Research Report: The Role, Responsibilities, and Legal Boundaries of Vocational Experts in California Workers' Compensation Proceedings

(PART-A INJURED WORKERS ANALYSIS)

March 1, 2026

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VOCATIONAL EXPERTS IN CALIFORNIA WORKERS' COMPENSATION: ROLE, RESPONSIBILITIES, AND LEGAL BOUNDARIES

Part 1: Overview and Key Takeaways

What This Report Covers

This report explains the role of vocational experts in California workers' compensation cases. A vocational expert is a professional who evaluates whether an injured worker can return to work, learn a new job, or compete for jobs in the open market. Vocational experts do not treat injuries or make medical decisions. Instead, they use information from doctors to assess your work options after an injury.

Between 2023 and 2026, several important decisions by the Workers' Compensation Appeals Board (WCAB)—the state body that hears disputes over workers' compensation benefits—have changed the rules about what vocational experts can and cannot do. You need to understand these changes if your case involves a vocational expert.

Key Takeaways

- Vocational experts may help you challenge your permanent disability rating (the percentage that measures how much your injury limits your ability to earn money). They can show that your disability is more severe than the standard rating says.
- Vocational experts cannot make their own decisions about apportionment (dividing your disability between work-related and non-work-related causes). Only doctors can do that. This rule comes from a major 2023 decision called Nunes v. State of California Department of Motor Vehicles (WCAB en banc 2023) (https://www.dir.ca.gov/wcab/EnBancdecisions2023/Nunes-Grace-August2023.pdf).
- If you want to use vocational evidence to increase your disability rating, you must pass a strict four-step test established by Havanis v. Kelly (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Kelly-HAVANIS-ADJ3802146.pdf).
- All parties must agree on your work restrictions (the limits your doctor places on what you can physically do at work) before a vocational expert can evaluate your case. This requirement comes from Fiore v. Los Angeles Community College District (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf).

Risk Warning

> ***Important: If a vocational expert's report improperly makes apportionment decisions—something only doctors may do—the WCAB can reject the entire report. This could seriously harm your case, even if the rest of your evidence is strong. Make sure your attorney reviews all vocational expert reports for compliance with current law before filing them.***

Timing Guidance

You should engage a vocational expert only after your doctors have completed reports on your work restrictions and apportionment. Vocational expert opinions prepared before 2024 may need to be updated to meet the standards described in this report.

Part 2: Legal Framework — Statutes Governing Permanent Disability

How California Calculates Permanent Disability

California law uses a formula to determine your permanent disability rating. This section explains the key statutes (written laws) that control this process.

California Labor Code § 4660 (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/) sets the framework. Your permanent disability rating is based on your diminished future earning capacity—meaning how much less money you can earn because of your injury. The law considers three factors:

- Your age at the time of injury
- Your occupation (the type of work you did)
- Your inability to compete in the open job market because of your work-related injuries

These factors are adjusted using the Permanent Disability Rating Schedule (PDRS), which is a standardized chart published by the Division of Workers' Compensation (https://www.dir.ca.gov/dwc/pdr.pdf). The 2005 PDRS uses the American Medical Association Guides to the Evaluation of Permanent Disability, Fifth Edition (AMA Guides) to measure your physical impairment based on medical findings.

The Apportionment Requirement

Apportionment means dividing your permanent disability between causes that are work-related (industrial) and causes that are not work-related (non-industrial). California Labor Code § 4663 (https://workcompmedical.com/wp-content/uploads/2013/08/Labor-Code-4663.pdf) controls this process. The key rules are:

- Apportionment must be based on causation (what actually caused the disability). See Cal. Lab. Code § 4663(a) (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/).
- Only a physician (doctor) may make the apportionment determination. The doctor must state what percentage of your disability was caused by the work injury and what percentage was caused by other factors. See Cal. Lab. Code § 4663(c) (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/).
- Non-work-related causes can include prior injuries, pre-existing conditions (like natural wear and tear on your body), and conditions that existed before your injury even if they caused no symptoms.

California Labor Code § 4664(a) (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/) creates a bright-line rule: your employer is only responsible for the percentage of permanent disability directly caused by the work injury. If you received a prior award for permanent disability, the law presumes that prior disability still exists at the time of any new injury.

The Evidence Standard

California Labor Code § 5708 (https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5708/) governs what evidence can be used in workers' compensation hearings. Workers' compensation judges are not bound by the same strict evidence rules used in regular courts. However, all evidence—including vocational expert testimony—must be substantial, meaning it is factual, specific, and not based on guesswork.

Part 3: Legal Framework — Regulations and Foundational Case Law

Regulatory Requirements for Vocational Expert Reports

Title 8, California Code of Regulations, § 10685 (Cal. Code Regs. tit. 8, § 10685) (https://www.dir.ca.gov/t8/10685.html) sets mandatory requirements for vocational expert evidence. These rules tell vocational experts what they must include in their reports and how they must prepare them.

Key requirements include:

- Reports must be in writing. A vocational expert may testify in person only if there is good cause (a valid reason the court approves).
- The expert must sign a declaration (sworn statement) that the information in the report is true and correct to the best of their knowledge.
- The expert must confirm there was no violation of Cal. Lab. Code § 139.32 (https://www.dir.ca.gov/t8/10685.html), which prohibits certain referral fee arrangements.
- The expert must personally prepare the report. No one else can take the worker's history, review records, or write the conclusions, except for limited tasks like preparing outlines, as long as the expert personally reviews and verifies everything.

Reports should include:

- Dates of evaluations and interviews
- History of the injury and the worker's job history

- The worker's complaints and limitations
- A list of all documents the expert reviewed
- Medical history, diagnoses, restrictions, and apportionment findings
- The expert's findings, opinions, and the reasoning behind them
- The expert's signature

> ***Note: If a report does not meet all content requirements, the report is not automatically thrown out. However, the judge will consider the missing information when deciding how much weight to give the report.***

Foundational Case Law

Three older decisions form the foundation for how vocational evidence works in California:

Ogilvie v. Workers' Compensation Appeals Board (2011). The Court of Appeal held that an injured worker may challenge (rebut) the standard permanent disability rating by using vocational evidence to show they cannot be retrained for a new career and have a greater loss of earning capacity than the rating reflects. This remains the most important decision authorizing vocational evidence. See Ogilvie v. Workers' Comp. Appeals Bd., 197 Cal. App. 4th 1262 (2011) (https://ccmpt.com/ogilvie-v-city-and-county-of-san-francisco/).

Acme Steel v. Workers' Compensation Appeals Board (2013). The Court of Appeal confirmed that even when a vocational expert finds total disability, medical apportionment under Cal. Lab. Code § 4663 (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/) still applies. Vocational findings of total disability cannot bypass the doctor's apportionment determination. See Acme Steel v. Workers' Comp. Appeals Bd. (2013) (https://law.justia.com/cases/california/court-of-appeal/2013/a137915.html).

Escobedo v. Marshalls, 70 Cal. Comp. Cases 604 (WCAB en banc 2005). This WCAB decision set the standard for what counts as substantial medical evidence in apportionment. A doctor's opinion must be based on reasonable medical probability, rely on real facts and a proper examination, and explain the reasoning behind conclusions. See Escobedo v. Marshalls (WCAB en banc 2005) (https://www.dir.ca.gov/dwc/Apportionment-Webinar/70-Cal-Comp-Cases-604.docx).

Part 4: The Nunes Decisions — Prohibition on Vocational Apportionment

What Happened in the Nunes Case

The most important recent change in the law governing vocational experts came from the WCAB's en banc decision in Nunes v. State of California Department of Motor Vehicles (WCAB en banc, June 22, 2023) (https://calawyers.org/workers-compensation/wcab-en-banc-rejects-vocational-apportionment/), reaffirmed in Nunes II (WCAB en banc, August 29, 2023) (https://www.dir.ca.gov/wcab/EnBancdecisions2023/Nunes-Grace-August2023.pdf). An en banc decision means the full board issued the ruling, making it binding on all workers' compensation judges in California.

In Nunes, the injured worker's doctor found that 40% of her cervical (neck) disability was caused by non-industrial degenerative changes (natural wear and tear) and 60% of her carpal tunnel syndrome was non-industrial. Despite these medical findings, the worker's vocational expert claimed that vocational apportionment should be 100% industrial. The vocational expert reasoned that because the worker could do her job without problems before the injury, all of her disability should be attributed to the work injury.

The WCAB's Ruling

The WCAB rejected the concept of vocational apportionment entirely. The board held:

- Cal. Lab. Code § 4663 (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/) requires only physicians to make apportionment determinations. The statute does not authorize vocational experts to create their own apportionment analysis.
- Vocational experts cannot reject a doctor's apportionment findings simply because the worker had no work restrictions, no wage loss, or no job problems before the current injury.
- Vocational experts must consider apportionment under the same legal standards as doctors. The law allows apportionment to pre-existing conditions even if those conditions were not "labor disabling" (did not interfere with work) before the industrial injury.

- Neither the applicant's nor the defendant's vocational expert provided substantial evidence, because both attempted to make independent apportionment determinations.

The Nunes II decision clarified that an award without apportionment (an unapportioned award) is appropriate only when medical and vocational evidence together show the industrial injury is the sole cause of the worker's permanent disability.

What This Means for You

> ***Critical: If you are an injured worker, your vocational expert must not make statements like "the disability is entirely caused by the work injury" or "non-industrial factors do not affect employability." These statements are now considered impermissible vocational apportionment and will cause the WCAB to reject the report.***

Instead, your vocational expert should:

- Accept the doctor's apportionment findings
- Analyze your work options based only on the work restrictions caused by the industrial injury
- Clearly explain how the doctor's apportionment was considered in forming opinions

If you are an employer or insurer, you should carefully review vocational expert reports for language that suggests independent apportionment. Any such language is grounds to challenge the report.

Part 5: Recent Developments (2024) — Havanis, Fiore, and Cano

Overview of Post-Nunes Clarifications

After the Nunes decisions, the WCAB issued three important panel decisions in 2024 that provide more detailed guidance on how medical and vocational evidence must work together.

Havanis v. Kelly (2024) — The Four-Step Burden

In Havanis v. Kelly (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Kelly-HAVANIS-ADJ3802146.pdf), the WCAB spelled out the four steps an injured worker must satisfy to use vocational evidence to challenge the permanent disability rating schedule:

1. Substantial medical evidence must establish your work restrictions.
2. Vocational evidence must show those restrictions prevent you from being retrained for another career.
3. Vocational evidence must show those restrictions prevent you from competing for jobs in the open labor market.
4. Substantial medical evidence must prove the cause of the restrictions is 100% industrial (work-related).

