preliminary assertion would have provided an incomplete basis for calculation of diminished future earnings, at best. We therefore conclude that applicant's *suspicion* of possible lower pay prior to the issuance of the Award is not the functional equivalent to knowledge of *actual* reduced earning capacity. We are therefore persuaded that applicant did not possess the requisite knowledge of a change in earning capacity until he had received a specific job offer through the work accommodation process, an offer which was only made *after* the issuance of the April 30, 2017 Award.

Irrespective of this issue, however, the WCJ found good cause to reopen the Award on grounds of new and further disability. (Lab. Code, § 5410; Finding of Fact No.1.)

Once the continuing jurisdiction of the WCAB has been invoked, the WCJ and the Appeals Board possess the authority to reconsider the entire case, including applicant's assertions related to the sufficiency of the Award. (*Bland v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 324, 475 [35 Cal.Comp.Cases 513, 517] ["in a petition to reopen, the injured employee need not request any particular classification of compensation in order to vest the Board with jurisdiction to reconsider the entire case"]; see also *Sarabi, supra*, at p. 925 [very broad or general petitions are sufficient to invoke the continuing jurisdiction of the Appeals Board].)

Thus, the WCJ's determination of good cause to reopen applicant's Award had the effect of throwing open the entire case for review, obviating issues of the sufficiency of collateral grounds asserted for reopening, including issues related to applicant's alleged knowledge of an impending reduction in earning capacity.

Labor Code Section 5313 provides:

> The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

As required by section 5313 and explained in *Hamilton v. Lockheed Corporation* (2001) 66 Cal. Comp. Cases 473 [2001 Cal. Wrk. Comp. LEXIS 4947] (Appeals Board en banc) (*Hamilton*), "the WCJ is charged with the responsibility of referring to the evidence in the opinion

on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

A decision "must be based on admitted evidence in the record" (*Hamilton, supra*, at p. 478), and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

Section 5815 also provides:

> Every order, decision or award, other than an order merely appointing a trustee or guardian, shall contain a determination of all issues presented for determination by the appeals board prior thereto and not theretofore determined. Any issue not so determined will be deemed decided adversely as to the party in whose interest such issue was raised.

Sections 5313 and 5815 thus require the WCJ to "file finding upon *all* facts involved in the controversy" and to issue a corresponding award, order or decision that states the "reasons or grounds upon which the [court's] determination was made." (Italics added; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-622 [2010 Cal. Wrk. Comp. LEXIS 74] (Appeals Board en banc).)

The WCJ's opinion on decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision…." (*Hamilton, supra,* at p. 476.) The Supreme Court has further observed that pursuant to Labor Code section 5908.5, decisions of the WCAB must state the evidence relied upon and specify in detail the reasons for the decision. (*Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351] (*Evans*).) The purpose of the requirement is "to assist the reviewing court to ascertain the principles relied upon by the lower tribunal, to help that tribunal avoid careless or arbitrary action, and to make the right of appeal or of seeking review more meaningful." (*Evans, supra*, at p. 755.)

Here, following the WCJ's determination of good cause to reopen applicant's Award, sections 5313 and 5815, as well as our decision in *Hamilton, supra*, require the WCJ's decision to address all facts and issues involved in the controversy, including applicant's allegations of increased disability as a result of diminished future earnings capacity. The applicant's successful invocation of the continuing jurisdiction of the Appeals Board had the effect of throwing open the entire basis of the Award for reconsideration, which in turn required a determination of the issues

and arguments advanced by the parties. Here, the Petition to Reopen raises issues of both new and further disability, as well as the sufficiency of the Award given applicant's reduced future earnings capacity. While the F&A addresses applicant's contentions regarding new and further disability, the F&A does not substantively address the merits of applicant's DFEC contentions, having foreclosed the issue based on a jurisdictional analysis.

In addition, we observe that insofar as the Award addresses new and further disability, the Award itself is nonspecific as to which hip requires future medical care, and whether the award reflects a compensable consequence injury, that is, an injury arising out of and in the course of employment, or the award of medical treatment to a nonindustrial body part necessary to treat an industrial body part. (See, e.g., *Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566]; see also *Laines v. Workmen's Comp. Appeals Bd.* (1975) 48 Cal.App.3d 872 [40 Cal.Comp.Cases 365]; *Southern California Rapid Transit Dist. v. Workers' Comp. Appeals Bd.* (Weitzman) (1979) 23 Cal.3d 158 [44 Cal.Comp.Cases 107].) In addition, the decision does not adequately address why the award after reopening, encompassing additional disability to the left hip, results in permanent disability levels unchanged from the prior Award.

