ erred in awarding applicant/packing utility worker 16 percent permanent disability for 5/11/2010 industrial right shoulder injury, and found, instead, that applicant incurred 12 percent permanent disability based upon a whole person impairment (WPI) of 6 percent, when WCAB concluded that WCJ improperly added 3 percent impairment for applicant’s loss of shoulder motion despite that Agreed Medical Examiner, using his judgment, training and experience, found 0 percent impairment for limited shoulder adduction under AMA *Guides*, that in absence of a specific impairment amount for applicant’s 35 percent shoulder adduction, Agreed Medical Examiner’s finding of 0 percent impairment was appropriate given range of 0 to 1 percent in AMA *Guides*, and that WCJ should have found 10 percent upper extremity impairment, rather than 11 percent, as stated by Agreed Medical Examiner, which amounted to 6 percent WPI under Table 16-3 of AMA *Guides*.

**Guillermo Hernandez, Applicant v. McKesson Corporation, PSI, Adjusted by Athens Administrators, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 108. Permanent Disability—Rating—Sleep Disorder—WCAB held that WCJ properly included applicant’s sleep impairment, arising from 3/1/2005 and 6/29/2005 industrial back injuries, as a separate ratable factor in applicant’s permanent disability rating, when defendant failed to demonstrate that applicant’s orthopedic or psychiatric impairment included consideration of applicant’s sleep disorder, orthopedic Agreed Medical Examiner indicated that he would find 3 percent whole person impairment (WPI) for applicant’s sleep disorder, but would defer to appropriate specialist, and WCJ appropriately excluded orthopedic Agreed Medical Examiner’s WPI for sleep disorder in his orthopedic rating and instead used separate impairment rating proposed by internal medicine Agreed Medical Examiner.

**Bruce Bates, Applicant v. Valley Vintners Wine Company, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 95. Permanent Disability—Rating—Vocational Expert Evidence—WCAB rescinded WCJ’s finding that applicant/warehouse supervisor incurred 100 percent permanent disability as a result of 2/10/92 industrial injuries to his cervical spine, low back and psyche, and held that applicant’s injuries caused 80 percent permanent disability, when WCAB found that opinion of vocational rehabilitation expert upon which WCJ relied in finding permanent disability did not constitute substantial evidence regarding applicant’s vocational feasibility because vocational expert failed to conduct a labor market survey or do any research or exploration into issue of whether or not applicant could work outside his home.

**John Chase, Applicant v. Contra Costa Mosquito & Vector Control District, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 101. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB upheld WCJ’s finding that applicant/abatement control inspector incurred 41 percent permanent partial disability as a result of 5/17/2006 industrial injury to his left ankle, gastrointestinal system and in forms of hypertension, sleep disorder and sexual dysfunction, and 6 percent permanent disability as a result of injury to his spine during cumulative period 5/17/2005 through 5/17/2006, and determined that WCJ properly relied upon diminished future earning capacity (DFEC) in 2005 Permanent Disability Rating Schedule to rate applicant’s permanent disability, when defendant sought, via a “reverse *Ogilvie*” type analysis, to rebut scheduled DFEC based on fact that applicant returned to work and suffered no diminished earnings, and, although WCAB saw no bar to defendant’s use of an *Ogilvie* type analysis to challenge a scheduled rating by rebutting DFEC factor, WCAB concluded that such a challenge must address earning *capacity*, that defendant only addressed applicant’s post-injury earnings and offered no evidence concerning disabling effects of injury on applicant’s earning capacity, that record revealed applicant was not able to perform his usual job post-injury without significant modifications and incurred a loss of future earning capacity because of his disability, and that defendant offered no expert evidence to rebut scheduled rating.

**Lori Chiradio, Applicant v. Volume Services America, Inc., American Home Assurance Co., Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 102. Permanent Disability—Rating—Substantial Evidence—WCAB, in a split panel opinion, rescinded WCJ’s finding that applicant/bartender incurred 63 percent permanent disability as a result of 4/29/2005 industrial injuries to her lumbar spine, cervical spine, psyche, sexual system, and urinary system, and returned matter to WCJ for further development of record regarding extent of applicant’s sleep and sexual impairment and whether these impairments should be separately rated, when WCAB found that, although Agreed Medical Examiner opined that applicant had a nocturnal eating disorder as a complication of her sleeping disorder and assigned a 5 percent whole person impairment (WPI) for sexual dysfunction, there was insufficient evidence to determine level of impairment for either of these conditions.

**Ronald Gerton, Applicant v. City of Pleasanton, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 105. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant/firefighter incurred 62 percent permanent partial disability as a result of injury to his low back during cumulative period ending on 6/16/2009 and that DFEC set forth in 2005 Permanent Disability Rating Schedule was rebutted by testimony of applicant’s vocational expert pursuant to analysis in Dahl v. Contra Costa County, 2012 Cal. Wrk. Comp. P.D. LEXIS 173, and held that, while analysis in *Dahl*, which takes into account effect of injury’s impairment on worker’s amenability to rehabilitation, may be properly applied in this case of less than total permanent disability, record required further development on whether applicant carried his burden of rebutting DFEC component of 2005 PDRS because vocational expert’s opinion did not fully address applicant’s amenability to rehabilitation and potential effect of rehabilitation on his DFEC, and because there was insufficient evidence on issue of applicant’s post-injury earnings and whether his actual earning history could be utilized to evaluate his DFEC and extent of permanent disability.

**Glenn Roundtree, Applicant v. SF Bart, PSI, Athens Administrators, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 126. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/transit vehicle mechanic with 9/17/2004 back injury incurred 100 percent permanent disability under 1997 Schedule for Rating Permanent Disabilities, based upon opinion of Qualified Medical Evaluator, as supported by treating physician’s opinion, testimony of vocational rehabilitation expert indicating that applicant was unable to compete in open labor market based upon applicant’s level of pain, fatigue, effects of medications and work preclusions, and applicant’s credible testimony regarding his condition.

**Edwin Suarez, Applicant v. Barrett Business Services, Inc., PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 129. Permanent Disability—Rating—Vocational Expert Evidence—WCAB rescinded WCJ’s finding that applicant/painter and drywall worker/foreman with injuries to his lumbar spine, cervical spine and upper extremities through cumulative period ending on 10/20/2006, incurred 100 percent permanent disability under **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, when WCAB found that vocational expert evidence relied upon by WCJ in finding permanent total disability did not constitute substantial evidence because vocational expert failed to address applicant’s management skills in concluding that applicant had no transferable skills, vocational expert relied on Agreed Medical Examiner’s report for proposition that applicant could not be retrained but report did not constitute substantial evidence to support this proposition, vocational expert noted fact that applicant was receiving social security benefits but did not address how this affected applicant’s motivation to work, and vocational expert documented that applicant did not know how to use a computer, but did not discuss impact of this non-industrial factor on applicant’s ability to be rehabilitated.

**Tabitha Asim, Applicant v. East Bay Municipal Utilities District, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 35. Permanent Disability—Rating—AMA *Guides*—WCAB, rescinding WCJ’s award, held that report of Panel Qualified Medical Evaluator did not constitute substantial evidence to support WCJ’s finding that applicant/custodian incurred 4 percent permanent disability as a result of 7/29/2008 specific injury to her hips and lumbar spine and 15 percent permanent disability from cumulative injury to same body parts through 11/2008, when Panel Qualified Medical Evaluator was unable to separate applicant’s lifting restrictions due to a 2011 non-industrial hernia injury from restrictions necessitated by applicant’s industrial injuries, Panel Qualified Medical Evaluator did not provide sufficient justification for her impairment findings pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and Panel Qualified Medical Evaluator did not discuss applicant’s impairment in relation to her activities of daily living (ADLs), but impermissibly relied upon a work preclusion from heavy lifting to justify her rating of applicant’s lumbar disability.

**Rene Garcia, Applicant v. City of Anaheim, PSI, Defendant,** 2013 Cal. Wrk. Comp. P.D. LEXIS 45. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/firefighter incurred 81 percent permanent disability as a result of injuries to his low back and both knees during cumulative period 4/2001 to 4/19/2005, when WCAB found that supplemental report and deposition testimony of applicant’s primary treating physician, upon which WCJ relied to determine extent of applicant’s permanent disability, did not justify a departure from strict application of AMA *Guides*, because (1) primary treating physician improperly considered applicant’s ability to compete in open labor market in addition to impairment of applicant’s activities of daily living (ADL) in formulating a rating, (2) in analyzing applicant’s loss of functional capacity physician used overlapping loss of functional capacity for lifting as to each body part to reach a total loss that was greater than 100 percent, and (3) physician’s analysis of applicant’s loss of his former lifting capacity was speculative given that physician lacked any baseline data or prior functional capacity evaluation upon which to base his determination of applicant’s loss of capacity.

**Horace Grant, Applicant v. Los Angeles Lakers, Federal Insurance Company, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 48. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/professional basketball player incurred 90 percent permanent disability as a result of injuries to his neck, lumbar spine, shoulders, arms, knees, ankles, right hip, wrists and in form of posttraumatic headaches, posttraumatic head syndrome, and sleep disorder from 3/12/2003 to 3/14/2004, and held that Qualified Medical Evaluator’s reporting relied upon by WCJ did not include a proper analysis of applicant’s condition pursuant to AMA *Guides* and was not substantial evidence, when Qualified Medical Evaluator’s assessment of applicant’s permanent disability using other than usual AMA *Guides* charts and tables on basis that applicant was a professional athlete was unjustified since occupational factor is already accounted for in rating string, Qualified Medical Evaluator’s deviation from usual method of measuring impairment under AMA *Guides* solely to obtain a higher whole person impairment (WPI) was contrary to holding in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and Qualified Medical Evaluator’s deviation from usual tables in AMA *Guide*s was not supported by medical record and was not adequately explained by Qualified Medical Evaluator.

**Martha Ponce, Applicant v. Ashley & J Pharmacy Corp, dba Ross Medical Pharmacy, Employers Compensation Insurance Company, Defendants,** *2013 Cal. Wrk. Comp. P.D. LEXIS 73*. Permanent Disability—Rating—AMA *Guides*—WCAB, denying applicant’s request for reconsideration, upheld its prior decision [see Ponce v. Ashley & J Pharmacy Corp, dba Ross Medical Pharmacy, 2012 Cal. Wrk. Comp. P.D. LEXIS 596] that applicant was not entitled to separate rating for sleep disorder, when applicant’s sleep disorder was fully described and subsumed in permanent disability rating for her orthopedic and psychiatric injuries, and, contrary to applicant’s assertions, there was no medical evidence that applicant was suffering from a separate neurological disorder that would bring her claim within scope of Chapter 13 of AMA *Guides* so as to justify additional permanent disability award for sleep disorder; WCAB found that applicant should have raised her objection to occupational variant used by WCJ by way of Petition for Reconsideration following initial decision.

**Asencio Villasenor, Applicant v. ARG Corporation, DBA Le Petit Bistro, Everest National Insurance Company, Administered By American Claims Management, Inc., Employers Insurance Company, Subsequent Injuries Benefits Trust Fund, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 86. Permanent Disability—Presumption of Total Disability—WCAB affirmed WCJ’s finding that applicant/cook was not entitled to 100 permanent total disability award pursuant to Labor Code § 4662 for injury to his brain in form of a stroke resulting in “incurable mental incapacity,” when WCAB found that fact that there was irreversible brain damage, in itself, did not justify finding of permanent total disability when medical evidence indicated only partial disability.

**Samantha Van Duinhoven, Applicant v. Spa Hotel & Casino, California Casualty, Administered by GAB Robins North America, Defendants,** 2013 Cal. Wrk. Comp. P.D. LEXIS 31. Permanent Disability—Rating—WCAB rescinded WCJ’s finding that applicant/spa director suffered permanent total disability as a result of 1/15/96 injuries to her neck, back, left shoulder, psyche, and in form of chronic pain syndrome, and, finding that there was insufficient evidence that applicant suffered injury to her low back and that she was not correctly diagnosed with chronic pain syndrome, determined that applicant incurred 70 percent permanent disability as rated under Multiple Disabilities Table based upon psychiatric disability, and disability caused by injuries to cervical spine and left shoulder.

**Arthur Cannon, Applicant v. City of Sacramento, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 615. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split panel opinion, rescinded WCJ’s finding that applicant/police officer suffered no permanent disability as a result of 10/21/2008 admitted industrial injury to his left foot and heel/plantar fasciitis, and ordered WCJ to find permanent disability based upon Agreed Medical Examiner’s opinion that applicant sustained 7 percent whole person impairment (WPI), when WCAB found that (1) Agreed Medical Examiner’s use of gait derangement by analogy to rate applicant’s impairment, based upon applicant’s functional impairment in his limitation from prolonged running, constituted substantial evidence pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut scheduled rating in 2005 Permanent Disability Rating Schedule, (2) WCJ, in rejecting Agreed Medical examiner’s opinion, misinterpreted language in *Almaraz/Guzman* so as to limit a rating by analogy only to cases with “complex and extraordinary” medical conditions, (3) language in *Almaraz/Guzman* should be interpreted to reflect a physician’s ability to rate impairment by analogy within four corners of AMA *Guides*, where a strict application of AMA *Guides* does not accurately reflect impairment, and (4) since applicant’s condition, plantar fasciitis, is not covered by AMA *Guides*, strict application of AMA *Guides* was not feasible, and Agreed Medical Examiner properly used his expertise and judgment to find impairment by analogy.