> ***Important: If you have work restrictions from both industrial and non-industrial causes, only the industrial restrictions—considered by themselves—must meet steps 2 and 3. If the non-industrial restrictions are what actually prevent you from working, you have not met your burden. For example, if your doctor says your sedentary restriction is 70% caused by your work injury and 30% caused by degenerative changes, the vocational expert must analyze whether the 70% industrial portion alone would prevent rehabilitation and labor market competition.***

Fiore v. Los Angeles Community College District (2024) — Work Restriction Agreement

In Fiore v. Los Angeles Community College District (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf), the WCAB established two critical rules:

- The parties must provide the vocational expert with your current work restrictions before the expert can evaluate your case.
- If there is disagreement between your treating physician (the doctor who treats you) and your Qualified Medical Evaluator (QME) (a doctor chosen to give an independent opinion) about your restrictions, the parties or the judge must resolve that disagreement first.
- As an alternative, parties may obtain a functional capacity evaluation (FCE)—a standardized physical test conducted by a licensed therapist that measures what you can physically do.

The Fiore decision also confirmed that vocational experts cannot offer opinions on rebutting the Combined Values Chart (CVC), which is a mathematical tool used to combine multiple impairment ratings. Only doctors can address CVC issues.

Cano v. Ecology Control Industries, Inc. (2024) — The Iterative Process

In Cano v. Ecology Control Industries, Inc. (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Jesse-CANO-SR-ADJ9983378.pdf), the WCAB created an iterative (back-and-forth) process between vocational experts and doctors:

- If a vocational expert finds that the work restrictions in the medical record are incomplete, unclear, or inconsistent, the expert may flag those problems.
- However, the vocational expert cannot independently change or expand the work restrictions.
- Instead, the parties must go back to the medical experts for clarification.

> ***Note: This process may increase costs because both vocational experts and doctors may need to issue additional reports. However, it ensures vocational opinions rest on a solid medical foundation.***

Part 6: The Four-Step Ogilvie Rebuttal Framework in Detail

Understanding Schedule Rebuttal

The standard permanent disability rating schedule assigns a disability percentage based on your medical impairment, age, and occupation. Sometimes this percentage does not accurately reflect how much the injury actually limits your ability to earn money. The Ogilvie rebuttal allows you to prove your disability is greater than the schedule says. This section explains each step in detail.

Step 1: Substantial Medical Evidence of Work Restrictions

Your treating physician, QME, or Agreed Medical Evaluator (AME) (a doctor both sides agree on) must assign specific, functionally limiting work restrictions. These restrictions must describe what you physically or mentally cannot do. Examples include:

- "No lifting more than 10 pounds"
- "Limited standing to 2 hours per 8-hour workday"
- "Unable to work at heights"

General statements like "limited duty" or a diagnosis alone are not enough. If your doctor's restrictions are vague, you may need a functional capacity evaluation (FCE) to clarify your actual abilities. An FCE is a clinical assessment by a licensed physical or occupational therapist that objectively measures your strength, range of motion, endurance, and ability to perform specific work tasks. See Visionary Law Group, "Functional Capacity Evaluation Workers Comp" (https://visionarylawgroup.com/functional-capacity-evaluation-workers-comp/).

Step 2: Vocational Evidence That Restrictions Preclude Rehabilitation

The vocational expert must show that the work restrictions caused by your industrial injury (considered alone, without non-industrial factors) prevent you from being retrained for another career. This requires the expert to analyze:

- Your education and prior work experience
- Your transferable skills (skills from previous jobs that could apply to different occupations)
- Available retraining opportunities
- Why no retraining path is realistic given your restrictions

The expert cannot simply say you cannot return to your old job. The expert must affirmatively explain why no alternative career is feasible.

Step 3: Vocational Evidence That Restrictions Preclude Open Labor Market Competition

The vocational expert must show that the industrial work restrictions (again, considered alone) prevent you from competing for available jobs at wages comparable to what you earned before your injury. This requires:

- Current labor market research (data no more than one to two years old)

- Research specific to your geographic area (for Northern California, this means Bay Area wages and job availability)
- Documentation of specific job postings, employer contacts, dates, and wage information

General claims that "the labor market is tight" or "wages are low" are not enough. The expert must provide documented evidence.

Step 4: Substantial Medical Evidence of 100% Industrial Causation

Medical evidence must prove that the work restrictions are caused entirely by the industrial injury, with no non-industrial contributing factors. If your doctor found any apportionment to non-industrial causes, this step becomes very difficult to satisfy.

> ***Important: Under the Havanis framework, if your doctor apportioned 20% of your disability to a pre-existing degenerative condition, you must either show that the industrial restrictions alone meet steps 2 and 3, or present medical evidence that the non-industrial factor is truly inconsequential to the restrictions. This is a demanding standard.***

Part 7: Apportionment and Medical Evidence Standards

How Apportionment Works After Nunes

Under Cal. Lab. Code § 4663 (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/), doctors may apportion your permanent disability to many non-industrial causes, including:

- Pre-existing pathology (conditions that existed before your injury, like degenerative disc disease, even if you had no symptoms)
- Age-related changes (natural wear on joints and spine)
- Prior industrial injuries (earlier work injuries)
- Lifestyle factors (smoking, obesity, prior non-work trauma)

> ***Critical: Under Nunes, apportionment to these factors is allowed even if they never caused you any work problems before. The question is whether the non-industrial factor currently contributes to your disability—not whether it caused problems in the past.***

What Doctors Must Include in Apportionment Opinions

Following Escobedo v. Marshalls, 70 Cal. Comp. Cases 604 (WCAB en banc 2005) (https://www.dir.ca.gov/dwc/Apportionment-Webinar/70-Cal-Comp-Cases-604.docx), a doctor's apportionment opinion must meet these requirements to count as substantial evidence:

- Be stated in terms of reasonable medical probability (more likely than not)
- Not be speculative or based on guesswork
- Be based on relevant facts and an adequate examination and medical history
- Include clear reasoning explaining how the doctor reached their conclusions

If the doctor's apportionment opinion does not meet these standards, you can challenge it. But you must do so through medical evidence—not through vocational evidence.

How Apportionment Affects Your Employer's Liability

Under Cal. Lab. Code § 4664(a) (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/), your employer is liable only for the industrially caused percentage of your disability. For example, if your total disability is rated at 50% but your doctor apportions 30% to non-industrial factors, your employer is responsible for only 35% permanent disability (70% of 50%).

What Vocational Experts May and May Not Do with Apportionment

Vocational experts may:

- Accept and incorporate the doctor's apportionment findings
- Analyze how industrial restrictions (after apportionment) affect your earning capacity

- Distinguish between different sources of impairment when medical evidence supports the distinction (for example, analyzing whether psychiatric disability alone could support a finding of total disability, separate from physical limitations)

Vocational experts may not:

- Assign their own apportionment percentages
- Reject the doctor's apportionment because you had no prior work restrictions
- Claim disability is 100% industrial based on vocational factors alone
- Use language suggesting that non-industrial factors "play no role" in your employability

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Part 8: Arguments Favoring Injured Workers

Overview

If you are an injured worker, vocational expert evidence can help increase your disability rating and benefits. Here are the strongest arguments your attorney can make using vocational evidence.

Argument 1: Non-Amenability to Vocational Rehabilitation

This is the strongest argument. Your vocational expert can show that because of your industrial work restrictions, you cannot be retrained for a new career and cannot compete for jobs in the open market. Under the Havanis (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Kelly-HAVANIS-ADJ3802146.pdf) framework, if your medical evidence establishes work restrictions and the cause is 100% industrial, vocational evidence demonstrating both non-retrainability and open market non-competitiveness will satisfy your burden.

Your attorney should emphasize that the vocational expert is not making apportionment decisions—the expert is simply assessing your work options based on the doctor's findings.

Argument 2: Proper Incorporation of Medical Apportionment

If the medical record contains valid apportionment findings, your vocational expert can incorporate those findings and analyze how they affect your earning capacity and retraining options. This is different from the impermissible vocational apportionment prohibited by Nunes. Integrating medical apportionment into a vocational analysis is allowed; substituting vocational judgment for medical apportionment is not.

Argument 3: Identifying Gaps in Work Restrictions

Under Cano v. Ecology Control Industries, Inc. (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Jesse-CANO-SR-ADJ9983378.pdf), if your doctor's work restrictions are too vague or incomplete, your vocational expert can flag the problem. This is not the same as the vocational expert making medical decisions. Instead, it triggers a process where the parties go back to the doctor for clarification.

Argument 4: Labor Market Evidence Supporting Wage Loss

Your vocational expert can provide detailed labor market surveys showing that despite some remaining ability to work, the local job market offers very limited opportunities at comparable wages. This evidence, if properly documented with employer contacts, job postings, and current wage data, directly supports a higher disability finding.

Argument 5: Transferable Skills Analysis

Your vocational expert can conduct a transferable skills analysis using standardized tools like the Dictionary of Occupational Titles (DOT) or *ONET** (the government's occupational information database). If this analysis shows that your prior work experience does not transfer to available jobs within your restrictions, it supports a higher disability rating.

Part 9: Arguments Favoring Employers and Insurers

Overview

If you are defending against a workers' compensation claim, vocational expert evidence can be challenged on several grounds. Here are the strongest arguments available to employers and insurers.

Argument 1: Impermissible Apportionment Disguised as Vocational Analysis

The strongest defense argument targets vocational expert reports that implicitly assign apportionment. Watch for red-flag language such as: "the disability is solely attributable to the industrial injury," "non-industrial factors do not affect employability," or "the worker had no prior wage loss, so apportionment should be zero." Under Nunes (WCAB en banc 2023) (https://calawyers.org/workers-compensation/wcab-en-banc-rejects-vocational-apportionment/), these assertions are impermissible and render the report insubstantial.

Argument 2: Inadequate Medical Foundation

If the medical evidence about work restrictions is ambiguous, conflicting, or speculative, the vocational expert's opinion has no solid foundation. Under Fiore (WCAB panel 2024) (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf), parties must resolve medical disagreements before vocational analysis proceeds. Defense counsel should demand that work restrictions be clearly established and agreed upon before accepting vocational testimony.

Argument 3: Deficient Labor Market Surveys

Vocational expert labor market surveys must be:

- Current: No more than one to two years old
- Documented: With specific employer names, contact dates, and wage information
- Localized: Reflecting the relevant geographic market (not national averages)

Surveys relying on outdated data, unsourced assumptions, or national generalizations fail the substantial evidence standard.

Argument 4: Failure to Account for Transferable Skills

Many workers with substantial restrictions still have transferable skills that enable employment in alternative occupations. If the vocational expert failed to conduct a rigorous transferable skills analysis using standardized methods (DOT, O*NET), the opinion on earning capacity loss is incomplete.

Argument 5: Ignoring Medical Apportionment

After Nunes, vocational reports that fail to acknowledge and address valid medical apportionment findings are vulnerable to rejection. Defense counsel should check whether the vocational expert considered non-industrial factors such as pre-existing degeneration, age-related changes, and prior injuries. Silence on apportionment findings suggests the expert improperly ignored them.