Accordingly, we will grant reconsideration, rescind the January 20, 2020 F&A, and return this matter to the trial level for further proceedings consistent with this decision. We observe that irrespective of the mechanism for invoking the Appeals Board's continuing jurisdiction, if the WCJ determines there is good cause to reopen the Award, the WCJ must thereafter address all facts and issues raised by the parties in order to comply with sections 5313, 5815 and *Hamilton, supra*. In the present matter, so long as the jurisdiction of the Appeals Board is properly invoked, the WCJ will need to substantively address applicant's contentions with respect to diminished future earnings capacity, as well as applicant's contentions of new and further disability.

Upon return of this matter to the trial level, we offer the following nonbinding guidance to the parties. With respect to the DFEC issue raised by applicant, the Court of Appeal in *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1273 [129 Cal.Rptr.3d 704] has observed that:

> [T]he cases have always recognized the schedule to be rebutted when a party can show a factual error in the application of a formula or the preparation of the schedule. (See *Fidelity & Cas. Co. v. Workmen's Comp. App. Bd.* (1967) 252 Cal.App.2d 327, 335 [60 Cal. Rptr. 442] [rebuttal based on one element of

> disability being included in the permanent disability rating that should not have been, and another not being included that should have been]; *State of California v. Ind. Acc. Com.* (1954) 129 Cal.App.2d 302, 304 [276 P.2d 820] [schedule's prima facie evidence was rebutted because the injured employee's congenital deaf-mutism was included in the rating as if he had lost his hearing and speech in the industrial accident in which he injured his hand]; *Young v. Industrial Acc. Com.* (1940) 38 Cal.App.2d 250, 255 [100 P.2d 1062] [the schedule did not constitute prima facie evidence because the schedule did not cover the impairment involved]; *National Kinney v. Workers' Comp. Appeals Bd.* (1980) 113 Cal.App.3d 203 [169 Cal. Rptr. 801] [employee's duties required application of a different group].) A challenge to an employee's presumptive disability rating thus appears to remain permissible on the basis that the schedule, or one of its component factors, was incorrectly calculated or applied.
>
> (*Id.* at p. 1273.)

However, the *Ogilvie* decision also specifically rejected the substitution of an alternate methodology used in determining the DFEC: "Nothing in Senate Bill No. 899 (2003–2004 Reg. Sess.) authorizes or compels the calculation of an alternative diminished earning capacity adjustment factor as the WCAB devised in order to resolve Ogilvie's claim." (*Ogilvie, supra*, at p. 1277; see also *Contra Costa County v. Workers' Comp. Appeals Bd.* (*Dahl*) (2015) 240 Cal.App.4th 746 [193 Cal. Rptr. 3d 7, 80 Cal.Comp.Cases 1119] ["the *Ogilvie* court did not sanction rebuttal of the statutory Schedule by a competing empirical methodology—no matter how superior the applicant and her expert claim it may be"].)

Further, the Court of Appeal decided *Ogilvie* under the auspices of section 4660, which applies to dates of injuries prior to January 1, 2013, and provides:

> (a) In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an *employee's diminished future earning capacity*.
>
> (Lab. Code, § 4660(a), italics added.)

However, for dates of injury after January 1, 2013, section 4660.1 removed the reference to the employee's diminished future earning capacity, in favor of a fixed multiplication factor of 1.4. (Lab. Code, § 4660.1(b).) (See *Wilson v. Kohls Dept. Store*[3] (December 6, 2021,

[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See

ADJ10902155) [2021 Cal. Wrk. Comp. P.D. LEXIS 322].) Thus, the WCJ may wish to instruct the parties to address these legislative changes, and their interaction with applicant's assertions of increased disability as a result of diminished future earning capacity. The WCJ may also wish to direct the parties to develop the record with their respective vocational experts.

In summary, we observe that the WCJ's finding of good cause to reopen applicant's Award had the effect of throwing open the entire case for reconsideration, and that pursuant to sections 5313, 5815 and our en banc decision in *Hamilton, supra*, the F&A must address all facts and issues raised by the parties, including applicant's assertion of change to disability ratings as a result of diminished future earnings capacity. We further note that the F&A is nonspecific as to the body parts injured, and as to the basis for the award. Accordingly, we will rescind the F&A and return the matter to the trial level for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

Gee v. Workers' Comp. Appeals Bd. (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].) Here, we refer to *Wilson v. Kohls Dept. Store* because it considered a similar issue.