**Danalee Fowler, Applicant v. Wolfgang Puck Catering Events, American Home Assurance, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 622. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant/bartender with 7/26/2006 admitted industrial left ankle injury was permanently totally disabled under **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989 based upon testimony of vocational rehabilitation expert, when WCAB found that vocational expert testimony relied upon by WCJ did not constitute substantial evidence because vocational expert relied upon matters outside his expertise, including effect of applicant’s medications and alleged “history of seizures,” to conclude that applicant was unable to engage in gainful employment, that vocational rehabilitation expert’s opinion was not supported by medical record, and that matter should be returned to trial level for further development of record with regard to applicant’s amenability for rehabilitation and ability to engage in gainful employment.

**Richard Kite, Applicant v. East Bay Municipality Utility District, Athens Administrators, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 640. Permanent Disability—Rating—AMA *Guides*—WCAB held that WCJ did not err in combining permanent disability stemming from injury to each of applicant/forklift operator’s hips using simple addition, rather than by using Combined Values Chart, based upon Panel Qualified Medical Evaluator’s opinion, when WCAB found that, although 2005 Permanent Disability Rating Schedule provides that impairments are *generally* combined using reduction formula, AMA *Guides* describe several methods of combining impairments, that rigid application of Multiple Disabilities Table is not mandated, that scheduled impairment rating is rebuttable, and that Panel Qualified Medical Evaluator appropriately determined that impairment resulting from applicant’s left and right hip injuries was most accurately combined using simple addition than by use of combined values formula.

**Jane Richison, Applicant v. California Wallboard, Inc., State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 662. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant incurred 100 percent permanent disability as a result of psychiatric injury suffered while working for defendant between 1996 and 6/17/2008, based upon principles in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989 and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, when Agreed Medical Examiner and vocational rehabilitation expert both concluded that applicant was not able to work in open labor market and had a totally diminished future earning capacity, and defendant produced no evidence to rebut these opinions.

**Carl Sirl, Applicant v. VSJ, Inc., Endurance Insurance Company, adjusted by FirstComp Insurance Agency, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 667. Permanent Disability—Rating—AMA *Guides*—WCAB, reversing WCJ, held that Panel Qualified Medical Evaluator’s opinion did not constitute substantial evidence to support WCJ’s finding that applicant/lube technician suffered ratable sleep impairment as a result of 2/8/2009 back injury, and returned matter for further development of medical record, when WCAB found that (1) Panel Qualified Medical Evaluator failed to explain why he did not perform formal sleep studies in a sleep laboratory, and that since AMA *Guides* are unclear on whether a physician can provide a WPI without a formal sleep study, Panel Qualified Medical Evaluator should provide an explanation for his choice to rely on Epworth Sleepiness Scale, (2) Panel Qualified Medical Evaluator did not discuss applicant’s sleep patterns before his industrial injury or provide a precise diagnosis of his sleep disturbance, and (3) WCJ should not have relied on Panel Qualified Medical Evaluator’s reporting to find permanent disability related to applicant’s sleep disorder.

**Robert Evans, Applicant v. Marriott International, Marriott Hot Springs, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 573. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/maintenance engineer sustained 3/8/2005 industrial injury in form of sleep disorder/insomnia based upon opinion of Panel Qualified Medical Evaluator, notwithstanding that no sleep study was undertaken, when Panel Qualified Medical Evaluator explained that insomnia was a different disorder than sleep apnea and did not require a sleep study.

**Ruthiea Avist, Applicant v. UC San Francisco Medical Center, PSI, Adjusted by Sedgwick CMS, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 554. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant with 1/14/2005 industrial spinal injury incurred permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662, without justification for apportionment, based on opinions of Agreed Medical Examiner, applicant’s primary treating physician and consulting spinal cord specialist that applicant was unemployable due to progression of her injury-related pathology, including inability to use either upper extremity in a meaningful fashion, inability to ambulate properly without assistance of a walker due to lack of function and residual spasticity, use of pain medication, and inability to leave her house independently.

**Devoris Brown, Applicant v. Southern California Permanente Medical Group, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 557. Permanent Disability—Rating—Permanent Total Disability—WCAB, rescinding WCJ’s finding that applicant/reception clerk incurred 100 percent permanent disability as a result of industrial injury to her hands, wrists, elbows, shoulders, psyche, and in form of rheumatoid arthritis during period 1987 through 1/27/2004 pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and held that record did not support application of a *LeBoeuf* analysis because, although applicant offered reporting of parties’ Agreed Medical Examiners indicating that she was unable to participate in open labor market, applicant offered no vocational showing that her injury impaired her rehabilitation, and WCAB found that consideration of whether an employee is amenable to rehabilitation requires specialized knowledge of an injured worker’s potential for vocational rehabilitation and type of employment available in labor market; WCAB found that even if record were sufficient to support a finding of permanent total disability under a *LeBoeuf* analysis, reporting of Agreed Medical Examiners supported apportionment of applicant’s permanent disability under Labor Code § 4663 and *4664*.

**Jesus Constanza, Applicant v. The Torrance Company, dba Holiday Inn City Center, PSI, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 564. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that record required further development regarding applicant’s hernia impairment, when medical reporting in record did not constitute substantial evidence to support hernia impairment finding because reporting physician determined hernia impairment under Class 1 of Table 6-9 in AMA *Guides* based on applicant’s occasional mild groin pain, but WCAB found that Class 1 of Table 6-9 requires a palpable defect, *and* either slight protrusion at sight of defect *or* “occasional mild discomfort,” and also found that it was unclear whether Table 6-9 requires a post-surgical palpable defect; WCAB found that physician’s finding of impairment of applicant’s cervical and lumbar spines based on ROM method did not constitute substantial evidence because physician did not provide adequate explanation as to why he used ROM method rather than DRE method of determining impairment when there was multilevel impairment of applicant’s spine.

**Patricia Davilla, Applicant v. Southern Wine & Spirits, Hartford Accident & Indemnity Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 566. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/receptionist incurred 23 percent permanent disability as a result of 2/5/2010 admitted industrial injury to her left upper extremity, when WCAB found that Panel Qualified Medical Evaluator’s opinion, upon which WCJ relied in finding permanent disability, did not justify rating of applicant’s upper extremity disability based upon combined loss of grip strength and loss of range of motion because Panel Qualified Medical Evaluator did not expressly state that both impairment factors should be used in rating disability.

**Wendy Drew, Applicant v. Creative Majic Gardens, Delos Insurance Services, Risk Enterprise Limited, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 570. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant incurred 25 percent permanent disability as a result of industrial injuries, and that opinion of Panel Qualified Medical Evaluator did not constitute substantial evidence with regard to impairment incurred by applicant from sleep disorder and sexual dysfunction, when Panel Qualified Medical Evaluator’s apportionment opinion was insufficient, Panel Qualified Medical Evaluator improperly rated sexual impairment under Table 1.2 (activities of daily living) of AMA *Guide*, and Panel Qualified Medical Evaluator’s opinion was based on purely subjective complaints.

**Carlos Guzman, Applicant v. Grimmway Enterprises, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 576. Permanent Disability—Rating—Permanent Total Disability—WCAB, in a split panel opinion, rescinded WCJ’s finding that applicant/maintenance worker sustained 90 percent permanent disability as a result of injuries to his right shoulder, low back, hearing, psyche, brain or nervous system and in form of gastritis on 12/11/99 and during cumulative period 12/11/98 through 12/11/99, and held that applicant’s injuries caused 100 percent permanent disability pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, based upon vocational experts conclusion that given applicant’s limitations, applicant was unemployable, and applicant’s wife’s credible testimony regarding applicant’s anger, headaches, and issues with concentration.

**Roy Haas, Applicant v. City of Santa Rosa, Redwood Empire Municipal Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 577. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split panel opinion, amended WCJ’s decision and increased permanent disability awarded to applicant/maintenance worker as a result of admitted industrial injury to his left elbow on 3/31/2009 and admitted cumulative trauma to bilateral shoulders over period ending 4/8/2009, based upon highest ratable factor of impairment for each part of body, when WCAB found that increased rating of applicant’s permanent disability was justified by medical evidence, that Agreed Medical Examiner’s use of loss of motion and loss of strength can be considered a “strict” rating under AMA *Guides* as an evaluator can use loss of motion and loss of strength at same time to rate upper extremity injury in an appropriate case, and that it was appropriate here for WCJ to choose highest appropriate ratable impairment, rather than a combined rating, because he found that Agreed Medical Examiner did not specifically explain why applicant’s loss of strength should be combined and rated with applicant’s loss of range of motion.

**Elsie Martinez, Applicant v. Southern California Edison, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 586. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/technical specialist/scientist III who incurred industrial injuries to her neck, right shoulder, right wrist, right hand and psyche on 6/15/2001, and cumulative injuries to her lumbar and cervical spines, shoulders, wrists, hands, psyche, and in form of fibromyalgia from 2/98 through 5/21/2004, was permanently totally disabled in “accordance with the fact” pursuant to Labor Code § 4662 based upon opinion of Independent Medical Evaluator in rheumatology that applicant was unable to participate in labor market and had total loss of future earning capacity due to her fibromyalgia.

**Jesus Martinez, Applicant v. City of Santa Monica, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 587. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant’s 9/6/2006 right knee injury/meniscus tear caused 2 percent permanent disability pursuant to Panel Qualified Medical Evaluator’s opinion that applicant’s knee impairment was 1 percent based strictly on pain, and held that applicant was not entitled to any permanent disability for 9/6/2006 injury, when WCAB found that under AMA *Guides* a meniscus tear is not a sufficient objective finding to support a whole person impairment rating, that Panel Qualified Medical Evaluator failed to comment on whether meniscus tear was related to applicant’s industrial injury, and that award of nominal disability pursuant to Labor Code § 5802 was improper absent medical evidence that “disability is likely to result at a future time.”

**Kevin Miller, Applicant v. California State University, Fresno, Sedgwick Claims Management, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 589. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that opinion of Agreed Medical Examiner was substantial evidence to support a finding that applicant/college professor incurred 20 percent WPI as a result of 1/20/2008 pulmonary embolism, when WCAB held that Agreed Medical Examiner’s finding that applicant had a WPI of 20 percent on his PAP and opinion that a measure of PAP at time of right heart catheterization is a more accurate measure of pulmonary hypertension than an echocardiogram because it is the only direct measure, was insufficient to rebut AMA *Guides* because Agreed Medical Examiner did not explain basis for his opinion as required under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*; WCAB remanded matter for further development of medical record pursuant to McDuffie v. Los Angeles County Metropolitan Transit Authority (2002) 67 Cal. Comp. Cases 138 (Appeals Board en banc opinion), instructing that Agreed Medical Examiner should clarify applicant’s level of impairment, explain current impact of embolism on applicant’s activities of daily living, and provide a more thorough analysis under *Almaraz/Guzman II*.

**Martha Ponce, Applicant v. Ashley & J Pharmacy Corp, dba Ross Medical Pharmacy, Employers Compensation Insurance Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 596. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/medical biller/pharmacy clerk suffered 53 percent permanent disability as a result of injury in form of sleep disorder from 9/30/2006 through 8/21/2007, when applicant testified that sleep problems arose solely due to orthopedic and psychiatric injuries, and WCAB found that WCJ’s separate award of permanent disability for sleep disorder based upon impairment rating in Table 13-4 of AMA *Guides*, applicable to neurological disorders, was redundant as sleep impairment was subsumed under ratings for applicant’s orthopedic and psyche disorders.

**Ofelia Salcedo, Applicant v. P.F. Chang’s China Bistro, Chubb Group, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 601. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/prep cook/dish washer with 9/8/2008 industrial injury to fourth and fifth digits on her left hand incurred 19 percent permanent disability, and held that treating physician’s reports upon which WCJ relied in awarding permanent disability did not constitute substantial evidence because treating physician measured applicant’s grip strength, and in providing grip strength measurements treating physician did not indicate whether measurements were taken in accordance with protocols set forth in AMA *Guides* or why those measurements should be a factor of disability as opposed to other possible objective impairment measurements, treating physician did not address applicant’s activities of daily living, which should form basis for calculating impairment under AMA *Guides*, and treating physician had not examined applicant since 8/10/2009.

**Kirkland Carr, Applicant v. Dr. Pepper Snapple Group, Inc., Insurance Company of the State of Pennsylvania, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 505. Permanent Disability—Rating—Occupational Group Number—WCAB reversed WCJ’s finding that applicant/bulk driver who sustained 8/12/2008 industrial injury to his back, right knee and in form of sleep disorder was in occupational group number 350 (truck drivers) and held that correct occupational group number was 460 (loaders and unloaders), when WCAB found that applicant’s job, although consisting of more driving than loading/unloading, contained a significant amount of loading/unloading objects weighing up to 75 pounds and, therefore, that applicant was exposed to hazards of loading/unloading work so as to qualify for occupational group number 460.

**Martin Cruzaley, Applicant v. Spin Cycle Coin Laundry, State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 509. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s award of 100 percent permanent disability pursuant to presumption in Labor Code § 4662 to applicant/cashier who had earlier lost sight in his right eye as a result of a non-industrial condition and was rendered legally blind after industrial injury to left eye, when WCAB found that industrial injury was not the cause of applicant’s loss of sight in both eyes and WCJ should not have applied Labor Code § 4662 presumption to find applicant totally permanent disabled without any apportionment to non-industrial factors.

**Angelina Kendrick McGee, Applicant v. State of California, Department of Justice, Legally Uninsured, Administered by State Compensation Insurance Fund, State Contract Services, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 522. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/office assistant supervisor sustained 56 percent permanent disability as a result of 10/5/2009 industrial injury to her cervical spine, left hand and wrist, bilateral shoulders and knees, when WCAB found that Agreed Medical Evaluator’s opinion did not support a departure from strict application of AMA *Guides* by including measurements of applicant’s grip loss as a factor of disability in light of limitation in Section 16.8a that grip loss be included only in “rare cases”, when Agreed Medical Evaluator did not provide any analysis to justify departure from AMA *Guides*.