Argument 6: Credibility and Methodology Challenges

You can challenge a vocational expert's qualifications, fee arrangements, prior testimony patterns, reliance on biased sources, and failure to consider alternative data interpretations. These challenges can undermine credibility even when the expert's legal theory is otherwise sound.

Part 10: Practical Strategy — Engaging Vocational Experts

When to Engage a Vocational Expert

You should engage a vocational expert only after these conditions are met:

- The injured worker has reached or is near maximum medical improvement (MMI), meaning the condition has stabilized and is not expected to improve significantly.
- Treating physicians or evaluating doctors (QME or AME) have assigned specific work restrictions.
- Medical causation of the injury has been established.
- Apportionment issues have been addressed by evaluating physicians, even if the findings are disputed.

If work restrictions are unclear or contested, consider getting a functional capacity evaluation (FCE) first. An FCE provides objective data about what the worker can physically do, giving vocational experts a stronger foundation. See PLBH, "The Role of Functional Capacity Evaluations" (https://www.plblaw.com/the-role-of-functional-capacity-evaluations-in-workers-compensation-claims/).

What to Include in the Engagement Letter

Your agreement with the vocational expert should clearly spell out:

- Scope of work: Whether the expert will conduct a vocational evaluation, labor market survey, transferable skills analysis, retraining feasibility assessment, or some combination. Do not assume the expert will address topics you did not specifically request.
- Factual foundation: What medical records, work history, and other documents the expert will review. Require the expert to flag any gaps.
- Apportionment handling: Instruct the expert to incorporate valid medical apportionment findings but not to independently determine or question apportionment percentages.
- Work restrictions foundation: Require the expert to confirm that the work restrictions provided accurately reflect the doctor's findings. If the expert believes restrictions are incomplete or inconsistent, the expert must flag the issue rather than independently modifying restrictions.
- Labor market data standards: Require data that is current (within two years), localized to the relevant market, and documented with sources.
- Fee and billing terms: Specify hourly rates for evaluation, report writing, deposition, and trial testimony, along with any caps.

Part 11: Report Requirements and Evidence Standards

Mandatory Report Contents Under Cal. Code Regs. tit. 8, § 10685

Under Cal. Code Regs. tit. 8, § 10685 (https://www.dir.ca.gov/t8/10685.html), vocational expert reports must include specific elements to count as substantial evidence. Here is what must be in the report:

Required declarations and disclosures:

- A sworn statement that the information is true and correct
- Confirmation of no violation of Cal. Lab. Code § 139.32 (https://www.dir.ca.gov/t8/10685.html) (prohibiting certain referral arrangements)
- A detailed curriculum vitae showing the expert's education, certifications (such as CRC — Certified Rehabilitation Counselor, or CVE — Certified Vocational Evaluator), and experience. See CRCC, "CVE – Get Certified" (https://crccertification.com/cve-get-certified/).
- A statement confirming the expert personally prepared the report

Required content:

- Dates of evaluations and interviews
- Complete injury history and vocational (work) history
- The worker's complaints and functional limitations
- A full list of all documents reviewed
- Medical history summary including diagnoses, treatments, restrictions, and apportionment findings
- Clear findings and opinions on the evaluation
- Detailed reasoning with specific references to medical findings, labor market data, and occupational analysis
- Explicit acknowledgment of apportionment findings and explanation of how they were considered

What to include in findings and opinions:

- Current functional capacity based on medical restrictions
- Transferable skills and alternative occupational options
- Labor market availability of suitable jobs
- Earning capacity in available jobs compared to pre-injury earnings
- Whether the worker is amenable to vocational rehabilitation or retraining
- Whether the industrial restrictions (considered alone, without non-industrial causes) preclude rehabilitation and labor market competition

> ***Important: Failure to meet content requirements does not automatically make the report inadmissible. However, the judge will weigh the missing information when deciding how much to rely on the report.***

Part 12: Discovery, Depositions, and Trial Strategy

Deposing a Vocational Expert

A deposition is sworn testimony taken before trial, where attorneys ask the expert questions under oath. When you depose a vocational expert, focus on these areas:

- Credentials and methodology used
- The basis for opinions on functional capacity, transferable skills, labor market availability, and earning capacity
- Sources of information and data relied upon
- Whether the expert considered contradictory evidence
- Whether the expert followed applicable legal standards, including the Nunes prohibition
- Assumptions underlying opinions and how conclusions would change if facts were different
- Consistency with the expert's prior testimony in other cases

Cross-Examination Strategy

Effective cross-examination should establish:

- The expert's fee arrangement (hourly rate, total fees paid)
- Whether the expert reviewed complete medical records
- Whether labor market research is current and documented
- Whether the expert verified that identified jobs actually exist and at what wages
- What transferable skills analysis methodology was used
- Whether the expert considered medical apportionment findings
- Whether the expert impermissibly ventured into apportionment

> ***Note: A key question to test for impermissible apportionment is: "In your opinion, what percentage of this worker's disability is caused by the industrial injury?" If the expert attempts to assign a percentage, this shows impermissible apportionment. The expert should answer only questions about vocational feasibility—not causation percentages.***

Supplemental Reports

Additional vocational expert opinions may be needed if:

- Medical evidence is updated (for example, the QME issues a supplemental report with revised work restrictions)
- Labor market conditions change significantly
- Apportionment issues are clarified through additional medical opinions
- The vocational expert identifies work restriction problems that require physician clarification under the Cano (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Jesse-CANO-SR-ADJ9983378.pdf) framework

Rebuttal Vocational Expert Evidence

Employers and insurers may retain their own vocational expert to challenge the applicant's vocational opinions. Rebuttal evidence is strongest when it provides more current or localized labor market data, identifies transferable skills the applicant's expert overlooked, or documents through employer contacts that suitable jobs are actually available. However, rebuttal experts must also comply with all Cal. Code Regs. tit. 8, § 10685 (https://www.dir.ca.gov/t8/10685.html) requirements and must not make their own apportionment determinations.

Part 13: Northern California Practice Considerations

Bay Area Workers' Compensation Proceedings

Workers' compensation cases in Northern California are handled at several locations, including San Francisco (100 Montgomery Street, Suite 800; 630 Sansome Street, 4th Floor) and Concord (1855 Gateway Boulevard,

Suite 850). See California DIR, WCAB Offices (https://www.dir.ca.gov/wcab/wcab-Decisions.htm). Cases are heard by Workers' Compensation Judges (WCJs) appointed by the WCAB, following California Labor Code procedures.

Labor Market Factors Unique to Northern California

Vocational experts working in Northern California must account for several regional factors:

- High wage baseline: Bay Area wages are significantly higher than national averages. Vocational experts must calculate post-injury earning capacity based on local Bay Area wages, not national averages. Using national data can significantly understate wage loss and overstate employability.
- Technology sector: The Bay Area's concentration of tech jobs creates opportunities for workers with technical skills but challenges for workers transitioning from non-technical occupations. Vocational experts must distinguish between truly transferable skills and occupations that require specific credentials.
- Occupational licensing: Many Northern California occupations (healthcare, construction, professional services) require state licensure. Vocational experts must evaluate whether work restrictions prevent meeting the physical or continuing education demands of licensed occupations.
- Cost of living: San Francisco's high cost of living means that a lower-paying alternative job may not be viable even if technically available.

Available Benefits for Northern California Workers

Injured workers in Northern California may be eligible for:

- Supplemental Job Displacement Benefit (SJDB): A voucher worth up to $6,000 for education and retraining, available if you have permanent partial disability and your employer does not offer suitable modified work. See DWC, Supplemental Job Displacement Benefits (https://www.dir.ca.gov/dwc/sjdb.html).
- Return-to-Work Supplement Program: An additional $5,000 payment from the state for workers with permanent partial disability. See Employees First Labor Law, "SJDB — Retraining Voucher" (https://employeesfirstlaborlaw.com/supplemental-job-displacement-benefits-retraining-voucher/).

Vocational experts should address whether proposed retraining is consistent with these programs and within approved educational provider limitations.

Part 14: Appellate Strategy and Preserving Your Record

Developing the Trial Record

If a workers' compensation judge rejects or limits vocational expert evidence, you must build a strong record for appeal. This means:

- Eliciting detailed testimony about the expert's methodology and factual basis
- Filing written motions that clearly state the legal grounds for admitting the evidence
- If evidence is excluded on procedural grounds (like a missing declaration), requesting a continuance to fix the problem rather than accepting exclusion

Appellate Standards of Review

The WCAB and appellate courts apply the substantial evidence standard when reviewing vocational expert evidence. This means the appellate body will defer to the trial judge's credibility assessments but will reverse if:

- No substantial evidence supports the decision
- The judge made a legal error in applying the Ogilvie framework or the Nunes apportionment prohibition

If you are the injured worker appealing, emphasize any legal error—such as the judge requiring your vocational expert to meet an unreasonable standard not required by law. If you are the employer appealing, emphasize gaps in medical apportionment, unresolved work restrictions, or vocational evidence that impermissibly substituted for medical evidence.

Petition for Reconsideration

If your case involves a novel legal question about vocational expert authority or apportionment boundaries, you may request the WCAB to review the case en banc. While this is discretionary, it may be appropriate for genuine issues of first impression. You can make this request in your petition for reconsideration.

Part 15: Ethics, Professional Standards, and Risk Warnings

Attorney Obligations

California Rules of Professional Conduct require attorneys to retain qualified experts and ensure expert testimony complies with ethical rules. An attorney who retains a vocational expert known to use impermissible apportionment practices or unreliable methods violates ethical duties to clients and the court.

Vocational Expert Professional Standards

Vocational experts holding certifications from the Commission on Rehabilitation Counselor Certification (CRCC) or the Certified Vocational Evaluator (CVE) credential are subject to professional ethics codes. These codes require opinions based on current, reliable data; disclosure of limitations and assumptions; and staying within the bounds of the expert's qualifications. See CRCC, "CVE Certification" (https://crccertification.com/cve-certification/).

Critical Risk Warnings

Risk 1: Impermissible apportionment can destroy your case. A vocational expert report that substitutes vocational apportionment for medical apportionment can undermine your entire case, even if other evidence is strong. The Nunes prohibition is firmly established. No exception or workaround exists. Always review reports before submission.

Risk 2: Outdated labor market data is vulnerable. Labor market data more than two years old faces serious challenge. Economic shifts—including post-pandemic changes and automation—can quickly make older data unreliable. Ensure your vocational expert uses current data.

Risk 3: Functional capacity evaluations carry risks. An FCE provides objective data, but if the injured worker performs better than expected, the insurer can use the results to argue restrictions are overstated. Conversely, poor performance inconsistent with objective findings can raise credibility issues. Understand the risks before requesting an FCE.

Risk 4: Vocational evidence depends on medical evidence. A vocational expert's opinion is only as strong as the medical evidence behind it. If the medical record is incomplete, apportionment is speculative, or work restrictions are vague, the vocational analysis will suffer. Complete your medical evidence development before engaging a vocational expert.

Risk 5: Regulatory changes are ongoing. Proposed 2026 amendments to vocational and return-to-work counselor regulations under Cal. Code Regs. tit. 8, art. 7.5 (https://www.dir.ca.gov/DIRNews/2025/2025-103.html) may affect professional standards. Monitor these changes for potential impacts on your case.

References

1. Sullivan Attorneys, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (2024). https://www.sullivanattorneys.com/blog/wcab-clarifies-roles-physicians-vocational-experts-ogilvie (https://www.sullivanattorneys.com/blog/wcab-clarifies-roles-physicians-vocational-experts-ogilvie)

2. State of California Department of Industrial Relations, "Jesse Cano SR v. Ecology Control Industries, Inc." (WCAB panel 2024). https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Jesse-CANO-SR-ADJ9983378.pdf (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Jesse-CANO-SR-ADJ9983378.pdf)

3. CCMPT, "Ogilvie v. City and County of San Francisco" (2011). https://ccmpt.com/ogilvie-v-city-and-county-of-san-francisco/ (https://ccmpt.com/ogilvie-v-city-and-county-of-san-francisco/)

4. State of California Department of Industrial Relations, "Nunes v. State of California Department of Motor Vehicles (En Banc)" (August 29, 2023). https://www.dir.ca.gov/wcab/EnBancdecisions2023/Nunes-Grace-August2023.pdf (https://www.dir.ca.gov/wcab/EnBancdecisions2023/Nunes-Grace-August2023.pdf)

5. State of California Department of Industrial Relations, "Workers' Compensation Appeals Board – Panel Decisions" (2026). https://www.dir.ca.gov/wcab/wcab-Decisions.htm (https://www.dir.ca.gov/wcab/wcab-Decisions.htm)

6. IEATRAINING, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (November 20, 2024). https://ieatraining.org/wcab-clarifies-roles-of-physicians-and-vocational-experts-under-ogilvie/ (https://ieatraining.org/wcab-clarifies-roles-of-physicians-and-vocational-experts-under-ogilvie/)

7. State of California Department of Industrial Relations, "Title 8, Section 10685: Vocational Experts' Reports as Evidence." https://www.dir.ca.gov/t8/10685.html (https://www.dir.ca.gov/t8/10685.html)

8. State of California Department of Industrial Relations, "Kelly Havanis v. Applicant" (WCAB panel 2024). https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Kelly-HAVANIS-ADJ3802146.pdf (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Kelly-HAVANIS-ADJ3802146.pdf)

9. State of California Department of Industrial Relations, "Michael Fiore v. Los Angeles Community College District" (WCAB panel 2024). https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf)

10. LFLM, "The Rise of Rebutting the PDRS and Derailing the Path to a 100% Award." https://www.lflm.com/news-knowledge/the-rise-of-rebutting-the-pdrs-and-derailing-the-path-to-a-100-award/ (https://www.lflm.com/news-knowledge/the-rise-of-rebutting-the-pdrs-and-derailing-the-path-to-a-100-award/)

11. Employees First Labor Law, "Labor Code §4663 – Apportionment of Permanent Disability." https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/ (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/)

12. Division of Workers' Compensation, "DWC Posts Draft Regulations Updating SJDB/RTW Rules" (October 20, 2025). https://www.dir.ca.gov/DIRNews/2025/2025-103.html (https://www.dir.ca.gov/DIRNews/2025/2025-103.html)

13. WorkComp Medical, "Labor Code Section 4663: Apportionment of Permanent Disability" (Complete text). https://workcompmedical.com/wp-content/uploads/2013/08/Labor-Code-4663.pdf (https://workcompmedical.com/wp-content/uploads/2013/08/Labor-Code-4663.pdf)

14. Justia, "California Labor Code § 5708 (2025)." https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5708/ (https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5708/)

15. State of California Department of Industrial Relations, "Escobedo v. Marshalls" (WCAB en banc 2005). https://www.dir.ca.gov/dwc/Apportionment-Webinar/70-Cal-Comp-Cases-604.docx (https://www.dir.ca.gov/dwc/Apportionment-Webinar/70-Cal-Comp-Cases-604.docx)

16. Visionary Law Group, "Functional Capacity Evaluation Workers Comp: What It Is and How It Works" (2024). https://visionarylawgroup.com/functional-capacity-evaluation-workers-comp/ (https://visionarylawgroup.com/functional-capacity-evaluation-workers-comp/)

17. PLBH, "The Role of Functional Capacity Evaluations in Workers' Compensation Claims" (2024). https://www.plblaw.com/the-role-of-functional-capacity-evaluations-in-workers-compensation-claims/ (https://www.plblaw.com/the-role-of-functional-capacity-evaluations-in-workers-compensation-claims/)

18. Justia, "Acme Steel v. WCAB – California Case Law" (2013). https://law.justia.com/cases/california/court-of-appeal/2013/a137915.html (https://law.justia.com/cases/california/court-of-appeal/2013/a137915.html)

19. WorkCompCentral, "Escobedo and the Slippery Slope of Irrelevancy" (2024). https://ww3.workcompcentral.com/columns/show/id/u128d05h600742wx4f7jos (https://ww3.workcompcentral.com/columns/show/id/u128d05h600742wx4f7jos)

20. California Bar Association, "WCAB En Banc Rejects 'Vocational Apportionment'" (June 22, 2023). https://calawyers.org/workers-compensation/wcab-en-banc-rejects-vocational-apportionment/ (https://calawyers.org/workers-compensation/wcab-en-banc-rejects-vocational-apportionment/)

21. LFLM, "WCAB Rejects Concept of 'Vocational Apportionment' in Rare En Banc Decision" (June 23, 2023). https://www.lflm.com/news-knowledge/wcab-rejects-concept-of-vocational-apportionment-in-rare-en-banc-decision/ (https://www.lflm.com/news-knowledge/wcab-rejects-concept-of-vocational-apportionment-in-rare-en-banc-decision/)

22. State of California Department of Industrial Relations, "Schedule for Rating Permanent Disabilities" (PDRS). https://www.dir.ca.gov/dwc/pdr.pdf (https://www.dir.ca.gov/dwc/pdr.pdf)

23. Bradford Barthel Law, "AMA Guides, California PDRS Can Differ on Rating Instructions" (March 25, 2025). https://bradfordbarthel.com/2025/03/25/ama-guides-california-pdrs-can-differ-on-rating-instructions/ (https://bradfordbarthel.com/2025/03/25/ama-guides-california-pdrs-can-differ-on-rating-instructions/)

24. Employees First Labor Law, "Supplemental Job Displacement Benefits – Retraining Voucher." https://employeesfirstlaborlaw.com/supplemental-job-displacement-benefits-retraining-voucher/ (https://employeesfirstlaborlaw.com/supplemental-job-displacement-benefits-retraining-voucher/)

25. Division of Workers' Compensation, "DWC Supplemental Job Displacement Benefits" (December 2024). https://www.dir.ca.gov/dwc/sjdb.html (https://www.dir.ca.gov/dwc/sjdb.html)

26. RGW Law Firm, "Employers Lose on Apportionment at High Ct., but Win at 1st DCA" (2024). https://www.rgwlawfirm.com/news/97 (https://www.rgwlawfirm.com/news/97)

27. Sullivan Attorneys, "Establishing Permanent Total Disability with Medical & Vocational Evidence" (2024). https://www.sullivanattorneys.com/blog/establishing-permanent-total-disability-medical-vocational-evidenc (https://www.sullivanattorneys.com/blog/establishing-permanent-total-disability-medical-vocational-evidenc)

28. Visionary Law Group, "How Vocational Data Determines Disability and Return-to-Work" (2024). https://visionarylawgroup.com/vocational-expert-workers-comp-guide/ (https://visionarylawgroup.com/vocational-expert-workers-comp-guide/)

29. CRCC, "CVE – Get Certified" (2026). https://crccertification.com/cve-get-certified/ (https://crccertification.com/cve-get-certified/)

30. CRCC, "CVE Certification" (2026). https://crccertification.com/cve-certification/ (https://crccertification.com/cve-certification/)

31. PBW Law, "California: A Critical Assessment of 'Vocational Apportionment.'" https://www.pbw-law.com/wp-content/uploads/2021/07/ArticleonVocationalApportionment.pdf (https://www.pbw-law.com/wp-content/uploads/2021/07/ArticleonVocationalApportionment.pdf)

32. Sullivan Attorneys, "Nunes v. State of CA DMV – Vocational Apportionment Invalid" (2023). https://www.sullivanattorneys.com/blog/special-report-nunes-dmv-vocational-apportionment-invalid (https://www.sullivanattorneys.com/blog/special-report-nunes-dmv-vocational-apportionment-invalid)

33. State of California Department of Industrial Relations, "Darren Hailey v. [Applicant]" (WCAB panel 2025). https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Darren-HAILEY-ADJ11207109-ADJ11207111.pdf (https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Darren-HAILEY-ADJ11207109-ADJ11207111.pdf)

34. Sullivan Attorneys (Companion Blog), "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (2024). https://www.sullivanoncomp.com/blog/wcab-clarifies-roles-of-physicians-and-vocational-experts-under-ogilvie (https://www.sullivanoncomp.com/blog/wcab-clarifies-roles-of-physicians-and-vocational-experts-under-ogilvie)

Research Report: The Role, Responsibilities, and Legal Boundaries of Vocational Experts in California Workers' Compensation Proceedings

(PART-B LEGAL ANALYSIS)

Generated by: Legal AI Assistant

Facilitated by: The Law Offices of Fernando Hidalgo, Inc.

March 1, 2026

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Executive Summary

Vocational experts occupy a critical but circumscribed role in California workers' compensation proceedings, serving as bridge professionals between medical evidence of disability and real-world employment capacity determinations. Operating within a regulatory and appellate framework established principally by California Labor Code sections 4660-4664 and refined by a series of landmark California Workers' Compensation Appeals Board (WCAB) decisions issued between 2011 and 2024, vocational experts possess significant authority to assess work feasibility, identify transferable skills, conduct labor market research, and opine on an injured worker's amenability to vocational rehabilitation. However, the scope of this authority remains subject to increasingly stringent legal constraints, most notably the prohibition-definitively established in the en banc WCAB decision Nunes v. State of California Department of Motor Vehicles (2023) and reaffirmed in subsequent decisions-against substituting "vocational apportionment" for medical apportionment in determining permanent disability.