**Gregory Nilsen, Applicant v. Vista Ford, Pacific Compensation Insurance Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 528. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/service writer was permanently totally disabled, with no basis for apportionment, as a result of 2/12/2007 industrial spine injury resulting in chronic pain syndrome and psychiatric disorder, when substantial medical and vocational evidence established that applicant was unable to participate in open labor market due to chronic pain and use of opioid medication, that applicant’s use of narcotics and narcotic dependency was itself sufficient to result in total loss of earning capacity, and that applicant had no loss of earning capacity as a result of pre-existing conditions prior to injury for purposes of apportionment.

**Rose Rockford, Applicant v. Long Beach Unified School District, York Riverside, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 534. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split panel opinion, upheld its prior decision [See Rockford v. Long Beach Unified School District, 2012 Cal. Wrk. Comp. P.D. LEXIS 435] in which it followed opinion of Panel Qualified Medical Evaluator to hold that applicant/team leader/teacher/administrator’s injuries to her lumbar and thoracic spine caused 19 percent permanent disability.

**Robert Kiehne, Applicant v. City of Sacramento Fire Department, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 471. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/firefighter incurred 30 percent permanent disability, after apportionment to non-industrial factors, as a result of cumulative right eye injury through 7/15/2009, and that WCJ was permitted to rate applicant’s permanent disability under chapter 12 of AMA *Guides* without a formal rating when rating was supported by opinion of panel Qualified Medical Evaluator, which constituted substantial evidence.

**Camilo Llanez, Applicant v. Diamond Holdings of California, Argonaut Insurance Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 474. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split panel opinion, rescinded WCJ’s finding that applicant/janitor incurred 74 percent permanent disability as a result of industrial injury to his head, face, spine, rib cage, right arm, bilateral lower extremities, and psyche and in forms of memory loss and headaches, and determined that 12 percent WPI due to grip loss based upon Agreed Medical Examiner’s opinion was not supported by substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when Agreed Medical Examiner did not explain why he departed from a strict application of AMA *Guides* and why grip loss more accurately reflected applicant’s impairment especially in light of applicant’s complaints of significant pain; WCAB remanded matter for rating of Agreed Medical Examiner’s reports without including 12 percent WPI due to grip loss, having determined that it was not appropriate to further develop record on issue of permanent disability because Agreed Medical Examiner had already issued four supplemental reports after initial report without addressing grip loss portion of his impairment finding and parties did not seek clarification.

**Margaret Sanchez, Applicant v. Washington Mutual Bank, Old Republic Insurance Company, administered by Specialty Risk Services, Inc., Defendants**, *2012 Cal. Wrk. Comp. P.D. LEXIS 487*. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/data entry clerk incurred 39 percent permanent disability as a result of 12/28/2006 specific injuries, and 76 percent permanent disability as a result of cumulative injury from 7/2004 to 8/28/2007, and held that Agreed Medical Examiner’s opinion indicating that applicant could use upper extremities but had difficulty with self care constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating and support award of permanent disability for applicant’s bilateral upper extremity impairment based on a Class 3 WPI for dominant and non-dominant upper extremity as contained in Table 13-6 of AMA *Guides*; WCAB upheld WCJ’s decision not to follow opinion of DEU rater who determined that reporting of Qualified Medical Evaluator in internal medicine was not consistent with AMA Guides, and found, instead, that opinion of Qualified Medical complied with *Almaraz/Guzman* and constituted substantial evidence regarding permanent disability caused by applicant’s diabetes and hypertension.

**Edward Schroeder, Applicant v. State of California, Department of Corrections, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 488. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant/correctional officer with 11/1/2008 admitted industrial injury to his heart (including hypertension and cardiovascular system), psyche and in forms of hypoxia/vascular dementia, erectile dysfunction, headaches, loss of sense of smell, and cognitive disorder caused permanent total disability pursuant to Labor Code § 4662(d), and remanded matter for a rating on existing medical record, when WCAB found that (1) despite WCJ’s contrary finding, “*mild* hypoxia/vascular dementia” constituting a 12 percent WPI as found by Agreed Medical Examiner did not constitute a disability which triggered Labor Code § 4662(d) conclusive presumption, as Legislative history and purpose behind Labor Code § 4662(d) contemplates a more severe disability than that incurred by applicant for application of conclusive presumption, and (2) applicant did not rebut scheduled DFEC factor pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, by showing that he was unable to compete in open labor market, because vocational expert upon whom applicant relied took impermissible factors into account in rendering her opinions, including limitations on employment based on geographical scope and general economic conditions, and misinterpreted medical evidence in determining applicant’s vocational feasibility.

**Michael Waters, Applicant v. Charter Communications, Broadspire, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 495. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant incurred 65 percent permanent disability as a result of 6/10/2010 injuries to his lower extremities and left knee, when applicant chose to rebut scheduled rating through cross-examination of rater rather than by presenting DFEC evidence prior to rating, WCJ allowed vocational expert testimony offered to rebut rating after MSC and after formal rating was issued, and vocational expert testimony offered in rebuttal to rating indicating that applicant had substantial incapacity to compete in open labor market was sufficient to rebut scheduled rating.

**Bruce Ayers, Applicant v. Granite Rock Company, Zurich American Insurance Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 401. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/plant manager with cumulative cervical spine injury through 6/6/2008 was permanent totally disabled in “accordance with the facts” pursuant to Labor Code 4662(d), when applicant’s injury resulted in chronic pain and depressive disorders, panel Qualified Medical Examiner reported that applicant was unemployable due to side effect of his narcotic medications, inability to concentrate, necessity to sit or stand as needed, sleep disturbances, and loss of 90 percent of all strength activities, and panel Qualified Medical Examiner’s opinion was supported by vocational rehabilitation expert opinions.

**Guillermo Hernandez, Applicant v. Spiess Construction, State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 415. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant/laborer/construction worker incurred 79 percent permanent disability as a result of 3/30/2005 admitted industrial lumbar back injury, and held that applicant suffered 37 percent permanent disability pursuant to 2005 Permanent Disability Rating Schedule and opinion of Agreed Medical Examiner, when WCAB found that to rebut scheduled DFEC factor an employee must establish that his diminished future earnings are attributable to the work-related injury and not to non-industrial factors such as illiteracy, proficiency in speaking English or lack of education, and that, here, testimony of vocational expert relied upon by WCJ did not constitute substantial evidence pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, to rebut scheduled DFEC factor because vocational expert did not explain how she reached conclusion that Spanish-speaking applicant’s inability to speak English and lack of education beyond elementary school would have no impact on his future earning capacity.

**Alda Mrozek-Payne, Applicant v. Spectre Air & Ground Freight, State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 427. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/vice president incurred 84 percent permanent disability as a result of 7/23/2001 industrial injuries to her psyche, skin, and in forms of headaches, chronic pain and fibromyalgia, and held that vocational rehabilitation expert’s opinion did not constitute substantial evidence to support a finding of 100 percent permanent disability when vocational expert did not meet with applicant, did not complete a formal work evaluation, only reviewed Agreed Medical Examiners’ reports which did not support a finding of permanent total disability, and expressed mere conclusions without adequate investigation, and WCAB found that (1) pursuant to decision in Rodrigues v. W.C.A.B. (2012) 77 Cal. Comp. Cases 669, a vocational expert opinion made without an individualized work up is not substantial evidence, and (2) although an applicant may be permanently totally disabled with a Global Assessment of Functioning (GAF) score of 45, GAF score alone, without further analysis of why the applicant is precluded from working, does not support finding of permanent total disability.

**Nelson Riggins, Applicant v. Republic Services, dba Solano Garbage Company, Defendants,**2012 Cal. Wrk. Comp. P.D. LEXIS 433. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/refuse collector/driver incurred 74 percent permanent disability as a result of 9/22/2005 industrial injuries to his spine, psyche, gastrointestinal system, and in forms of hypertension, sleep disorder, and sexual dysfunction, and determined that WCJ correctly omitted sleep impairment from applicant’s permanent disability rating when Agreed Medical Examiner determined that applicant did not qualify for an impairment rating based on his score on Epworth Sleepiness Scale, there were no formal sleep studies performed pursuant to AMA *Guides*, and manner in which Epworth test was conducted was not sufficient to support a finding of sleep impairment.

**Rose Rockford, Applicant v. Long Beach Unified School District, York Riverside, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 435. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split panel opinion, rescinded WCJ’s finding that applicant/team leader/teacher/administrator suffered 27 percent permanent disability as a result of her admitted 12/14/2007 industrial lumbar and thoracic spine injury, and followed opinion of panel Qualified Medical Evaluator to hold that applicant’s injuries caused 19 percent permanent disability, when WCAB found that (1) treating physician’s opinion, upon which WCJ relied, was not substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict AMA *Guides* rating, because treating physician impermissibly utilized hernia chapter in AMA *Guides* to determine applicant’s impairment and provide applicant with greater disability without adequately explaining why this chapter provided a better description of applicant’s disability than spinal chapter, except to state that hernia chapter more closely provided a rating that would have been available under old rating system which incorporated work restrictions, and (2) panel Qualified Medical Evaluator reached result based on DRE II category under spinal chapter of AMA *Guides* after providing complete examination and providing explanation to support his impairment findings.

**Robert Ruybal, Applicant v. State of California, CDCR-Salinas Valley State Prison, legally uninsured, State Compensation Insurance Fund/State Contract Services, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 436. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/mechanic suffered 3/22/2006 industrial low back injury that caused permanent total disability with 30 percent apportionable to prior injury based upon panel Qualified Medical Evaluator’s opinion, when WCAB found that panel Qualified Medical Evaluator’s opinion constituted substantial evidence under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837* and **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624 to rebut strict application of AMA *Guides* because panel Qualified Medical Evaluator extensively discussed factors related to applicant’s case that made a strict application of AMA *Guides* inaccurate and there was no evidence in record to contradict doctor’s opinion.

Permanent Disability—Apportionment—WCAB affirmed WCJ’s 30 percent apportionment of applicant/mechanic’s permanent total disability to prior award under Labor Code § 4663 pursuant to opinion of Qualified Medical Evaluator, when defendant failed to meet burden pursuant to **Kopping v. W.C.A.B.** (2006) 142 Cal. App. 4th 1099, 48 Cal. Rptr. 3d 618, 71 Cal. Comp. Cases 1229, to show overlap between applicant’s disability resulting from 3/22/2006 industrial low back injury as rated under new schedule with prior disability rated under old schedule so as to support apportionment under Labor Code § 4664.

**Joanna Schoengarth, Applicant v. Marshall Hospital, California Insurance Guarantee Association On Behalf O Fremont Insurance Company, In Liquidation, Administered By Sedgwick CMS, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 439. Permanent Disability—Rating—Rebuttal Evidence—WCAB, affirming WCJ’s finding that applicant incurred 57 percent permanent disability as a result of 11/23/91 back and compensable consequence shoulder and knee injuries, held that WCJ did not violate applicant’s due process rights by denying her petition to strike rating and her request to present vocational expert rebuttal evidence, when WCAB found that vocational expert’s testimony would not rebut rater’s expert rating, but was rather an attempt to alter rating instructions by providing further evidence regarding applicant’s overall permanent disability, that it was too late, at this stage of proceedings, for applicant to present evidence regarding her level of disability, that expert evidence to rebut a recommended permanent disability rating cannot be used to re-litigate case, and that evidence of applicant’s ability or inability to compete in open labor market could have been obtained at any time after applicant became permanent and stationary.

**Louise Swarts, Applicant v. Cadence Design System, The Hartford, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 442. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/administrative assistant incurred 37 percent permanent disability as a result of cumulative injury to her cervical spine and upper extremities during period ending on 6/9/2005, and held that opinion of Qualified Medical Evaluator regarding applicant’s upper extremity rating, upon which WCJ relied in finding permanent disability, did not constitute substantial evidence to rebut scheduled AMA *Guides* rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Qualified Medical Evaluator did not state why strict application of AMA *Guides* did not accurately reflect applicant’s impairment, or why strict application was not warranted due to peculiarities of this particular case.

**Sharon Wright, Applicant v. City of Los Angeles Department of Water and Power, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 448. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that Agreed Medical Examiner’s opinion constituted substantial evidence to support finding that applicant/customer service representative incurred 50 percent permanent disability as a result of 6/4/2008 industrial injuries to her right knee, right shoulder, right elbow, wrists, and left elbow, and 26 percent permanent disability as a result of 1/19/2010 left shoulder injury, when Agreed Medical Examiner applied section 16.8a of AMA *Guides* to find applicant’s WPI based upon loss of motion and loss of grip strength, which he found most accurately reflected applicant’s level of impairment, and WCAB found that Agreed Medical Examiner did not attempt to rebut strict application of AMA *Guides*, as implied by defendant, but rather adhered to strict AMA *Guides* rating by using loss of motion and grip strength to find impairment, which was appropriate in this case.

**Sharon Angell, Applicant v. Marymount Academy, Inc., California Insurance Guarantee Association (CIGA) by its servicing agent Sedgwick CMS, for Fremont Indemnity in liquidation, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 328. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s findings regarding permanent disability incurred by applicant as a result of industrial injuries to her bilateral shoulders, elbows, wrists, hands, neck, back and in form of fibromyalgia during periods 7/12//2000 through 1/2/2001 and 7/11/97 through 4/10/2000, when WCJ rated applicant’s fibromyalgia as a compensable consequence of her orthopedic injuries rather than separately and WCAB found no evidence to support WCJ’s conclusion that fibromyalgia was caused by orthopedic injuries as opposed to being a separate ratable injury.

**Grace Aoki, Applicant v. City of Torrance, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 329. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/library page suffered 46 percent permanent disability as a result of 11/29/2007 industrial right shoulder injury based upon report of Agreed Medical Examiner, and held that applicant’s injuries caused 20 percent permanent disability under AMA *Guides*, when WCAB found that Agreed Medical Examiner’s report upon which WCJ relied in awarding permanent disability was not sufficient to rebut scheduled rating in AMA *Guides* pursuant to requirements in *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Agreed Medical Examiner impermissibly combined a rating for weakness of shoulder motion and loss of grip strength with a rating for range of motion loss in shoulder to determine applicant’s WPI, without adequate explanation as to why principles set forth in section 16.8a of AMA *Guides* did not apply, and specifically without addressing whether loss of strength was based on “unrelated etiologic or pathomechanical causes.”

**Barbara Edwards, Applicant v. Caltrans, State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 340. Permanent Disability—Rating—Total Disability—WCAB affirmed WCJ’s finding and reaffirmed its prior determination [See Edwards v. Caltrans, 2011 Cal. Wrk. Comp. P.D. LEXIS 429] that applicant/highway maintenance lead worker incurred 100 percent permanent disability without apportionment as a result of 8/22/2005 injuries to her head, neck, brain, and psyche, and that there was no basis for 15 percent apportionment to pre-existing attention deficit disorder and depression pursuant to Agreed Medical Evaluator’s opinion, when WCAB found that applicant’s brain injury with resulting dementia was, in itself, totally disabling and, therefore, apportionment to pre-existing, non-disabling condition would be justified only if percentage of permanent disability could exceed 100 percent.

**Michael Hoelscher, Applicant v. C&S Transportation Services, Inc., and/or Joseph Park an individual, Peter Kim an individual, Uninsured Employers Benefit Trust Fund, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 351. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/truck driver/loader incurred 22 percent permanent disability as a result of 12/30/2008 industrial injuries to his left arm and left elbow, when medical report relied upon by WCJ in determining permanent disability did not constitute substantial evidence because, although doctor identified grip loss and loss of range of motion of left elbow as factors of permanent disability, doctor did not comply with AMA *Guides* as he did not analyze whether loss of strength was related to loss of motion of applicant’s elbow, and did not evaluate whether loss of grip strength was caused by loss of motion of elbow that prevented application of maximal force in gripping.

**Aria Khayatan, Applicant v. BMW Concord (a Corp.), Redwood Fire & Casualty Insurance Company, Administered By Berkshire Hathaway Homestate Companies, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 356. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that vocational rehabilitation expert’s opinion that applicant with 1/14/2006 industrial injuries to his neck and shoulders was unable to return to open labor market, in conjunction with Agreed Medical Examiner’s opinion, constituted substantial evidence to support WCJ’s finding that applicant was permanently totally disabled “in accordance with the facts” pursuant to Labor Code § 4662, and that analysis in Ogilvie v. W.C.A.B. (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, did not apply because applicant was not attempting to rebut a scheduled partial permanent disability under Labor Code 4660, but was rather claiming permanent total disability as addressed in Labor Code § 4662.

**Cynthia Mehas-Wipf, Applicant v. Corning Revere Factory Stores, Insurance Company of the State of Pennsylvania (Chartis San Diego), Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 370. Permanent Disability—Rating—Permanent Total Disability—WCAB, affirming WCJ, held that applicant/clerk suffered permanent total disability as a result of industrial injuries to her low back and psyche during period 10/1/97 to 10/1/98, “in accordance with the fact” pursuant to Labor Code § 4662, based upon medical and vocational evidence indicating that applicant incurred mental function losses, had three failed back surgeries, required additional treatment, used a cane, failed at her attempt to complete a vocational rehabilitation work evaluation, needed seven days a week in-home care, and was unable to compete in open labor market.

**Constance Phillips, Applicant v. United Health Care Services, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 379. Permanent Disability—Rating—Sleep Disorder—WCAB held that WCJ did not err in including applicant/health care advocate’s sleep/arousal disorder as a separate impairment in her permanent disability rating, when applicant suffered admitted industrial injury to her upper extremities during cumulative period ending on 11/26/2007, Qualified Medical Evaluator found a 30 percent WPI related to applicant’s sleep disorder resulting in daytime sleepiness based upon a formal sleep study, and WCAB determined that extensive reporting and applicant’s testimony indicated that many activities central to applicant’s life were negatively affected by cognitive detriment from lack of sleep, such that sleep disorder was not adequately accounted for in applicant’s orthopedic impairment ratings and was properly rated separately.

**Danilo Aranton, Applicant v. Monterey County Sheriff’s Department, PSI, Adjusted By Intercare Holding Services, Inc., Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 263. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding of permanent disability stemming from applicant/deputy sheriff’s cumulative trauma ending on 1/19/2008, when rating instructions identified impairment factors identified by Agreed Medical Examiner and instructed rater to combine factors pursuant to requirements of AMA *Guides*, rater properly combined factors and rated applicant’s permanent disability and did not substitute her own assessment contrary to Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), and, although Agreed Medical Examiner’s opinion is entitled to great weight, Agreed Medical Examiner’s incorrect combining of impairment factors were not followed because they were inconsistent with requirements of AMA *Guides* and not supported by analysis under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*.

**Tracy Jones, Applicant v. Los Angeles Unified School District, PSI, Administered By Sedgwick Claims Management Services, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 296. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/cafeteria worker who suffered injuries to her neck, bilateral wrists, left shoulder, psyche, and in form of sleep disorder on 7/30/2004 and from 7/30/2003 through 7/30/2004, incurred 55 percent permanent disability and that DFEC factor in 2005 Permanent Disability Rating Schedule was not rebutted pursuant to **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624 by testimony of vocational rehabilitation expert so as to justify a finding of permanent total disability, when WCAB found that vocational expert’s opinion that applicant was unable to compete in open labor market due to her medication usage and psyche claim did not constitute substantial evidence because opinion was based on an assessment of applicant’s medical condition that was inconsistent with physician’s findings and vocational expert did not review relevant job analyses.

**Natalie Quiroz, Applicant v. Louis Vuitton U.S. Manufacturing, Inc., St. Paul Travelers, Federal Insurance Company, administered by Chubb Group, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 310. Permanent Disability—Rating—WCAB affirmed WCJ’s finding that applicant/sewing machine operator who incurred injuries to her wrists, elbows, psyche and gastrointestinal system during period 11/3/2004 to 11/3/2005 did not suffer a separate, ratable injury in form of sleep disorder due to orthopedic pain, when WCAB found that sleep disorder due to orthopedic disabilities are adequately accounted for in the orthopedic rating, including a 3 percent add-on for pain, and do not constitute separate and distinct injuries.

**Rose Walton, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, Administered by State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 322. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed its prior decision [See Walton v. State of California, Department of Corrections and Rehabilitation, 2012 Cal. Wrk. Comp. P.D. LEXIS 47] that Agreed Medical Evaluator’s opinion upon which WCJ relied to find permanent disability resulting from applicant/correctional lieutenant’s industrial injuries to her back, psyche, gastrointestinal system, and in forms of hypertension, sleep disturbance, esophageal reflux and headaches on 11/9/98 and during period 1983 through 2/20/2006, did not constitute sufficient evidence to rebut strict AMA *Guides* impairment rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Agreed Medical Examiner used DRE category IV to rate applicant’s impairment based on her potential need for future surgery rather than on her present level of impairment, Agreed Medical Examiner had previously reported that DRE category III most accurately depicted applicant’s impairment based upon her radicular pain, and Agreed Medical Evaluator failed to adequately explain his use of hernia rating by analogy to reach a higher WPI rating or why “regular” WPI rating set forth in AMA *Guides* failed to adequately describe applicant’s impairment.

**Daphne Dewey, Applicant v. The Limited/Lerner, Specialty Risk Services, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 232. Permanent Disability—Rating—Permanent Total Disability—WCAB rescinded WCJ’s finding that applicant/retail clerk/manager suffered 57 percent permanent disability, without apportionment, after suffering industrial injuries to her right palm, psyche, bilateral shoulders, bilateral upper extremities and bilateral lower extremities as a result of complex regional pain syndrome on 7/2/99, and held that medical evidence and reporting of applicant’s vocational rehabilitation expert supported a finding that applicant incurred 100 percent permanent total disability, when (1) WCAB disagreed with WCJ’s finding that factors of disability for applicant’s physical and psychiatric conditions overlapped to such a degree that only applicant’s orthopedic factors of disability should be utilized for purposes of rating applicant’s permanent disability, (2) vocational expert’s report in which she detailed medical reports she reviewed and her methodology, including her consideration of both orthopedic and psychiatric factors of disability, constituted substantial evidence to support a finding of permanent total disability, (3) **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989 analysis remains viable to prove permanent disability based upon inability to compete in open labor market, and (4) record in this matter revealed that applicant was not able to complete a vocational plan because of pain caused by her injury and was unable to compete in open labor market.

**Jose Gomez, Applicant v. Castle & Cooke, Inc., dba Seven Oaks Country Club and Zurich American Insurance Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 238. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ in a split panel opinion, held that applicant/groundskeeper incurred 34 percent permanent disability as a result of 10/29/2004 industrial back and psyche injuries, based upon opinion of defendant’s Qualified Medical Evaluator, when WCAB found that defense Qualified Medical Evaluator did not ignore test results indicating multi-level disc involvement in applicant’s lumbar spine with radiculopathy and did not erroneously rate applicant’s impairment using DRE rather than ROM method under AMA *Guides*, that even applying a strict interpretation of AMA *Guides* it is within medical evaluator’s discretion to use DRE method notwithstanding multi-disc involvement within same region of spine, that although defense Qualified Medical Evaluator could have employed ROM method, his report was not invalidated by his failure to do so, that under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, a medical evaluator may employ clinical judgment within four corners of AMA *Guides* to reach a result that accurately states level of impairment, that opinion of defense Qualified Medical Evaluator placing applicant in DRE category III for purpose of calculating impairment constituted substantial evidence, and that WCJ did not err in failing to rely on reports of applicant’s Qualified Medical Evaluator placing applicant in DRE category V based on alteration of motion segment integrity as a result of artificial disk replacement surgery.

**Doreen Dahl, Applicant v. Contra Costa County, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 173. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant/medical records technician with industrial injuries to her neck and right shoulder during cumulative period ending 3/14/2005 incurred 59 percent permanent disability as calculated pursuant to 2005 Permanent Disability Rating Schedule, when WCJ’s permanent disability award was based on his finding that under **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, applicant could not rebut DFEC adjustment factor contained in 2005 Schedule by expert testimony unless it was shown that injury caused a total loss of future earning capacity and 100 percent permanent disability pursuant to analysis in **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, but WCAB held that (1) decision in *Ogilvie* does not preclude a finding of permanent disability that accounts for injury’s impairment of rehabilitation and its effect upon injured worker’s DFEC, and (2) application of a *LeBoeuf* type analysis in cases of partial permanent disability may be properly applied in cases such as this where employee has rebutted 2005 Schedule by showing that she will have a greater DFEC than reflected in scheduled rating, and that such analysis requires expert opinion on effect of injury’s impairment on worker’s amenability to rehabilitation and effect of that on DFEC.

**Gennadiy Fomin, Applicant v. Bentley School and Employers Compensation Insurance Company, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 178. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/maintenance person incurred permanent total disability as a result of 12/9/2005 industrial injuries to his head, left shoulder and psyche based upon opinions of Agreed Medical Examiner and vocational rehabilitation experts that applicant was unable to compete in open labor market, and found that fact that applicant’s Global Assessment of Functioning (GAF) increased from 40 to 45 on re-evaluation did not preclude finding of 100 percent permanent disability because Agreed Medical Examiner stated that slightly higher GAF would not result in significant improvement that would allow applicant to become re-employed.

**Cynthia Hardeman, Applicant v. Intermodal Transportation Services, CNA, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 186. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/computer data entry/office worker incurred permanent total disability as a result of 9/14/99 industrial injuries to her back, psyche, and left upper extremity based upon primary treating physician’s opinion that applicant was unable to compete in open labor market due to her orthopedic work restrictions, and determined that a physician is competent to opine that an injured worker is physically totally permanently disabled even in absence of a vocational expert.

**Gurdev Malhotra, Applicant v. State of California, Department of Developmental Services, Legally Uninsured, State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 143. Permanent Disability—Rating—AMA *Guides*—WCAB, rescinding WCJ’s finding that applicant/lab tech assistant incurred 20 percent permanent disability as a result of 4/5/2006 industrial injury to his right small finger, held that WCJ’s permanent disability rating was impermissibly based upon grip loss because (1) Qualified Medical Evaluator’s opinion did not support departure from strict application of AMA *Guides* by including grip loss measurements as a factor of disability in light of limitation in section 16.8a of AMA *Guides* stating that grip loss can be used as a factor of disability only in “rare cases,” (2) although physician had “latitude” to assign WPI based upon grip loss, he did not do so, and instead used loss of range of motion to determine applicant’s WPI, and (3) WCJ did not have authority, in absence of medical opinion, to determine that applicant’s impairment should be based upon grip loss solely on basis of applicant’s pain symptoms and Qualified Medical Evaluator’s statement that applicant gave an honest effort in grip testing.