Key Takeaways for Practitioners: Vocational experts may rebut the permanent disability rating schedule under the framework established in Ogilvie v. Workers' Compensation Appeals Board (2011), provided they satisfy a demanding four-step burden: substantial medical evidence must establish work restrictions; vocational evidence must demonstrate those restrictions preclude rehabilitation into another career field; vocational evidence must establish those restrictions preclude competition in the open labor market; and substantial medical evidence must prove the cause of the restrictions is one hundred percent industrial in origin. When industrial and non-industrial causation factors are mixed, the industrial work restrictions alone must meet the three-part vocational test. Recent decisions (Fiore v. Los Angeles Community College District, Cano v. Ecology Control Industries, Inc., and Havanis v. Kelly), all issued in 2024, have clarified that vocational experts must incorporate valid medical apportionment findings-rather than attempting to create independent vocational apportionment analysis-and have expanded the obligation of parties to ensure agreement on work restrictions before vocational evaluation proceeds.

Risk Assessment: Vocational expert evidence that impermissibly ventures into apportionment determinations faces rejection as not constituting substantial evidence and risks destabilizing an entire award predicated on vocational findings. Defense counsel must carefully scrutinize vocational expert reports for language suggesting independent apportionment findings and must condition acceptance of work restrictions on medical expert agreement. Applicant counsel must ensure medical experts have conducted thorough apportionment analysis before engaging vocational experts and must be prepared to supplement medical evidence if apportionment gaps emerge during vocational analysis. The burden of proof-requiring clear and specific factual bases for opinions-remains high for both sides.

Timeline and Critical Deadlines: Vocational expert engagement should occur only after medical causation and apportionment issues have been clarified through physician reports or supplemental physician authority. The Workers' Compensation Appeals Board has indicated that cases involving outdated or insufficient vocational evidence in light of post-2024 jurisprudence may be remanded for updated opinions. Practitioners should assume that vocational expert opinions prepared before 2024 may require supplementation to comply with current standards regarding apportionment consideration and work restriction verification.

I. Legal Framework: Statutes, Regulations, and Foundational Case Law

A. Statutory Authority and the Permanent Disability Rating Scheme

California Labor Code section 4660 establishes the framework for determining permanent disability, requiring that the permanent disability rating be based on the injured worker's diminished future earning capacity, rather than solely on medical impairment.[13] The statute mandates consideration of "(1) the employee's age at the time of the injury, (2) the employee's occupation, and (3) the employee's inability to compete in the open labor market as a result of the work-related injuries," adjusted by the Permanent Disability Rating Schedule (PDRS) adopted by the Division of Workers' Compensation.[32] The 2005 PDRS incorporates the American Medical Association Guides to the Evaluation of Permanent Disability, Fifth Edition (AMA Guides), which provide

standardized methodology for assessing whole person impairment based on clinical findings and functional limitation.[30][32]

California Labor Code section 4663 establishes the apportionment mandate that governs the interaction between medical and vocational evidence. Section 4663(a) provides that "[a]pportionment of permanent disability shall be based on causation."[13][62] Critically, section 4663(c) requires that "a physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries."[13][15][62] The statute does not authorize apportionment determinations by non-medical experts, nor does it authorize alternative apportionment schemes or methodologies. Rather, apportionment must account for "other factors both before and subsequent to the industrial injury," and may include disability formerly believed to be non-apportionable, including apportionment to pathology, asymptomatic prior conditions, and retroactive prophylactic work restrictions.[4][45]

Labor Code section 4664(a) complements section 4663 by providing that "[t]he employer shall only be liable for the percentage of permanent disability directly caused by the injury arising out of and occurring in the course of employment."[13] This creates a bright-line rule: employers bear liability only for the industrially caused portion of disability, as determined by physicians applying the causation standard. The statute further provides that "[i]f the applicant has received a prior award of permanent disability, it shall be conclusively presumed that the prior permanent disability exists at the time of any subsequent industrial injury."[13][15] This statutory presumption places an affirmative burden on employers to demonstrate that current disability involves non-industrial contributing factors and to quantify those factors through medical evidence.

Labor Code section 5708 establishes the evidentiary standard applicable to all testimony in workers' compensation proceedings, including vocational expert evidence: "All hearings and investigations before the appeals board or a workers' compensation judge are governed by this division and by the rules of practice and procedures adopted by the appeals board. In the conduct thereof they shall not be bound by the common law or statutory rules of evidence and procedure, but may make inquiry in the manner, through oral testimony and records, which is best calculated to ascertain the substantial rights of the parties and carry out justly the spirit and provisions of this division."[16] Despite this broad grant of discretion, the statute requires that evidence presented be "substantial," a term defined through case law as evidence that is factual, specific, and not speculative.

B. Regulatory Framework Governing Vocational Expert Reports

Title 8, California Code of Regulations, section 10685 establishes mandatory procedural and substantive requirements for vocational expert evidence in workers' compensation proceedings. The regulation requires that vocational expert reports be submitted in written form, with direct examination of a vocational expert witness permitted only upon a showing of good cause.[8][8][8][8] Good cause is not found merely because a vocational expert has not issued a report; rather, the offering party must demonstrate that it exercised due diligence in attempting to obtain a report.[8]

The regulation prescribes specific declarations that must accompany a vocational expert report, including a sworn statement by the expert that "the information contained in this report and its attachments, if any, is true and correct to the best of [the expert's] knowledge" and that "there has not been a violation of Labor Code section 139.32."[8][8][8] The report must disclose the vocational expert's qualifications, which may be satisfied by attaching a curriculum vitae.[8] Critically, the report must contain a statement that "No person, other than the vocational expert signing the report, has participated in the non-clerical preparation of the report, including all of the following: (i) Taking a history from the employee; (ii) Reviewing and summarizing medical and/or non-medical records; and (iii) Composing and drafting the conclusions of the report," with limited exceptions permitting preliminary outline preparation or excerpt generation by others, provided the vocational expert personally reviews such materials and conducts additional inquiries as necessary.[8][8][8]

The regulation specifies that vocational expert reports should include, where applicable, the date(s) of evaluations and interviews; the history of the injury; the employee's vocational history; injured employee complaints; a listing of all information reviewed; the injured employee's medical history and residuals; findings and opinions; the reasons for those opinions; and the expert's signature.[8][8][8][8] Notably, the

regulation provides that a failure to comply with content requirements "will not make the report inadmissible but will be considered in weighing the evidence."[8] This reflects the principle that procedural non-compliance may affect credibility without triggering automatic exclusion.

Proposed amendments to Title 8, California Code of Regulations, Article 7.5, effective as of 2026, impose additional requirements on vocational and return-to-work counselors (VRTWCs), including stricter educational program requirements, limitations on financial interests in education providers, and a process for removal from the official VRTWC list maintained by the Administrative Director.[14] While these amendments are directed at the supplemental job displacement benefit (SJDB) program rather than at vocational expert qualifications in litigation, they reflect an evolving legislative and regulatory emphasis on professional standards and accountability in vocational services.

C. Foundational and Binding Case Law: Ogilvie, Acme Steel, and Escobedo

The modern framework for vocational evidence in California workers' compensation was established in Ogilvie v. Workers' Compensation Appeals Board (2011), in which the Court of Appeal held that an injured worker may rebut a scheduled permanent disability rating by establishing, through vocational evidence, that the worker is not amenable to vocational rehabilitation and therefore has a greater diminished future earning capacity than reflected in the scheduled rating.[1][3][6][7][25][7][48][58] Although this decision predates the current apportionment framework clarifications, it remains the canonical statement of permissible vocational rebuttal and has been preserved and refined in all subsequent appellate authority.

Acme Steel v. Workers' Compensation Appeals Board (2013) confirmed that disability apportionment pursuant to Labor Code section 4663 is required even when an injured worker has suffered a 100 percent loss of future earning capacity, notwithstanding vocational evidence establishing permanent total disability.[1][11] This decision foreclosed the argument that vocational findings of total disability could circumvent medical apportionment obligations.

Escobedo v. Marshalls (2005), an en banc WCAB decision, established the foundational standard for substantial medical evidence in apportionment determinations: a medical opinion must be framed in terms of reasonable medical probability, must not be speculative, must be based on pertinent facts and adequate examination and history, and must set forth reasoning in support of its conclusions.[18][21][49] The decision placed the burden on applicants to prove the percentage of permanent disability directly caused by the industrial injury and established that applicants bear the burden of establishing the approximate percentage attributable to non-industrial causes when such apportionment is claimed.

D. The Nunes Decisions (2023): The Vocational Apportionment Prohibition

The most significant recent development in the law governing vocational experts is the en banc WCAB decision in Nunes v. State of California Department of Motor Vehicles, issued June 22, 2023, and reaffirmed after petition for reconsideration (designated Nunes II) on August 29, 2023.[1][4][45][1][45][59] The decision holds, in mandatory language, that Labor Code section 4663 requires a reporting physician to make an apportionment determination and prescribes the standard for apportionment, and that the Labor Code makes no statutory provision for "vocational apportionment."[1][4][45] The WCAB explicitly rejected the practice-apparently engaged in by some vocational experts-of creating independent apportionment findings based on vocational factors, particularly the assertion that because a worker had no work disability prior to a current industrial injury, the percentage of disability attributable to non-industrial factors should be adjusted downward or eliminated entirely in the vocational analysis.

In Nunes, the applicant's vocational expert opined that despite the Qualified Medical Examiner's (QME's) finding of 40 percent non-industrial apportionment for degenerative cervical changes and 60 percent non-industrial apportionment for carpal tunnel syndrome, "vocational apportionment" was 100 percent industrial because the applicant "was capable of performing her usual and customary work with zero impediment until the specific injury of September 13, 2011."[1] The defendant's vocational expert, conversely, opined that at least 10 percent of the loss of earning capacity was attributable to non-industrial factors. The WCAB rescinded the trial judge's award and held that neither vocational expert's apportionment analysis constituted substantial evidence, because vocational experts are not statutorily authorized to make independent apportionment determinations.[1][4][45][1][45]

The Nunes II decision, issued after reconsideration, reaffirmed the holding and clarified its scope: vocational evidence must address apportionment and may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment.[4][1][45][59] The WCAB stated that an unapportioned award may be appropriate only "where it can be established through competent medical and/or vocational evidence that the current industrial injury is the sole causative factor for the employee's residual permanent disability."[1] Critically, the WCAB added that "vocational experts no longer may reject a physician's apportionment to nonindustrial factors simply by finding no work restrictions or wage loss prior to the current industrial injury. Vocational experts must consider apportionment under the same legal standards as physicians, and the law allows apportionment to pre-existing nonindustrial factors even if they were not labor disabling before the industrial injury occurred."[1][1]

II. Current Legal Landscape: Recent Appellate Developments and Emerging Issues (2023-2026)

A. The Post-Nunes Clarification Phase: Havanis, Fiore, and Cano Decisions (2024)

Following the Nunes decisions, a series of panel decisions issued in 2024 have further clarified the interaction between medical and vocational evidence in workers' compensation proceedings. These decisions have not altered the fundamental prohibition on vocational apportionment established in Nunes but have instead provided more granular guidance on the mechanics of work restriction analysis, the burden-shifting framework, and the parties' obligations regarding medical-vocational coordination.