Stephanie Paglialonga, Applicant v. City of Irvine, PSI, administered by Adminsure, Defendants, 2012 Cal. Wrk. Comp. P.D. LEXIS 150. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/police officer incurred 45 percent permanent disability as a result of 12/9/2005 injuries to her neck, back, right shoulder, right arm, right elbow and right hand, and that report of evaluating physician was insufficient under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut AMA *Guides* impairment, when WCAB found that, although applicant’s activities of daily living (ADLs) were impacted to a greater extent than that described in AMA *Guides* for applicant’s injuries, physician did not use his clinical judgment to explain why ADLs in AMA *Guides* were incorrect, nor did he adequately explain his departure from AMA *Guides* in finding an alternative rating.

**Alda Mrozek-Payne, Applicants v. Spectre Air & Ground Freight, State Compensation Insurance Fund, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 147. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/vice president incurred 78 percent permanent disability as a result of injuries to her psyche, skin and in forms of headaches, chronic pain and fibromyalgia on 7/23/2001, when WCAB held that, in making permanent disability finding, WCJ improperly rejected opinion of Agreed Medical Examiner in rheumatology who had combined applicant’s WPI found using Table 13-4 of AMA *Guides* with WPI utilizing Table 13-8 of AMA *Guides*, based upon his interpretation that Chapter 13.2 of AMA *Guides* precluded combining of impairments from Tables 13-4 and 13-8, and that Agreed Medical Examiner’s opinion constituted substantial evidence and should have been followed because (1) Agreed Medical Examiner clearly incorporated descriptions of impairments in AMA *Guides* as required under Labor Code § 4660(b)(1), *(2)* since there is no impairment rating relating to fibromyalgia in AMA *Guides*, there was no scheduled rating to rebut and therefore the rules set forth in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837* were not strictly applicable, and (3) Agreed Medical Examiner used tables within four corners of AMA *Guides* and explained his methodology.

**Frances Velasco, Applicant v. County of Santa Barbara Probation, County of Santa Barbara, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 161. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that factors of disability attributable to applicant/juvenile institution officer’s 3/12/2008 injury to her left upper extremity were limited to loss of range of shoulder motion under AMA *Guides*, when WCAB found that applicant’s subjective complaints regarding limitations in activities of daily living (ADL) were not credible and, therefore, rejected Agreed Medical Examiner’s determination pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to extent determination was based upon applicant’s subjective complaints.

**Yolanda Sandoval, Applicant v. Murphy Chiropractic, Sports and Wellness Physical Therapy, State Farm, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 99. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant who suffered injuries to her neck, wrists, and right shoulder during period 5/98 through 6/28/2004, while employed as a receptionist, and to her neck, wrists, hands, right elbow, and right shoulder while employed as a physical therapist with a different employer during period 8/11/2004 through 12/5/2004, incurred 46 percent permanent disability apportioned between her two injuries, and that 8 percent WPI (converted from 13 percent upper extremity impairment) for muscle weakness caused by right shoulder injury and 13 percent WPI (converted from 21 percent upper extremity impairment) for carpal tunnel injury based on median nerve motor deficit and sensory deficit, did not run afoul of prohibition against rating grip strength and range of motion loss, because post-surgical shoulder impairment and carpal tunnel syndrome-caused left upper extremity impairments have “unrelated etiological or pathomechanical causes” so they can be combined.

**Wai Chiu Li, Applicant v. County of Los Angeles, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 84. Permanent Disability—Rating—AMA *Guides*—WCAB, denying reconsideration of its prior decision [See Li v. County of Los Angeles, 2011 Cal. Wrk. Comp. P.D. LEXIS 580], affirmed its award of 36 percent permanent disability to applicant/deputy sheriff with 9/9/2009 left forearm injury based upon opinion of Agreed Medical Examiner, which included ratable loss of grip strength under AMA *Guides*, when WCAB found that Agreed Medical Examiner’s rating of applicant’s loss of grip strength was consistent with AMA *Guides* and Agreed Medical Examiner’s expertise and exercise of clinical judgment to assess applicant’s impairment most accurately, and that Agreed Medical Examiner’s opinion constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and should not have been disregarded by the WCJ in determining applicant’s permanent disability rating.

**Roberto Barajas, Applicant v. Fresno Unified School District, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 7. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/grounds keeper/gardener incurred 27 percent permanent disability as a result of 7/10/2009 industrial injuries to his right wrist, right hand and right fingers, based upon Agreed Medical Examiner’s opinion, and held that Agreed Medical Examiner adequately justified his departure from a strict application of AMA *Guides* by including measurements of applicant’s grip loss as a separate factor of disability, pursuant to requirements in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*), because Agreed Medical Examiner fairly expressed his view that applicant’s effort on grip loss testing was “maximal,” thus removing it from the limitation in Section 16.8a that precludes its combination with loss of range of motion, Agreed Medical Examiner found that applicant was not prevented by his decreased range of motion or painful conditions from exerting maximal force in his grip strength testing, applicant’s treating physicians concurred with Agreed Medical Examiner’s findings on grip loss, and applicant’s own testimony corroborated Agreed Medical Examiner’s findings that applicant made maximal effort on testing.

**Darrin Bean, Applicant v. City of Chula Vista, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 8. Permanent Disability—Rating—WCAB, granting removal, held that applicant/fire captain incurred 35 percent permanent disability as a result of industrial injury in form of skin cancer during period 8/8/2001 through 11/21/2008, pursuant to opinion of Agreed Medical Examiner who diagnosed basal cell carcinoma, photo dermatitis, and actinic keratoses, and assessed applicant’s whole person impairment (WPI) as 25 percent under Class 3 of AMA *Guides*, based upon his finding that applicant’s condition, including his history of basal cell carcinoma, constituted an insidious disease process that limited applicant’s performance of many activities of daily living, and required applicant to undergo intermittent medical treatment and monitoring, and WCAB determined that Agreed Medical Examiner correctly assessed applicant’s impairment in conformance with Table 8-2 in AMA *Guides*, and assessed impairment at lowest end of range (25 percent to 54 percent) because applicant’s skin condition was not as severe as some other conditions listed; WCAB found no basis for apportionment of applicant’s permanent disability under Labor Code § 4663 due to anti-attribution clause in Labor Code § 4663(e) as applied to injuries presumed compensable under Labor Code § 3212.1 or under Labor Code § 4664 because defendant did meet burden of proving overlap.

**Martin Duncan, Applicant v. Coca Cola Enterprises, Inc., adjusted by Sedgwick CMS, Defendants**, 2012 Cal. Wrk. Comp. P.D. LEXIS 20. Permanent Disability—Rating—Effect of Medications—WCAB affirmed WCJ’s finding that applicant incurred permanent total disability as a result of his 3/3/2001 industrial injury, when substantial medical evidence, coupled with testimony of vocational experts, supported a finding that applicant was unemployable in open labor market due to medication usage.

**Raquel Hernandez, Applicant v. Viam Manufacturing, Inc., Federal Insurance, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 27. Permanent Disability—Rating—WCAB, in a split panel opinion, held that WCJ erred in finding that applicant/machine operator/seamstress who suffered injuries to her shoulders, bilateral wrists, right elbow, and psyche during period ending on 10/22/2007, also suffered from “internal” injury rather than “hypertension,” but affirmed WCJ’s finding that applicant suffered 8 percent WPI for sleep impairment based upon opinions of treating physician and panel Qualified Medical Evaluator, and applicant’s credible testimony, and determined that WCJ did not err in making a finding regarding applicant’s sleep disorder WPI without a sleep study because both treating physician and panel Qualified Medical Evaluator, applying Table 13-4, Class 1 of AMA *Guides*, found that applicant’s sleep disturbance interfered with her activities of daily living.

**Michelle Jones, Applicant v. City of Long Beach, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 31. Permanent Disability—Rating—WCAB held that WCJ erred in finding that applicant/file clerk suffered an industrial injury in form of a sleep disorder and in awarding permanent disability based upon sleep disorder as a separate injury, when WCAB found that substantial medical evidence showed that applicant’s sleep condition/hypersomnia was related to pain caused by her 3/15/2007 admitted right shoulder and was not a separate ratable sleep disorder causing permanent disability under AMA *Guides*, and that effects of pain caused by shoulder injury were encompassed within permanent disability rating for that injury.

**Emilia Olguin, Applicant v. ESIS Division of ACE/USA Insurance, PSI, Defendant,** 2012 Cal. Wrk. Comp. P.D. LEXIS 35. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/insurance clerk who suffered 12/31/2004 injuries to her cervical spine and elbows, and injuries to her cervical spine, elbows, wrists, and psychological system during period 7/31/2004 to 7/29/2005, incurred 22 percent permanent disability after apportionment based upon reports of treating physician and opinion of regular physician in which he assessed applicant’s WPI using strict application of AMA *Guides*, and held that regular physician’s application of AMA *Guides* pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) **(Almaraz/Guzmean II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman)** (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837 (*Guzman III*) was not sufficient to rebut strict application of AMA *Guides* because, contrary to principles in *Almaraz/Guzman II* and *Guzman III*, physician attempted to inject work restrictions similar to those used in 1997 Schedule for Rating Permanent Disabilities (use of no very forceful activities) into his analysis to obtain a WPI rather than assessing applicant’s limitations on activities of daily living (ADLs) as appropriate under AMA *Guides*.

**Vilma Tentnowski, Applicant v. Perotti & Carrade, State Compensation Insurance Fund, Defendants,** 2012 Cal. Wrk. Comp. P.D. LEXIS 45. Permanent Disability—Rating—Effect of Opioid Medications—WCAB, in a majority panel opinion, rescinded its opinion and order granting reconsideration, dismissed defendant’s petition for reconsideration as not taken from a final order, and denied defendant’s petition for removal from its prior decision [see Tentnowski v. Perotti & Carrade, 2011 Cal. Wrk. Comp. P.D. LEXIS 509, in which majority WCAB panel held that medical record required further development to address applicant’s current medication usage and what effect, if any, such usage had on her permanent disability], when WCAB found that defendant did not show how WCAB’s prior decision resulted in significant prejudice or irreparable harm so as to justify removal.

**Rose Walton, Applicant v. State of California, Department of Corrections and Rehabilitation, Legally Uninsured, Administered by State Compensation Insurance Fund, Defendants,** *2012 Cal. Wrk. Comp. P.D. LEXIS 47*. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/correctional lieutenant suffered 71 percent permanent disability as a result of admitted cumulative trauma to her back, psyche, gastrointestinal system, and in forms of hypertension, sleep disturbance, esophageal reflux and headaches during period 1983 through 2/20/2006, when Agreed Medical Evaluator’s opinion upon which WCJ relied to find permanent disability did not constitute sufficient evidence to rebut strict AMA *Guides* impairment rating under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because Agreed Medical Examiner used DRE category IV to rate applicant’s impairment based on her potential need for future surgery rather than on her present level of impairment, Agreed Medical Examiner had previously reported that DRE category III most accurately depicted applicant’s impairment based upon her radicular pain, and Agreed Medical Evaluator failed to adequately explain his use of hernia rating by analogy to reach a higher WPI rating or why “regular” WPI rating set forth in AMA *Guides* failed to adequately describe applicant’s impairment.

**Wai Chiu Li, Applicant v. County of Los Angeles, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 580. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/deputy sheriff suffered 15 percent permanent disability as a result of 9/9/2009 admitted left forearm injury, and instead awarded applicant 36 percent permanent disability based upon opinion of Agreed Medical Examiner, which included ratable loss of grip strength under AMA *Guides*, when WCAB found that Agreed Medical Examiner’s rating of applicant’s loss of grip strength was consistent with AMA *Guides* and Agreed Medical Examiner’s expertise and exercise of clinical judgment to assess applicant’s impairment most accurately, and that Agreed Medical Examiner’s opinion constituted substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, and should not have been disregarded by the WCJ in determining applicant’s permanent disability rating.

**Wanda Boult, Applicant v. State of California, Department of Corrections, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 519. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/correctional counselor II specialist’s injuries to her heart and cardiovascular system, including primary pulmonary hypertension, superventricular arrhythmias and heart failure, during cumulative period through 8/20/2007, although only equaling a combined rating of 99 percent permanent disability, resulted in 100 percent permanent disability pursuant to Labor Code § 4662, based upon applicant’s testimony and opinions of agreed medical evaluator and treating physicians that applicant was unable to work and compete in open labor market due to her condition.

**Diane Cecena, Applicant v. Walt Disney Studios, PSI, Adjusted By Liberty Mutual Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 521. Permanent Disability—Rating—*LeBoeuf* Rules—WCAB, dismissing applicant’s petition for reconsideration and granting removal, rescinded WCJ’s order precluding applicant with 2/17/2000 admitted spine injury, from offering vocational rehabilitation expert evidence pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, and held that WCJ’s order violated applicant’s due process and, if allowed to stand, would result in significant prejudice and/or irreparable harm because it deprived applicant of an opportunity to present evidence that her disability precluded her from substantial gainful employment in the open labor market.

**Jesus Cordova, Applicant v. Garaventa Enterprises, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 523. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/heavy equipment operator/maintenance person who sustained 12/17/2003 industrial injuries to his cervical spine, left upper extremity and lumbar spine incurred permanent total disability, when WCAB found that Labor Code § 4662 addresses permanent total disability and Labor Code § 4660 addresses permanent partial disability, that specific constraints of Labor Code § 4660(b)(1) and *(2)* are not necessarily applicable to a determination of permanent total disability “in accordance with the fact” pursuant to Labor Code § 4662, that WCJ thoroughly analyzed evidence in this case and, although he did not specifically cite Labor Code § 4662, he did find permanent total disability “in accordance with the fact,” as opposed to using descriptions in AMA *Guides* pursuant to Labor Code § 4660, that WCJ correctly interpreted “total loss of earning capacity” as term is used in 2005 Permanent Disability Rating Schedule to mean a total loss of pre-injury earning capacity, and recognized that everyone has a particular combination of education, experience, and intellectual and physical characteristics that generally affect earning capacity but have no specific bearing on a permanent disability determination, and that WCJ correctly concluded that, based upon evidence, sole cause of applicant’s total loss of earning capacity was his medical condition.

**Mack Jaramillo, Applicant v. Coca Cola Bottling Co., PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 538. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that applicant/warehouseman incurred 100 percent permanent disability without apportionment as a result of injuries to his cervical spine, lumbar spine, psyche and in forms of seizure disorder, headaches, neurologic disorder, cognitive disorder, language disorder, behavioral disorder, and sleep disorder on 2/3/2005 and during cumulative period 8/15/87 through 4/15/2005, when WCAB found that, despite WCJ’s failure to specifically refer to Labor Code § 4662 as basis for her permanent disability finding, it was apparent that WCJ relied upon evidence that applicant sustained a total loss of earning capacity to determine that applicant was totally disabled “in accordance with the fact” pursuant to Labor Code § 4662 and 2005 Permanent Disability Rating Schedule’s definition of “total loss of earning capacity.”

**Maria Flores Candelario, Applicant v. John Chiang State Controller, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 466. Permanent Disability—Rating—AMA *Guides*—WCAB, rescinding WCJ’s finding, held that WCJ erred in relying upon opinion of applicant’s treating chiropractor to find that applicant’s injuries to her neck, back, knees, and in form of sleep disorder during period 8/1/2008 through 8/7/2009, caused 61 percent permanent disability, because treating chiropractor did not explain why he utilized DRE method in AMA *Guides* to rate applicant’s cervical spine impairment, or why he applied 3 percent add-on for pain, and WCAB found that treating chiropractor’s report did not constitute substantial evidence to support WCJ’s permanent disability finding.

**Charles Graham, Applicant v. City of Sacramento, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 482. Permanent Disability—Rating—WCAB, affirming WCJ, held that applicant/tree maintenance worker incurred no permanent disability as a result of 1/18/2008 industrial back injury, based upon medical report indicating that objective findings consistent with cervical spondylosis and radiculopathy were not related to applicant’s industrial injury, that applicant did not have any symptoms until after he suffered a stroke, and that it was medically probable that applicant’s neck and leg symptoms were related to multiple altercations in which applicant was involved.

**Dan Igo, Applicant v. Los Angeles Community College District, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 484. Permanent Disability—Rating—*LeBoeuf* Rules—WCAB affirmed WCJ’s finding that applicant suffered industrial injury in form of stroke over period 1/1/79 through 10/23/97, but did not suffer injury to his neurological system, psyche and ENT system over period 4/99 through 6/2002, and, relying upon AME reports, held that 50 percent of applicant’s stroke-related permanent disability was industrial and remaining 50 percent was due to non-industrial factors, with no evidence to support a finding of 100 percent permanent disability pursuant to **LeBoeuf v. W.C.A.B.** (1983) 34 Cal. 3d 234, 193 Cal. Rptr. 547, 48 Cal. Comp. Cases 587, 666 P.2d 989, based upon applicant’s inability to compete in open labor market.

**Michael Moore, Applicant v. City of Fresno Police Department, administered by AARLA, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 492. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that AME’s reports constituted substantial evidence pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict application of AMA *Guides*, when AME gave a detailed explanation of why he believed AMA *Guides* was insufficient to describe applicant’s wrist-related permanent disability, detailed the expertise that led to his conclusion that AMA *Guides* were inadequate, and quoted from Chapter 16 of AMA *Guides* which, in his opinion, more accurately described applicant’s disability than tables used for applicant’s type of wrist injury.

**Juan Parga, Applicant v. City of Los Angeles, Tristar, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 496. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that applicant incurred 25 percent permanent disability as a result of industrial injury to his lumbar spine during period 3/5/79 through 2/2/2009, based upon 11 percent WPI as rated pursuant to DRE III in AMA *Guides*, and that agreed medical evaluator’s opinion that a more accurate WPI would be 27 percent was insufficient under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict application of AMA *Guides*, because agreed medical evaluator did not explain why he concluded applicant should have a higher disability than that produced through strict application of AMA *Guides*.

**Vilma Tentnowski, Applicant v. Perotti & Carrade, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 509. Permanent Disability—Rating—Effect of Opioid Medications—WCAB, in a majority panel opinion, rescinded WCJ’s finding that applicant/manager incurred 95 percent permanent disability, after apportionment, as a result of injuries to her back, bilateral knees and psyche on 11/24/2003, in 4/2004 (as a compensable consequence of prior injury) and during cumulative period through 4/14/2004, when WCJ relied upon opinions of AMEs in orthopedics and psychiatry in making her finding regarding extent of applicant’s permanent disability, but WCAB found that AMEs, in forming their opinions, did not consider effects of applicant’s pain medications, including Oxycontin, Dilaudid and Exalgo, on her disability, and that medical record required further development to address applicant’s current medication usage and what effect, if any, such usage has on her permanent disability.

**Erick Rozenoff, Applicant v. California Highway Patrol, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 502. Permanent Disability—Rating—AMA *Guides*—WCAB, affirming WCJ, held that applicant/CHP officer incurred 15 percent permanent disability, without basis for apportionment, as a result of low back injury through period ending 5/26/2010, and that agreed medical evaluator’s opinion did not constitute substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut strict application of AMA *Guides*, because agreed medical evaluator did not adequately explain his conclusions.

**Marlene Chan, Applicant v. Mariner Post Acute Network, Inglewood Health Care Center, Insured by American Home Assurance Company, Administered by Chartis Inc., Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 419. Permanent Disability—Rating—Substantial Evidence—WCAB rescinded WCJ’s finding that applicant/certified nurse’s assistant incurred 100 percent PD as a result of 3/12/2002 injuries to her low back and psyche, and 7 percent PD as a result of CT injury to her cervical spine, left shoulder and left knee during period 3/27/2002 through 4/2002, and remanded matter for further proceedings, when WCJ’s finding that applicant was 100 percent permanently disabled was based largely on opinion of IME who found that applicant was still temporarily disabled but would be permanently totally disabled if her condition was P&S, and WCAB held that, since there had been no determination that applicant had reached P&S status with regard to her psychiatric injury, there was no medical basis for determining extent of applicant’s PD.

**Ariel Cortes, Applicant v. Southwest Airlines, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 422. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/provisioning agent with injury to his left upper extremity and cervical spine from 9/17/2007 through 9/17/2008, incurred 48 percent permanent disability without apportionment based upon AME’s opinion, and held that, while AME’s use of DRE Cervical Category III in AMA *Guides* to rate applicant’s impairment was appropriate, AME’s opinion did not constitute substantial evidence under *Almaraz v.* *Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion)* (*Almaraz II*) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837* to support WCJ’s permanent disability rating because AME’s diagnosis of “left upper extremity repetitive stress injury” was incomplete, AME did not explain why alternate rating more accurately described applicant’s permanent impairment than standard AMA *Guides* rating, and AME did not adequately discuss relevant criteria in connection with her grip loss assessment.

**Barbara Edwards, Applicant v. Caltrans, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 429. Permanent Disability—Rating—Total Disability—WCAB rescinded WCJ’s finding that applicant with traumatic brain injury was entitled to award of 88 percent PD, after apportionment, based upon recommended rating, and held that applicant was entitled to an award of 100 percent PD without apportionment, when both AME and WCJ determined that applicant was totally precluded from open labor market, WCAB stated that cases of presumptive PTD under Labor Code § 4662 may be treated differently than cases in which there is a finding of PPD (up to 99.75%) under Labor Code § 4660, as evidenced by fact that there are separate sections for computing disability payments in cases of partial disability (Labor Code § 4658(d)) and total disability (Labor Code § 4659(b)), that WCJ’s finding of PPD was not supported by substantial evidence, and that there was no basis for apportionment to non-industrial, pre-existing condition because applicant’s industrial brain injury, with dementia, was by itself totally disabling.

**Shelly Fitzsimmons, Applicant v. Scotts Jack London Seafood, Inc., Pacific Compensation Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 431. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/bartender incurred 25 percent PD as a result of 5/13/2007 back injury based upon panel QME’s opinion, and that panel QME’s opinion was sufficient to rebut strict application of AMA *Guides* pursuant to requirements in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when panel QME found that using DRE method in Chapter 15 of AMA *Guides* produced an inaccurate rating because it did not account for applicant’s functional loss due to impairment in activities of daily living, QME analogized to chapters in AMA *Guides* addressing gait impairment and hernia as these chapters more accurately reflected applicant’s level of impairment, and WCAB found that pursuant to *Almaraz/Guzman*, a physician is permitted to use analogous ratings if a strict application of AMA *Guides* does not accurately measure injured worker’s impairment as long as rating is within four corners of AMA *Guides*, and that, here, QME’s opinion constituted substantial evidence and was sufficient to rebut strict AMA *Guides* rating pursuant to requirements in *Almaraz/Guzman*.

**Charlotte Hudson, Applicant v. EMG Children & Family Services, Everest National Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 434. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/family advocate incurred 11 percent PD as a result of 10/3/2006 industrial injuries to her back and lower extremities, and returned matter to trial level for development of medical record on extent of applicant’s impairment based upon analysis in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) and *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, by obtaining supplemental report from AME regarding 7 percent WPI he opined that applicant should receive because of her gait derangement, which WCJ did not allow, and to provide AME an opportunity to explain why he believed that gait derangement contributed to level of applicant’s impairment.

**Spellman Olivier, Applicant v. The Boeing Company, ACE American Insurance Company, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 442. Permanent Disability—Rating—Permanent Total Disability—WCAB, rescinding its prior decision [see Olivier v. The Boeing Company, 2011 Cal. Wrk. Comp. P.D. LEXIS 288] in which it held that there was not substantial evidence to support WCJ’s finding that applicant/aircraft mechanic incurred 100 percent PD as a result of injury to his shoulders, knees, neck, back, ankles, feet, and psyche, and in form of headaches, hypertension, diabetes, and diabetic neuropathy during period 4/1/2003 through 3/17/2006, deferred issue of PD for further proceedings on issues of whether scheduled DFEC adjustment was rebutted pursuant to holding in **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, and whether PD award should include any adjustment under Labor Code § 4658.

**Refugio Perez, Applicant v. Orange Plastics, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 444. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant/printing assistant incurred permanent total disability as a result of 4/15/2003 injury to his psyche and both hands, and held that applicant incurred 90 percent PD, when vocational reports, which WCAB found were properly admitted into evidence, attributed part of applicant’s inability to participate in vocational rehabilitation to his lack of education and, citing **Ogilvie v. W.C.A.B.** (2011) 197 Cal. App. 4th 1262, 129 Cal. Rptr. 3d 704, 76 Cal. Comp. Cases 624, WCAB found that applicant failed to prove that he was permanently totally disabled because of factors of disability directly attributable to his industrial injury.

**Daniela Robison, Applicant v. Salinas Valley Memorial Hospital, PSI, Administered by Acclamation Insurance Management Services, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 448. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/registered nurse incurred 30 percent PD as a result of 11/23/2009 low back injury, and that applicant’s post-surgical (micro-discectomy at L5-S1) WPI under AMA *Guides* was correctly rated using ROM as opposed to DRE method pursuant to *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when applicant had objective evidence of multiple level disc injuries, evaluating physician adequately explained his use of ROM method to find impairment based upon effect of injury on applicant’s activities of daily living, and physician stayed within four corners of AMA *Guides* in evaluating applicant’s impairment.

**Lorraine Rodgers, Applicant v. County of Sacramento, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 449. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/deputy sheriff incurred 34 percent PD as a result of her 10/29/2008 knee injury, and that AME’s opinion, upon which WCJ relied, constituted substantial evidence to rebut strict AMA *Guides* rating pursuant to requirements in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (**Almaraz/Guzman II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman)** (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837, when (1) AME adequately explained why a strict AMA *Guides* rating based on Chapter 17 of AMA *Guides* was not an accurate reflection of applicant’s impairment given applicant’s subjective complaints as well as his objective findings of gait impairment and diffuse sensitivity around knee, which he found to be atypical of most knee arthroscopy patients, (2) AME determined that Table 13–15, Class 2, more appropriately reflected applicant’s ability to walk, and (3) WCAB concluded that AME’s opinion, which should be followed absent good reason to find opinion insufficient, to be well-reasoned and unambiguous so as to constitute substantial evidence.

**Woldeslassie Habteslassie, Applicant v. Sebastopol Unified School District, PSI, Administered by Redwood Empire Schools Insurance Group, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 371. Permanent Disability—Rating—WCAB rescinded WCJ’s finding that applicant/custodian with 8/25/2000 industrial right knee injury incurred 5 percent PD, after apportionment, and deferred issue of PD, when defendant, who sought reconsideration of WCJ’s PD finding, asserted that WCJ should have found 16 percent PD based upon 1997 Schedule for Rating Permanent Disabilities and panel QME’s opinion, and that WCJ failed to consider applicant’s subjective and objective factors of disability, and WCJ recommended that reconsideration be granted to correct error in PD award.