In Havanis v. Kelly (2024), the WCAB articulated the precise four-step burden applicable to applicants seeking to rebut the permanent disability rating schedule through vocational evidence.[7][9][7] The framework requires: (1) substantial medical evidence establishing work restriction(s); (2) vocational expert evidence demonstrating that the work restriction(s) preclude applicant from rehabilitation into another career field; (3) vocational expert evidence demonstrating that the work restriction(s) preclude applicant from competing on the open labor market; and (4) substantial medical evidence establishing that the cause of the work restriction(s) is 100 percent industrial.[7][7] This framework preserves the Ogilvie principle that vocational evidence may support schedule rebuttal but explicitly requires medical evidence to anchor both the identification of work restrictions and the causation analysis.[7]

The Havanis decision also clarified that an applicant may have multiple work restrictions, some of which are nonindustrial.[7][7] Critically, "only if the industrial work restrictions, standing alone, preclude the applicant from rehabilitation and from competing in the open labor market, has he or she met the burden on causation of disability."[7][7] This means that if medical evidence establishes that a worker has sedentary restrictions due 70 percent to industrial injury and 30 percent to non-industrial degenerative changes, the vocational expert must analyze whether the industrial restrictions alone-assuming the non-industrial component did not exist-would preclude rehabilitation and open labor market competition. If the non-industrial component contributes materially to the vocational finding, the applicant has not met the burden.

In Fiore v. Los Angeles Community College District (2024), the WCAB reaffirmed that vocational evidence "may be used to address issues relevant to the determination of permanent disability, however, the vocational expert is not a doctor and they may not opine on areas that require medical evidence."[10][10] Critically, the WCAB held that "the parties must provide the vocational expert with applicant's present work restrictions" and that "[t]o the extent that there is disagreement between the primary treater and the QME as to work restrictions, the parties, or ultimately the WCJ, must determine whose opinion on work restrictions constitutes substantial medical evidence so that the vocational expert can properly evaluate applicant's vocational feasibility."[1][10][10] The decision added that "in the alternative, and particularly in cases where there is disagreement as to applicant's functional capacity, the parties may consider obtaining a functional capacity evaluation."[1][10][10] This places an affirmative obligation on parties to resolve factual disputes regarding work capacity before engaging vocational experts, potentially extending litigation timelines but improving the quality of vocational evidence.

In Cano v. Ecology Control Industries, Inc. (2024), the WCAB expanded the obligation of parties when vocational experts identify potential work restriction issues. The decision provides that "[i]f the vocational expert has cause to disagree with or otherwise expand upon the work restrictions assigned, the parties must return to the medical experts to clarify applicant's ability to return to work."[2][7][7] This creates an iterative process: vocational experts may not independently determine work restrictions, but they may flag areas where medical evidence appears insufficient or contradictory, triggering a return to physicians for supplemental

analysis. One commentator notes that Cano "gives vocational experts an expanded role in determining an applicant's work restrictions. Although all the cases agree that an applicant's work restrictions, and causation of them, is a medical issue, Cano states that if a vocational expert disagrees with the assigned restriction, 'the parties must return to the medical experts to clarify applicant's ability to return to work.' That probably will increase discovery costs, as vocational experts and medical doctors will be required to issue additional reports."[7][7]

B. Substantial Evidence Standard and Apportionment Application

The Nunes decisions made clear that vocational expert reports must address valid medical apportionment and that failure to do so renders the vocational opinion insubstantial.[1][4][45][1] The WCAB explained that "a vocational report is not substantial evidence if it relies upon facts that are not germane, marshaled in the service of an incorrect legal theory."[45][45] Examples of impermissible reasoning include assertions that disability is solely attributable to the industrial injury because the applicant had no prior work restrictions, or because the applicant adequately performed their job prior to the current injury, or because the applicant suffered no wage loss before the current injury.[1][4][45][45][59] These findings are "not germane" to apportionment analysis under Labor Code section 4663, which looks to causation of present permanent disability, not pre-injury work performance.

Conversely, the WCAB has indicated that vocational experts may legitimately "parse" or distinguish between multiple sources of impairment-for example, by analyzing whether psychiatric disability could stand alone as the sole basis for permanent total disability, distinct from physical limitations.[45][59] This distinguishes between impermissible independent apportionment (which vocational experts cannot do) and legitimate analytical separation of distinct impairment sources (which vocational experts may do when medical evidence supports the distinction).

C. Pending Litigation and Emerging Issues

As of March 2026, no published appellate decisions have directly challenged or distinguished the Nunes, Havanis, Fiore, or Cano framework. However, trial-level cases are beginning to implement the requirements articulated in these decisions, and some questions remain unresolved:

Scope of permissible apportionment discussion in vocational reports. While Nunes prohibits independent vocational apportionment, the extent to which vocational experts may discuss or analyze physician apportionment findings (rather than merely incorporating them) remains somewhat undefined. Courts have indicated that vocational experts may "consider" valid medical apportionment, but the practical mechanics of how such consideration should be documented in reports remains a matter of dispute.

Standards for functional capacity evaluations (FCEs). While Fiore and Cano reference FCEs as a remedy for work restriction disputes, California workers' compensation lacks comprehensive appellate guidance on FCE methodologies, admissibility standards, or the extent to which FCE findings may override physician restrictions.

Implementation of the iterative physician-vocational process. The Cano framework envisions parties returning to physicians when vocational experts identify work restriction issues. However, practical questions remain: How many iterations are permissible before a case becomes unreasonably protracted? What sanctions apply if parties fail to engage in good-faith supplemental discovery? When does an impasse justify proceeding to trial with incomplete evidence?

Impact of 2026 regulatory changes on vocational expert standards. Proposed amendments to VRTWC rules may indirectly influence vocational expert qualifications or professional standards, but the final impact of these regulatory changes on litigation practice is uncertain.

III. California-Specific Context: San Francisco Workers' Compensation Court and Northern California Practice Considerations

A. San Francisco Immigration Court Analogue: San Francisco Workers' Compensation Court Procedural Framework

While the Law Offices of Fernando Hidalgo, Inc. maintains a primary focus on immigration law, the workers' compensation framework operates within California state courts and the WCAB, with significant regional

variations in caseload composition, judge preferences, and enforcement patterns. Northern California (encompassing San Francisco, Oakland, El Sobrante offices and their service regions) presents specific contextual factors relevant to vocational expert practice:

San Francisco Workers' Compensation Court and EOIR Analogues. The San Francisco workers' compensation proceedings are handled by the San Francisco Workers' Compensation Appeals Board judge offices, located at 100 Montgomery Street, Suite 800; 630 Sansome Street, 4th Floor, Room 475; and a Concord hearing location at 1855 Gateway Boulevard, Suite 850, Concord, California 94520.[5][5] Unlike immigration proceedings, which involve federal EOIR judges and USCIS officers, workers' compensation proceedings involve WCJs (workers' compensation judges) appointed by the WCAB and operate under California Labor Code procedures. However, the framework similarities exist: both involve administrative proceedings with appellate review, both involve expert testimony as a critical component of case development, and both involve regional variations in practitioner familiarity with recent case law.

Regional Caseload and Practice Considerations. Northern California workers' compensation practice reflects a heavy caseload from construction, healthcare, transportation, and technology sectors. San Francisco's high cost of living and substantial immigrant workforce create a distinct demographic profile compared to other California regions, with implications for vocational expert engagement: labor market analyses must account for Bay Area wage premium, significant occupational diversity, and availability of return-to-work placements. Vocational experts serving Northern California must have current, localized labor market data reflecting San Francisco, Oakland, and surrounding Bay Area employment opportunities, not statewide or national generalizations.

State Law Interactions: Proposition 47, Criminal Convictions, and Immigration Consequences. While criminal convictions do not directly affect workers' compensation benefits, California criminal law modifications (Proposition 47 reductions, Penal Code section 1473.7 vacature of convictions with immigration consequences, AB 1352 discovery requirements) may affect vocational rehabilitation planning when injured workers have prior convictions. These state law interfaces are less prominent in workers' compensation than in immigration proceedings but remain relevant when vocational experts are assessing retraining feasibility and labor market access.

B. Labor Market Characteristics and Vocational Expert Considerations in Northern California

The Northern California labor market presents distinct characteristics that vocational experts must accurately capture in their analyses:

Technology Sector Growth and Skills Transferability. The Bay Area's concentration of technology employment creates unique opportunities for workers with technical skills but also presents challenges for workers transitioning from non-technical occupations. Vocational experts must accurately distinguish between transferable skills (which may or may not apply to high-wage tech positions) and occupational reality (that technology positions increasingly require specific credentials, experience, and continuous skill updates).

High Wage Baseline and Wage Loss Quantification. Northern California's cost of living and wage premium compared to national averages mean that an injured worker's pre-injury earnings may substantially exceed national median wages for the same occupation. Vocational experts must calculate post-injury earning capacity based on local Bay Area wages, not national DOT averages. Failure to do so can significantly understate wage loss and overstate employability.

Occupational Licensing and Professional Credential Requirements. Many occupations in Northern California (healthcare, construction, professional services) require state licensure or professional credentials. Vocational experts assessing retraining feasibility must evaluate whether work restrictions preclude the medical, continuing education, or physical demands of licensure-eligible occupations.

Return-to-Work Supplement Program and SJDB Coordination. Northern California injured workers may be eligible for the Supplemental Job Displacement Benefit (SJDB) voucher (up to $6,000 for education and training) and the Return-to-Work Supplement Program (additional $5,000 state payment) if they have permanent partial disability and are not offered suitable modified work by their employer.[44][46] Vocational experts assessing retraining feasibility should explicitly address whether proposed retraining is consistent with available SJDB and state supplement programs and within the educational provider limitations (CalJOBS-approved providers for injuries post-January 1, 2013).[46]

IV. Strategic Analysis Framework: Arguments Favoring and Opposing Vocational Expert Evidence Positions

A. Arguments Favoring Applicant (Injured Worker) Use of Vocational Expert Evidence

Argument 1: Non-Amenability to Vocational Rehabilitation Under Ogilvie. Vocational expert evidence showing that an injured worker is not amenable to vocational rehabilitation and cannot compete in the open labor market due to work restrictions imposed by the industrial injury constitutes permissible evidence to rebut the permanent disability rating schedule. Under Havanis, if medical evidence establishes work restrictions and causation is 100 percent industrial, vocational evidence that demonstrates both non-retrainability and open market non-competitiveness will satisfy the burden.[7][9][7] This remains the strongest position for applicant-side vocational experts and has survived all post-Nunes challenges. Applicant counsel can emphasize that the applicant is not asking the vocational expert to make apportionment determinations but rather to assess vocational feasibility in light of physician-determined work restrictions and physician-determined apportionment.

Argument 2: Accurate Medical Apportionment Incorporation. If the medical record contains valid apportionment findings by a treating physician, QME, or AME, the vocational expert's incorporation of those findings-and analysis of how they affect earning capacity and retraining feasibility-does not constitute impermissible vocational apportionment. Rather, the vocational expert is applying valid medical apportionment to a vocational analysis. The Nunes prohibition targets only substitution of independent vocational apportionment for medical apportionment, not integration of medical apportionment into vocational assessment.

Argument 3: Identification of Work Restriction Insufficiencies. Per Cano, if medical evidence fails to assign sufficiently detailed work restrictions, the vocational expert may identify gaps and flag them for physician clarification. This does not constitute independent medical opinion by the vocational expert; rather, it is a procedural mechanism to ensure adequate factual foundation for vocational analysis. Applicant counsel can present vocational expert findings regarding work restriction insufficiency as part of a collaborative process to strengthen the medical record.

Argument 4: Labor Market Evidence Supporting Wage Loss. Vocational experts may provide detailed labor market surveys, documented employer contacts, posted job wages, and occupational analysis showing that despite residual functional capacity, the local labor market offers limited opportunities at comparable wages. This evidence, if properly sourced and dated, constitutes substantial vocational evidence supporting permanent disability findings and settlement valuations.

Argument 5: Transferable Skills Analysis. Legitimate transferable skills analysis (using Dictionary of Occupational Titles or O*NET codes) identifying the extent to which prior work experience maps to available occupations is permissible vocational evidence. Even if an injured worker cannot return to their prior occupation, the availability of alternative occupations at comparable wages directly affects disability ratings. Conversely, absence of suitable alternative occupations supporting higher disability ratings is within the vocational expert's proper scope.

B. Arguments Opposing or Limiting Vocational Expert Evidence (Defense Perspective)

Argument 1: Impermissible Apportionment Disguised as Vocational Analysis. The strongest defense argument targets vocational expert reports that implicitly or explicitly assign apportionment percentages. Any language suggesting that disability is "solely" or "entirely" attributable to the industrial injury, or that non-industrial factors "do not affect" employability, should be challenged as impermissible vocational apportionment. Specific red-flag language includes assertions that because the worker had no prior wage loss or work disability, the apportionment should be zero percent or reduced from medical apportionment findings.

Argument 2: Inadequate Medical Factual Foundation. If medical evidence regarding work restrictions or causation is ambiguous, conflicting, or speculative, the vocational expert's opinion necessarily lacks a sufficient factual foundation. Under Fiore, parties must resolve medical disagreements before vocational analysis proceeds. Defense counsel should demand that apportioned work restrictions be explicitly established and agreed upon before accepting vocational expert testimony.

Argument 3: Labor Market Survey Deficiencies. Vocational expert labor market surveys must be current (not more than one to two years old), documented (with specific employer names, contact dates, and wage

information), and localized to the relevant geographic market. Surveys relying on outdated DOT or O*NET data, national averages, or unsourced assumptions regarding job availability constitute speculative evidence failing the substantial evidence standard.

Argument 4: Failure to Account for Transferable Skills. Even workers with substantial work restrictions often possess transferable skills enabling employment in alternative occupations. If a vocational expert fails to conduct a rigorous transferable skills analysis using standardized methodologies (DOT, O*NET, vocational testing), the opinion on earning capacity loss is necessarily incomplete and does not constitute substantial evidence.

Argument 5: Insufficient Consideration of Medical Apportionment. Post-Nunes, vocational expert reports that fail to explicitly acknowledge and address valid medical apportionment findings are vulnerable to rejection. Defense counsel should scrutinize whether the vocational expert has considered non-industrial factors (pre-existing degeneration, age-related changes, prior injuries) in forming opinions on retrainability and market competitiveness. Silence on medical apportionment findings suggests the expert has impermissibly ignored them.

Argument 6: Credibility and Methodology Challenges. General challenges to vocational expert qualifications, methodology transparency, and independence remain available. Cross-examination regarding the expert's fee arrangement, prior case testimony patterns, reliance on biased sources, and failure to consider alternative interpretations of data can undermine credibility even if the expert's legal theory is sound.

C. Government (Employer/Insurer) and Workers' Compensation Appeals Board Tendencies

The WCAB has indicated through its Nunes, Havanis, Fiore, and Cano decisions that it is concerned with vocational expert overreach into medical/apportionment determinations but remains open to legitimate vocational evidence on feasibility and earning capacity. Recent decisions evidence a preference for well-developed medical records, explicit apportionment findings, and clear causation analysis before vocational evidence is considered. The WCAB appears to view the four-step Ogilvie test as a serious burden that requires rigorous medical and vocational coordination, not a routine path to schedule rebuttal.

V. Practical Implementation: Vocational Expert Engagement, Evidence Preparation, and Discovery Strategy

A. Timing and Initiation of Vocational Expert Engagement

Vocational expert engagement should occur only after the following predicate determinations have been made: (1) the employee has reached maximum medical improvement (MMI) or near-MMI status; (2) treating physicians or QMEs/AMEs have assigned work restrictions with reasonable specificity; (3) medical causation of the injury has been established; and (4) apportionment issues have been addressed by evaluating physicians (even if apportionment findings are contested, medical experts must have made apportionment determinations for vocational experts to incorporate them).[1][10][10]

If work restrictions are ambiguous or contested between medical experts, parties should consider obtaining a functional capacity evaluation (FCE) before vocational expert engagement. An FCE is a standardized clinical assessment conducted by a licensed physical or occupational therapist measuring physical capacities (strength, range of motion, endurance, tolerance for postures and movements) and functional limitations relevant to job tasks.[19][22] FCE results provide objective data that can clarify whether restrictions assigned by treating physicians are medically supported, enabling vocational experts to proceed from a stronger factual foundation.

Applicant-side counsel should consider engaging vocational experts at the lump-sum settlement/permanent disability evaluation stage, when rating disputes are clearly delineated and expert analysis can focus on schedule rebuttal. Defense-side counsel should anticipate vocational expert engagement by applicants and should consider whether obtaining a rebuttal vocational expert is necessary and, if so, when to engage such expert to maximize impact and avoid unnecessary discovery extensions.

B. Scope of Work and Engagement Letter Requirements

Vocational expert engagement should be memorialized in a detailed engagement letter specifying the scope of work, fee arrangements, deliverables, and any limitations on the expert's authority or disclosure obligations. Key elements of an engagement letter include:

Scope Definition. Clearly specify whether the engagement covers (a) vocational evaluation and transferable skills analysis; (b) labor market survey and earning capacity assessment; (c) feasibility opinion on retraining; (d) amenability to vocational rehabilitation opinion; (e) apportionment analysis or apportionment incorporation; (f) deposition and trial testimony; or (g) some combination thereof. Do not assume that a vocational expert engaged for one purpose will address others without explicit specification.

Factual Foundation. Specify what medical records, work history documentation, educational records, and other sources the expert will review. Require the expert to confirm receipt of complete and accurate records and to flag any gaps in the medical record that prevent formation of a complete opinion.

Apportionment Handling. Explicitly instruct the expert regarding apportionment: the expert must incorporate valid medical apportionment findings into feasibility analysis but must not independently determine or question medical apportionment percentages. If medical apportionment is unclear, incomplete, or contested, the expert should flag the issue for attorney clarification before finalizing opinions.

Work Restrictions Foundation. Require the expert to confirm that work restrictions provided by counsel accurately reflect the complete set of restrictions assigned by evaluating physicians. If the expert believes restrictions are incomplete, ambiguous, or inconsistent with medical records, the expert must flag such issues rather than independently modifying restrictions.

Labor Market Data. Specify that labor market data must be current (within the past two years), localized to the Northern California market where applicable, and documented with sources (employer names, contact persons, dates, wage data sources, posting dates). Require the expert to disclose methodology, sample size, and limitations of labor market research.

Fee and Billing. Specify hourly fee rates for evaluation, report writing, deposition, and trial testimony; caps on evaluation hours; and procedures for additional work beyond the initial scope. Clarify whether the expert will provide raw notes, work product, and supplemental opinions if facts change or additional information emerges during discovery.

Confidentiality and Privilege. Confirm that the engagement is for purposes of litigation in the workers' compensation matter, that the expert will maintain confidentiality regarding proprietary work product until disclosure is required, and that all communications regarding strategy, theme, or likely positions constitute attorney work product privileged from disclosure.

C. Report Requirements and Substantial Evidence Standards

Under Title 8, California Code of Regulations section 10685, vocational expert reports must meet specific minimum requirements to constitute substantial evidence. The report must include:

Mandatory Declaration. A declaration under penalty of perjury stating that "the information contained in this report and its attachments, if any, is true and correct to the best of [the expert's] knowledge" and confirming that "there has not been a violation of Labor Code section 139.32."[8][8][8] Absence of this declaration may render the report inadmissible.

Qualifications Disclosure. Detailed curriculum vitae establishing the expert's education, training, certifications (CRC, CVE, etc.), prior case experience, and area of specialization.

Personal Preparation Statement. A statement confirming that the vocational expert personally took the history, reviewed and summarized records, and drafted conclusions-or, if preliminary outline or record excerpts were prepared by others, a detailed statement of what was delegated and what additional inquiries the expert personally conducted.

Complete Record Review. Listing of all documents reviewed: medical records, employment records, educational records, job descriptions, relevant vocational testing results, prior appraisals, etc. If the expert relied upon information provided by counsel or others, the report must identify such sources.

Methodology Explanation. Detailed explanation of the evaluation methodology, including dates of evaluation/interview, tests administered, occupational research methods, labor market survey approach, transferable skills analysis methodology, and standards applied.

Medical Record Summary. Summary of medical history, injuries, diagnoses, treatments, restrictions assigned by evaluating physicians, any apportionment findings, and the expert's assessment of how these medical facts affect vocational feasibility.

Vocational History. Detailed summary of work history, occupational skills acquired, training and education, performance history, and prior earnings.

Findings and Opinions. Clear articulation of findings regarding: (a) current functional capacity in light of medical restrictions; (b) transferable skills and occupational options; (c) labor market availability of alternative occupations; (d) earning capacity in available occupations compared to pre-injury earnings; (e) amenability to vocational rehabilitation or retraining; (f) feasibility of proposed retraining if applicable; and (g) ultimate opinion on whether the industrial injury (to the extent causally attributable to the industrial injury, not non-industrial factors) precludes retrainability and open market competition.

Reasoning and Factual Support. Detailed explanation of the basis for each opinion, with specific reference to medical findings, vocational testing results, labor market data, and occupational analysis.

Apportionment Acknowledgment. Explicit acknowledgment of any apportionment findings in the medical record and explanation of how such apportionment was considered in forming vocational opinions. The expert must not independently quantify apportionment but must affirmatively confirm that valid medical apportionment was considered.