**Mu Xi Yu, Applicant v. JFRN Enterprise Incorporated, Illinois Midwest Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 406. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that opinion of AME constituted substantial evidence under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) (2010) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to support finding as to extent of PD caused by applicant/busboy/dishwasher’s 8/19/2008 industrial right hip and low back injuries, when AME explained how she determined applicant’s back impairment by combining 7 percent WPI for loss of motion based on multi-level spine involvement, with 5 percent WPI from Table 15-7 of AMA *Guides*, resulting in a 12 percent WPI, and indicated that she analogized applicant’s hip disability (20 percent WPI) to functional equivalent of an individual who had a hip replacement (although applicant did not have a hip replacement) rather than using specific sections of AMA *Guides*, because this more accurately reflected applicant’s hip disability, and WCAB found that, although AME did not strictly follow AMA *Guides*, she stayed within its four corners as required under *Guzman*.

**Michael Graham, Applicant v. Pepsi Bottling Group, Old Republic Insurance Company, Administered By Sedgwick Claims Management Services, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 368. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/vending machine installer/delivery person incurred 24 percent PD as a result of his 10/3/2008 back injury based upon panel QME’s 7/28/2010 report in which panel QME rated applicant’s impairment by analogizing to a Class 2 rating for hernia impairments found in Table 6-9 of AMA *Guides* to produce a 15 percent WPI, when WCAB found that (1) panel QME’s 7/28/2010 report satisfied requirements in *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz/Guzman II*) and was consistent with principles in Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), delineating roles of physician, WCJ and DEU rater, (2) panel QME’s 7/28/2010 report adequately explained rational for analogous rating, and rating accounted for injury’s impact on activities of daily living, as opposed to work activities, as is required, (3) panel QME’s analogy using DRE rating method as set forth in his 10/12/2009 and 11/1/2009 reports could not be relied upon because rating did not meet standards imposed by *Almaraz/Guzman II*, and (4) panel QME’s 9/26/2010 supplemental report in which he used Table 15-9 to rate lumbar spine disabilities and concluded that using this Table produced 45 percent WPI did not constitute substantial evidence because panel QME did not adequately explain his opinion that Table 15-19 should be used rather than Table 6-9, and, according to holding in *Almaraz/Guzman II*, fact that a different rating method yields a higher rating should not be deciding factor in determining impairment.

**Theodis Daniels, Applicant v. Ford Store, Travelers, Defendants,** 2011 Cal.Wrk. Comp. P.D. LEXIS 312. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/shuttle driver incurred 21 percent PD as a result of 6/1/2007 admitted left shoulder injury, and that opinion of panel QME regarding extent of applicant’s PD did not constitute substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, to rebut AMA *Guides* impairment, when panel QME improperly considered applicant’s wage loss in determining disability to rebut WPI in AMA *Guides* rather than analogizing to other impairments in AMA *Guides* that more accurately reflected applicant’s disability, medical evidence did not support a finding that applicant was unable to return to his employment as a shuttle driver and fact that applicant voluntarily retired did not rebut medical evidence, and panel QME’s finding of impairment was inconsistent with treating physician’s description of disability, which WCJ found was substantial evidence under *Almaraz II*, as treating physician stayed within four corners of AMA *Guides* to determine applicant’s impairment.

**Rene Garcia, Applicant v. City of Anaheim, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 318. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/firefighter incurred 81 percent PD as a result of injuries to his low back and both knees during cumulative period 4/2001 to 4/19/2005, and returned matter to trial level for further development of record, when WCAB found that opinion of applicant’s treating physician, upon which WCJ relied in determining PD, did not constitute substantial evidence under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*) to rebut AMA *Guides*, because treating physician determined applicant’s WPIs by simply adding effect of impairment on applicant’s activities of daily living (ADLs) to effect on ability to compete in open labor market, and WCAB found that physician’s approach in formulating WPI “add-ons” under AMA *Guides* was legally incorrect in that physician erred in undertaking an *Almaraz/Guzman* analysis that considered both effect of industrial injury on ADLs *and* ability to compete in open labor market.

**Tory Riley, Applicant v. City of Pasadena, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 295 Doris Cortes, Applicant v. Bank of the West, ESIS, Defendants, 2011 Cal. Wrk. Comp. P.D. LEXIS 266. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/police officer who suffered admitted industrial right knee injury on 3/7/2007 incurred 15 percent permanent disability based upon “range of evidence,” and deferred issue of extent of applicant’s permanent disability, when AME testified in his deposition that AMA *Guides* did not justify a rating above 7 percent absent limitations on applicant’s activities of daily living and only a limitation to no prolonged running, and WCJ provided no good cause to reject AME’s opinion. Injury AOE/COE—Compensable Consequence Injuries—WCAB, rescinding WCJ’s finding, held that applicant/police officer did not suffer injury to her left knee as a compensable consequence of 3/7/2007 admitted industrial right knee injury, when medical evidence established that applicant’s need for a total left knee replacement and subsequent disability was not related to her industrial injury but to prior injuries and non-industrial pathology.

**Ofelia Rivera, Applicant v. Costco Wholesale Corporation, PSI, adjusted by Sedgwick CMS, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 296. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split opinion, affirmed WCJ’s finding that applicant who incurred industrial injury to her wrists during cumulative period ending 5/24/2007, met her burden of proof to rebut AMA *Guides* and establish that she suffered 19 percent PD after application of Combined Values Table (CVT), when WCAB found that AME’s opinion on impairment, upon which WCJ relied, met requirements of *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because even though AME did not explicitly state that applicant’s PD was “most accurately” described with the addition of 3 percent WPI derived from her diminished ability to perform repetitive forceful activities, WCAB found that this was clear from his report, and that AME exercised his professional judgment in concluding that applicant’s PD was most accurately described as set forth in his report, staying within four corners of AMA *Guides* and provided an explanation regarding the bases of his conclusions.

**Cynthia Siegert, Applicant v. Cottage Health Systems, PSI, Administered by Keenan & Associates, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 300. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/registered nurse incurred 45 percent PD as a result of 6/29/2006 injury to her lumbar spine, and that applicant did not meet burden of rebutting scheduled DFEC factor Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion) **(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*), because opinion of applicant’s vocational expert did not constitute substantial evidence as it was based upon applicant’s conflicting testimony regarding her loss of earnings, and applicant’s testimony that she searched for jobs but could find none within her restrictions, by itself, was insufficient to rebut DFEC portion of 2005 Schedule.

**Cynthia Siegert, Applicant v. Cottage Health Systems, PSI, Administered by Keenan & Associates, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 300. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/registered nurse incurred 45 percent PD as a result of 6/29/2006 injury to her lumbar spine, and that AME’s opinion was sufficient to rebut scheduled impairment rating pursuant to *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when AME set forth facts and reasoning to justify his opinion that applicant was in DRE Category V of AMA *Guides*, at top of 25 to 28 percent WPI, because she had instability in her lumbar spine and numbness in her thigh, AME’s assessment of 28 percent WPI was supported by his clinical and sensory exams as well as his clinical judgment, and AME’s WPI assessment was within four corners of AMA *Guides*.

**Spellman Olivier, Applicant v. The Boeing Company, ACE American Insurance Company, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 288. Permanent Disability—Rating—Permanent Total Disability—WCAB held that there was not substantial evidence to support WCJ’s finding that applicant/aircraft mechanic incurred 100 percent permanent disability as a result of injury to his shoulders, knees, neck, back, ankles, feet, and psyche, and in form of headaches, hypertension, diabetes, and diabetic neuropathy during period 4/1/2003 through 3/17/2006, when WCAB found that, although Labor Code § 4662 authorizes a finding of permanent total disability “in accordance with the fact” even if Labor Code § 4660 would not support such a rating, AME reports supported a rating of 98 percent, there was no medical evidence in record or evidence by a vocational expert to support a finding of 100 percent PD, and applicant’s lay testimony, by itself, did not support a finding of total loss of future earning capacity.

**Maria Mercedes Felix, Applicant v. Sea Dwelling Creatures, Inc., State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 271. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/shipping clerk/packer’s 1/4/2006 low back injury caused no PD based upon report of panel QME, when panel QME found that applicant’s disability fell within DRE Lumbar Category I, which equated to 0 percent WPI under AMA *Guides*, and that applicant required no further medical treatment, panel QME’s report was only medical report in evidence, and, although panel QME proposed a 3 percent WPI for pain under Table 18-3 of AMA *Guides*, WCAB, applying principles in Blackledge v. Bank of America (2010) 75 Cal. Comp. Cases 613 (Appeals Board en banc opinion), found that since there was no other impairment to “increase,” there was no legal basis to allow a 3 percent WPI add-on for pain.

**Pamela Barclay, Applicant v. County of Monterey, PSI, Liberty Mutual Insurance Company/Helmsman, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 257. Permanent Disability—Rating—Permanent Total Disability—WCAB affirmed WCJ’s finding that, whether disability was rated under 1997 Schedule or 2005 Schedule, applicant/chronic disease prevention coordinator with 2/11/2003 injuries to her neck, back, head and psyche incurred 100 percent PD “in accordance with the fact” pursuant to Labor Code § 4662, based upon opinions of AME as corroborated applicant’s vocational expert, and that applicant’s qualification for SSDI benefits was not a factor relevant in finding of 100 percent PD, as requirements for receiving SSDI benefits are not the same as those for finding 100 percent PD in California workers’ compensation system.

**Robert Chavez, Applicant v. International Paper, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 264. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/truck driver incurred 1 percent permanent disability as a result of 6/4/2008 right shoulder injury based upon panel QME’s report, and that applicant did not meet his burden of proof to rebut AMA *Guides* under *Almaraz v.* Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*), when WCAB found that, although applicant’s treating physician diagnosed a massive and irreparable rotator cuff tear and opined that it would be most accurate to rate injury as a shoulder arthroplasty (13 percent WPI), applicant did not establish that injury impacted his activities of daily living or his ability to work sufficiently to warrant rating injury as a shoulder arthroplasty, treating physician did not explain reasoning behind his conclusion that rotator cuff tear was more accurately evaluated as a shoulder arthroplasty or compare applicant’s measurable impairment resulting from unlisted condition to a measurable impairment resulting from similar conditions with similar impairment of function in performing activities of daily living, and panel QME explained why a shoulder arthroplasty was *not* a proper analogy given applicant’s range of motion and functional ability.

**Matias Chavez, Applicant v. San Benito Foods, American Safety Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 205. Permanent Disability—Rating—Permanent Total Disability—Cost of Living Increases—WCAB affirmed WCJ’s finding that applicant/forklift driver suffered permanent total disability based upon his right knee injury “in accordance with the fact” under Labor Code § 4662 pursuant to AME’s report and testimony of vocational rehabilitation expert, and that COLA adjustment in Labor Code § 4659(c) applies to awards of permanent total disability paid at less than maximum rate.

**Peter Hajdukiewics, Applicant v. Department of Motor Vehicles, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 219. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant incurred 55 percent permanent disability as a result of 10/22/2008 industrial injury to his neck, low back, gastrointestinal system, lower extremity/gait dysfunction, psyche and in form of sleep disorder, and remanded matter to WCJ to revisit issue of rebuttal of DFEC factors in 2005 Permanent Disability Rating Schedule pursuant to calculations specified in Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion) **(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*), when WCAB found that WCJ erred in skipping “second phase” of *Ogilvie II* calculation of taking applicant’s standard WPI rating and dividing it by his estimated proportional earnings loss, to come up with an individualized rating to loss ratio.

**Dario Barragan, Applicant v. Laurence and Hovenier, Inc., PSI, Adjusted By York Claims Services, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 203. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/carpenter incurred 72 percent permanent disability, after apportionment, as a result of 12/2/2004 injuries to his cervical and lumbar spine, right shoulder, right wrist, right ankle, left knee, and psyche, and that there was substantial evidence under Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion)**(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*) to rebut DFEC factor in 2005 Permanent Disability Rating Schedule, based upon a total loss of earnings; WCAB found that WCJ did not err by including applicant’s educational level and his limited ability to speak English in evaluating DFEC under *Ogilvie*, and that there was no support for defendant’s assertion that lack of education and transferable skills, in themselves, constitute “other factors” for purposes of apportionment which excludes these factors from *Ogilvie* analysis.

**Martin Duncan, Applicant v. Coca Cola, Constitution State Service Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 210. Permanent Disability—Rating—*LeBoeuf* Rules—WCAB, reversing WCJ, held that there was not substantial evidence to support WCJ’s finding that applicant/machinist incurred permanent total disability as a result of 3/3/2001 injuries to his bilateral knees, back, hips and neck, when testimony of applicant and vocational rehabilitation experts that effects of medication rendered applicant unemployable in open labor market contradicted conclusions reached by AME, and WCAB found that record needed further development regarding whether applicant’s condition worsened in one year interval between AME’s examination and time of trial.

**John Henry, Applicant v. City of Santa Monica, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 164. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant/police officer’s industrial injuries to his knees, neck, spine, cardiovascular system, and in the form of hypertensive heart disease, GERD, IBS, and headaches during period 4/78 through 6/4/2007 caused 85 percent permanent disability, and held that applicant’s trial testimony regarding actual earnings from 2006 through 2009 was insufficient to rebut scheduled DFEC portion of 2005 Permanent Disability Rating Schedule under to Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion) **(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*), because evidence did not address whether injuries had an effect on applicant’s “earning capacity.”

**Linda Jenkins, Applicant v. Family Practice Medical Associates, Employers Compensation Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 167. Permanent Disability—Ratings—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that good cause existed to reopen applicant/office manager’s previous permanent disability award of 17 percent for admitted industrial right elbow injury during period ending 9/21/2004, when WCAB interpreted decisions in Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion) **(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*), which issued after applicant’s time to seek reconsideration elapsed, as a change in law sufficient to permit applicant an opportunity to rebut her DFEC under new standards set forth in those cases, since decisions articulated factors to consider in rebutting rating schedule and set forth methodology to do so.

**Joni Lamkin, Applicant v. Department of Transportation, State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 169. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/graphic designer/design technician who sustained admitted psyche injury on 9/27/2004, and admitted neck, right elbow and right wrist injuries during cumulative period ending 5/28/2006, and alleged injury to right wrist on 3/1/2006, incurred 15 percent cervical and upper extremity disability, when WCAB found that panel QME’s opinion upon which WCJ relied to determine permanent disability did not constitute substantial evidence to rebut alternative to standard AMA *Guides* rating under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*) as affirmed by *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, because panel QME failed to adequately explain why he chose alternative method of determining applicant’s impairment and why standard application of AMA *Guides* rating was inadequate.

**Alfredo Mata, Applicant v. Wagner Construction Company, Zurich American Insurance Company, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 173. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/laborer incurred 90 percent permanent disability as a result of 12/20/2003 industrial injuries to his spine and psyche, based upon combined values of disability reflected in medical reports, and held that applicant did not meet burden of establishing permanent total disability through testimony of vocational rehabilitation experts or opinion of social security ALJ.

**Terry Lynn Ross, Applicant v. Bernard & Sons, Inc., State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 187. Permanent Disability—Rating—Total Disability—WCAB affirmed WCJ’s finding that applicant/truck driver suffered 100 percent permanent disability as a result of 6/4/2004 industrial injuries to his back, right hip, bilateral feet, right knee, psyche, urological system and in forms of sleep and pain disorders, pursuant to 2005 Permanent Disability Rating Schedule, when QME applied Chapter 18 of AMA *Guides* to find that applicant had an 87 percent WPI as a consequence of failed low back surgery syndrome, myofascial pain syndrome and psychiatric symptoms and, after adjustment, this WPI reached 100 percent impairment found by WCJ, medical evidence supported a finding that applicant had no earning capacity, and WCAB found that Labor Code § 4662 allows a determination of 100 percent permanent disability “in accordance with the fact,” even if Labor Code § 4600 would not produce such a rating.

**Odila Valladares, Applicant v. J.A.M. Industries, American Home Assurance/AIG, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 192. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/garment production worker incurred 62 percent permanent disability as a result of 9/9/2004 industrial injuries to her back and shoulders, and that AME’s opinion upon which WCJ relied in determining extent of permanent disability constituted substantial evidence to support 62 percent permanent disability award pursuant to *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, affirming Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion), as AME’s use of Figure 15-19 of AMA *Guides* to determine low back impairment was within four corners of AMA *Guides* and it was appropriate for WCJ to accept AME’s clinical judgment.

**David Wilkinson, Applicant v. Ontario Neon Company, Inc., State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 194. Permanent Disability—Ratings—Diminished Future Earning Capacity—WCAB affirmed WCJ’s finding that applicant/sign installer’s 3/13/2004 admitted industrial injuries to his head, face, back, bilateral shoulders, ribs, lungs, psyche, and neck and in form of post-traumatic head syndrome, caused 100 percent permanent disability under 2005 Permanent Disability Rating Schedule and Labor Code and Labor Code § 4662, when evidence in record established that applicant had a total loss of earning capacity, and defendant failed to establish a basis for apportionment.

**Edward Daniels, Applicant v. UCLA Medical Center, PSI, Providence St. Joseph Medical Center, Sedgwick CMS/American Home Assurance, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 110. Permanent Disability—Rating—Psychiatric Injury—WCAB rescinded WCJ’s finding that applicant suffered 70 percent permanent disability as a combined result of 5/31/2002 spinal injury (65 percent permanent disability) and psychiatric injury (10 percent permanent disability), and held that WCJ erred in relying on “range of evidence,” including report of applicant’s QME which did not constitute substantial evidence, to find that applicant suffered psychiatric disability and instead should have incorporated opinion of defendant’s QME with regard to applicant’s psychiatric permanent disability to find that applicant sustained no ratable psychiatric disability, as defense QME analyzed applicant’s condition in light of relevant eight work functions listed in 1997 Schedule for Rating Permanent Disabilities and found no impairment in any of eight functions, and defense QME’s opinion was supported by applicant’s trial testimony and constituted substantial evidence.

**Miguel Espinoza, Applicant v. Southwest Airlines, ACE American Insurance, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 113. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/airline ramp agent incurred 12 percent permanent disability as a result of injury to cervical and thoracic spines from 12/30/2007 through 12/30/2008, and instead held that applicant’s injury caused no permanent disability, when treating physician’s report upon which WCJ relied did not constitute substantial evidence to rebut scheduled rating under AMA *Guides* pursuant to requirements in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when physician did not analogize to a comparable condition described in AMA *Guides* or use another chapter, table, or method contained within AMA *Guides* but instead relied on unreasonable departure from AMA *Guides* by assigning 3 percent WPI each for cervical and thoracic spines based on his judgment that clinical findings fell somewhere between DRE Cervical Category I/DRE Thoracic Category I and Cervical Category II/DRE Thoracic Category II rather than assigning 0 percent WPI pursuant to strict application of AMA *Guides*.

**Emar Funez, Applicant v. BOS Sheet Metal and Air Conditioning, Inc., State Compensation Insurance Fund, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 115. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/air conditioning installer incurred 58 percent permanent disability as a result of 12/21/2007 injuries to back, right foot and psyche, and that orthopedic AME’s re-evaluation opinion was not sufficient to rebut scheduled rating under AMA *Guides* pursuant to requirements in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*) as affirmed by *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when AME applied improper legal standard in attempting a rebuttal to scheduled rating by stating that application of AMA Guides “would be inequitable, disproportionate, unfair, and an inaccurate measurement of the employee’s permanent disability.”

**Esiquio Gonzalez, Applicant v. Vons Grocery Company, PSI, Defendant,** 2011 Cal. Wrk. Comp. P.D. LEXIS 118. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB rescinded WCJ’s finding that applicant/clerk with cumulative injuries to his cervical spine, lumbar spine, and left knee rebutted scheduled DFEC factor in 2005 Permanent Disability Schedule, when WCAB found that WCJ failed to do a complete analysis pursuant to Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 248 (Appeals Board en banc opinion) **(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*), because WCJ gave no explanation regarding period used to calculate applicant’s post-injury earnings and earning loss, and did not fully analyze whether applicant’s earnings during that time period were more indicative of his earning capacity than scheduled rating; WCAB remanded matter to trial level with instructions that WCJ do a complete *Ogilvie* analysis explaining evidence relied upon to find applicant’s earning loss and explaining earning loss period decided upon, discussing whether adjusted DFEC factor was a true reflection of applicant’s earning capacity, and weighing adjusted DFEC factor against scheduled factor to determine which better reflects applicant’s diminished future earning capacity.

**Robert Leon, Applicant v. RF Development & Busch Corporation, Lincoln General Insurance, Administered by American Claims Management, Defendants,** 2011 Cal. Wrk. Comp. P.D. LEXIS 123. Permanent Disability—Rating—AMA *Guides*—WCAB, in a majority decision, rescinded WCJ’s finding that applicant incurred 37 percent permanent disability as a result of admitted industrial injuries to his right lower extremity, right foot and back on 10/4/2007 and 10/9/2007, and found that opinion of applicant’s primary treating physician, upon which WCJ relied in determining permanent disability, was not sufficient to rebut scheduled rating under AMA *Guides* pursuant to requirements in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*) as affirmed by *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when WCAB found that by relying upon applicant’s subjective complaints, especially in determining functional capacity, physician improperly relied on criteria not directly applicable under AMA *Guides* and failed to follow requirement that impairment ratings be based upon objectively verifiable conditions, that physician incorrectly concluded that DRE method for evaluating applicant’s impairment did not provide an accurate assessment of impairment and should not be followed, and that physician did not adequately justify his rejection of DRE method.

**Jose Oliveira, Applicant v. River Front Apartments, Illinois Midwest Insurance Agency on behalf of Pennsylvania Manufacturers’ Association Insurance Company, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 133. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/maintenance worker suffered 39 percent permanent disability as a result of 6/8/2007 industrial injury to his left shoulder based upon opinion of panel QME, when WCAB found that opinion of panel QME was sufficient to rebut scheduled AMA *Guides* rating for shoulder impairment under Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837* because panel QME provided clear rationale for applying hernia chapter of AMA *Guides*, rather than upper extremity chapter based on loss of range of motion for purposes of analyzing applicant’s WPI, and preclusion from heavy lifting used by panel QME seemed to most accurately describe applicant’s impairment.

**Jennifer Hundemer, Applicant v. County of Santa Cruz, Sedgwick CMS, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 73. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/social worker with cumulative injury to upper extremities in form of bilateral carpal tunnel syndrome during period ending 12/1/2004, incurred 28-percent permanent disability, and that QME’s opinion on which WCJ relied was sufficient to rebut scheduled impairment rating pursuant to *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when QME, by describing impairments using chapters and tables within “four corners” of AMA *Guides*, correctly applied criteria set forth in Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*), used his clinical judgment, and considered overall clinical findings including applicant’s impaired activities of daily living (ADL) to concluded that impairment of applicant’s ADL required application of a higher whole person impairment (WPI).

**Donald Laury, Applicant v. R&W Concrete Contractors, State Compensation Insurance Fund, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 77. Permanent Disability—Rating—AMA *Guides*—WCAB, in a split opinion, rescinded WCJ’s finding that applicant/cement mason with 6/27/2005 industrial spinal injury resulting in psychological disability and sleep/sexual dysfunction, incurred 75 percent permanent disability, and that there was insufficient evidence to rebut scheduled whole person impairment (WPI), and held that (1) AME’s use of Figure 15-19 in AMA *Guides* was appropriate in this case, as this was within “four corners” of AMA *Guides*, (2) AME, based on his expertise, opined that DRE and ROM methods of rating did not accurately reflect applicant’s level of impairment and that applicant lost 60 percent of the use of his lumbar spine excluding impact on his sexual function and sleep disorder, and (3) AME’s opinion constituted substantial evidence upon which WCJ should have relied pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) (*Almaraz II*).

**Donald Laury, Applicant v. R&W Concrete Contractors, State Compensation Insurance Fund, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 77. Permanent Disability—Rating—Diminished Future Earning Capacity—WCAB held that opinion of vocational expert constituted substantial evidence supporting WCJ’s finding that applicant/cement mason with 6/27/2005 industrial spinal injury resulting in psychological disability and sleep/sexual dysfunction rebutted diminished future earning capacity (DFEC) portion of 2005 Permanent Disability Rating Schedule pursuant to **(Ogilvie I) and Ogilvie v. City and County of San Francisco (2009) 74 Cal. Comp. Cases 1127 (Appeals Board en banc opinion)** (*Ogilvie II*), but found that WCJ did not sufficiently explain why he selected formula he used pursuant to *Ogilvie II* and remanded matter for WCJ to provide explanation regarding *Ogilvie* formula he selects.

**Monica Ledesma, Applicant v. Firestone Vineyard, State Compensation Insurance Fund, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 78. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant/food preparer incurred 21 percent permanent disability as a result of injury to lumbar spine and in form of sleep disorder based upon treating physician’s report, when WCAB found that treating physician’s report did not constitute substantial evidence pursuant to Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District (2009) 74 Cal. Comp. Cases 1084 (Appeals Board en banc opinion) **(Almaraz II) and Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 76 Cal. Comp. Cases 837** to support WCJ’s permanent disability rating because, although he remained within four corners of AMA *Guides* in applying Table 6-9 (criteria for rating permanent impairment due to herniation) in hernia chapter of AMA *Guides* to determine applicant’s impairment, treating physician provided no explanation for why he changed applicant’s spinal impairment from an 8 percent WPI as found in his initial report based on a DRE lumbar category II, to an 18 percent WPI in a subsequent report based on Table 6-9, nor did he provide any explanation as to why rating applicant’s impairment under Table 6-9 in hernia chapter was more appropriate than rating it under spinal chapter of AMA *Guides*.

**Alex Pfaeffle, Applicant v. San Mateo County Community College, PSI and Administered By Sedgwick 2065 Oakland, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 91. Permanent Disability—Rating—AMA *Guides*—WCAB affirmed WCJ’s finding that applicant/instructional aide with 11/10/2006 injury to his back and left lower extremity incurred 44 percent permanent disability, and that panel QME’s finding of applicant’s whole person impairment (WPI) based on combined ratings for lower extremity (gait derangement/foot drop) and back (DRE method) was sufficient to rebut scheduled impairment under *Milpitas Unified School Dist. v. W.C.A.B. (Guzman) 187 Cal. App. 4th 808, 115 Cal. Rptr. 3d 112, 75 Cal. Comp. Cases 837*, when panel QME relied upon his clinical judgment and expertise, explained reasons he chose to use the two methods for rating applicant’s impairment, provided his analysis of how he used AMA *Guides*, and stayed within “four corners” of AMA *Guides* to determine impairment.

**Dawn Deans, Applicant v. Palmdale Water District, PSI, Administered by ACWA/JPIA, Defendants**, 2011 Cal. Wrk. Comp. P.D. LEXIS 16. Permanent Disability—Rating—AMA *Guides*—WCAB rescinded WCJ’s finding that applicant incurred 13 percent permanent disability as a result of 10/1//2007 industrial injuries to her right elbow and wrist, and remanded matter to WCJ, when WCAB found that panel QME report on which WCJ relied to find permanent disability rating did not constitute substantial evidence because panel QME incorrectly measured applicant’s grip strength and analyzed her loss of grip strength, did not memorialize in his report that he tested applicant’s grip strength multiple times, did not discuss how applicant’s loss of grip strength on dominant side impacted her activities of daily living, and did not explain why applicant’s whole person impairment (WPI) under AMA *Guides* was best described by grip loss.

Index to CA - WCAB Noteworthy Panel Decisions

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