D. Discovery Strategy: Depositions, Supplemental Reports, and Trial Testimony

Vocational expert depositions typically focus on: (1) credentials and methodology; (2) basis for opinions regarding functional capacity, transferable skills, labor market availability, and earning capacity; (3) sources of information and data used; (4) consideration of contradictory evidence; (5) whether the expert followed applicable standards and case law; (6) assumptions underlying opinions and sensitivity to alternative facts; and (7) consistency of opinions with prior testimony or reports by the same expert.

Cross-examination of vocational experts should target: (1) outdated labor market data; (2) failure to investigate whether jobs identified actually exist; (3) failure to account for transferable skills or alternative occupations; (4) assumptions about worker motivation or job-seeking efforts; (5) inadequate consideration of medical apportionment findings; (6) speculative statements regarding job availability; (7) conflicts between the vocational expert's assumptions and medical evidence; and (8) whether the expert impermissibly ventured into apportionment determination.

Supplemental vocational expert opinions may be necessary if medical evidence is supplemented (e.g., QME issues a supplemental report with revised work restrictions), if labor market conditions change materially, or if apportionment issues are clarified through additional medical opinions. Under the Cano framework, if vocational experts identify work restriction inadequacies, parties should obtain supplemental physician opinions before finalizing vocational analysis.

VI. Permanent Disability Rating Determinations: The Ogilvie Rebuttal Framework and Apportionment Integration

A. The Four-Step Burden Under Havanis and Recent Decisions

The Ogilvie framework, as refined in Havanis, Fiore, and Cano, establishes a rigorous four-step burden that applicants must satisfy through combined medical and vocational evidence:

Step 1: Substantial Medical Evidence of Work Restrictions. A treating physician, QME, or AME must assign specific, functionally-limiting work restrictions. These restrictions must identify physical or cognitive limitations (e.g., "no lifting more than 10 pounds," "limited standing to 2 hours per 8-hour workday," "unable to work at heights"), not merely general diagnoses. If work restrictions are ambiguous or lack functional specificity, this step is not satisfied. Parties may require additional evaluation (such as an FCE) to clarify functional capacity if medical evidence is insufficient.

Step 2: Vocational Evidence That Restrictions Preclude Rehabilitation. Vocational expert evidence must establish that the assigned industrial work restrictions (considered in isolation, without regard to non-industrial contributing factors) preclude the injured worker from participating in vocational rehabilitation and

retraining into another career field. This requires analysis of the injured worker's education, prior work experience, transferable skills, and available retraining opportunities. The expert must affirmatively explain why no retraining path is feasible given the restrictions, not merely assert that the injured worker cannot return to their prior occupation.

Step 3: Vocational Evidence That Restrictions Preclude Open Labor Market Competition. Vocational expert evidence must establish that the assigned industrial work restrictions (again, considered in isolation) prevent the injured worker from competing for available jobs in the open labor market at wages comparable to pre-injury earnings. This requires current, localized labor market research showing what jobs are realistically available within the restrictions and what wages such jobs command. General assertions that the labor market is tight or that wages are low do not substitute for documented labor market research.

Step 4: Substantial Medical Evidence of 100% Industrial Causation. Medical evidence must affirmatively establish that the work restrictions are caused 100 percent by the industrial injury, with no non-industrial contributing factors. If apportionment to non-industrial factors is found (e.g., 70% industrial causation, 30% non-industrial), the applicant has not satisfied this step unless the non-industrial factors are truly inconsequential to the restrictions identified. For example, if a physician apportions 20% to a pre-existing degenerative condition but the medical evidence establishes that the degenerative condition was entirely asymptomatic and non-limiting before the industrial injury, an argument can be made that the 20% apportionment does not reduce the industrial causation to below 100% for practical purposes. However, such arguments are difficult to sustain post-Nunes.

Application of the Four-Step Test to Mixed Causation Cases. The Havanis decision clarifies that when an injured worker has mixed causation work restrictions-some industrial, some non-industrial-the applicant must prove that the industrial restrictions, standing alone, meet steps 2 through 4. If the industrial restrictions alone would not preclude rehabilitation or open market competition (even though the combined restrictions do so), the applicant has not met the burden. This severely limits applicant arguments in cases where non-industrial factors materially contribute to disability.

B. Apportionment Determination and Medical Evidence Standards

Medical apportionment under Labor Code section 4663 must be based on the physician's expertise, grounded in specific medical facts (diagnostic findings, imaging, prior medical history, functional examination results), and articulated with sufficient specificity that the determination is not speculative. Following Escobedo, the physician must "disclose familiarity with" apportionment standards and "set forth reasoning in support" of conclusions with reference to "pertinent facts" and "adequate examination and history."[18][21][49][62]

Physicians may apportion to pre-existing pathology (asymptomatic degenerative changes), age-related changes, prior industrial injuries, lifestyle factors (smoking, obesity, prior trauma), and other non-industrial causes, even if such factors were not previously disabling or did not cause prior wage loss.[1][4][45][1][62] The critical inquiry is not whether the non-industrial factor caused prior disability or wage loss, but rather whether it presently contributes causally to the current disability. This principle, fully articulated in Nunes, reversed prior practice that required evidence of prior "labor disabling" effect before apportionment was permissible.

When medical causation is apportioned, the employer's liability under Labor Code section 4664(a) is limited to the industrially-caused percentage. However, under the Nilsen principle, an award of permanent total disability may nonetheless be issued if medical and vocational evidence together establish that the permanent total disability arises solely from industrial factors-meaning even if some causation percentages are non-industrial, the permanent total disability determination can stand if the non-industrial restrictions do not materially contribute to the inability to work.[36][36] This is a difficult distinction and has generated significant appellate litigation.

C. Combined Values Chart (CVC) Rebuttal

The permanent disability rating schedule incorporates a Combined Values Chart for combining multiple impairment ratings affecting different body parts. Under prior law, applicants sometimes attempted to "rebut" the CVC by arguing that it improperly underestimated disability given the synergistic effect of multiple injuries. Following Fiore, "vocational expert evidence regarding rebuttal of the CVC is irrelevant to these proceedings" because "the vocational expert is not a doctor and they may not opine on areas that require

medical evidence."[10][10] In other words, the CVC is a rating methodology issue requiring medical expertise, not a vocational feasibility issue. Only physicians may determine whether the CVC should be rebutted based on medical evidence of synergistic impairment effects.

VII. Challenging and Defending Against Vocational Expert Evidence: Litigation Strategy

A. Grounds for Excluding or Limiting Vocational Expert Testimony

Vocational expert testimony may be challenged on multiple grounds: (1) failure to comply with Title 8 section 10685 procedural requirements (missing declarations, inadequate qualifications disclosure, etc.); (2) failure to establish substantial evidence foundation (speculative analysis, outdated data, unsourced assumptions); (3) impermissible apportionment determination or independent causation analysis; (4) inadequate consideration of medical apportionment findings; (5) lack of expertise regarding the specific issues opined upon; (6) conflicts of interest or bias; and (7) internal inconsistencies or conflicts with medical evidence.

Procedural challenges (missing declarations, failure to appear for depositions) can render reports inadmissible under Title 8 section 10685, even if the substance is otherwise sound. Substantive challenges (failure to document labor market sources, reliance on outdated DOT data, inadequate transferable skills analysis) affect the weight of evidence rather than admissibility but can be decisive if the trial judge finds the evidence insufficient.

B. Cross-Examination Strategy

Effective cross-examination of vocational experts should establish: (1) the expert's fee arrangement (hourly rate, total fees paid, contingency components if any); (2) the specific medical records reviewed and whether records were complete; (3) dates of labor market research and whether data is current; (4) specific employers contacted in labor market survey and whether contacts are documented; (5) whether the expert independently verified that identified jobs exist and at what wages; (6) what transferable skills analysis methodology was used and whether it is standardized; (7) whether the expert considered medical apportionment findings and how they affect vocational conclusions; (8) alternative interpretations of data that the expert rejected and why; and (9) whether the expert's opinions are consistent with prior cases involving similar restrictions.

Cross-examination can also explore whether the expert impermissibly ventured into apportionment by asking: "In your opinion, what percentage of this worker's disability is caused by the industrial injury?" If the expert attempts to assign a percentage, this evidences impermissible apportionment. The expert should respond only to questions about vocational feasibility, not causation percentages.

C. Rebuttal Vocational Expert Evidence

Employers/insurers may retain rebuttal vocational experts to challenge applicant vocational opinions on methodology, labor market findings, or earning capacity conclusions. Rebuttal evidence is most effective when it: (1) provides more current or localized labor market data; (2) identifies transferable skills and suitable alternative occupations that applicant's expert overlooked; (3) documents through employer contacts that identified jobs are actually available; (4) applies standardized transferable skills methodology; and (5) demonstrates that the applicant can earn comparable wages despite restrictions.

However, rebuttal vocational experts must also comply with all Title 8 section 10685 requirements and must not venture into apportionment territory impermissibly. The defense cannot improve its position by having the vocational expert assign lower apportionment percentages than the medical evidence supports; such evidence violates Nunes.

VIII. Preservation of Error and Appellate Strategy

A. Trial-Level Record Development

When vocational expert evidence is rejected or accepted with limitations at the trial level, practitioners must carefully develop the appellate record through trial testimony, written motions, and clear articulation of legal grounds. If a WCJ rejects vocational expert evidence as insubstantial, applicant counsel should elicit testimony establishing the bases for the expert's methodology and attempt to create a record that the evidence, while potentially improvable, was substantive enough to require more than perfunctory dismissal.

If a trial judge excludes vocational expert evidence on procedural grounds (e.g., missing declaration), applicant counsel should request a continuance to remedy the defect rather than allowing the evidence to be excluded entirely. Procedural errors are often reversible on appeal if the substance of the evidence is sound.

B. Appellate Briefing and Appellate Standards of Review

Appellate review of vocational expert evidence typically applies the "substantial evidence" standard, under which the appellate court defers to the trial judge's credibility determinations and weighing of evidence but reverses if no substantial evidence supports the decision or if legal error occurred in applying the Ogilvie framework or Nunes apportionment prohibitions. Applicant counsel should emphasize in appellate briefing any legal error by the trial judge in requiring vocational experts to satisfy unreasonable burdens not mandated by statute or case law, or in rejecting evidence on grounds inconsistent with Ogilvie, Havanis, or other controlling precedent.

Defense counsel, conversely, should emphasize on appeal any trial-level evidence that medical apportionment was inadequate, that work restrictions were not definitively established, or that vocational evidence impermissibly substituted for medical evidence.

C. Certification to the WCAB and Petition for Reconsideration

A trial-level decision involving novel legal questions regarding vocational expert authority, apportionment boundaries, or other unsettled issues may be appropriate for certification to the WCAB for en banc review. While certification is discretionary with the WCAB chairman, practitioners may request certification in briefings for reconsideration if the case presents a genuine issue of first impression.

IX. Ethical and Professional Conduct Considerations

A. Attorney Obligations Regarding Vocational Expert Engagement

California Rules of Professional Conduct require that attorneys retain experts with appropriate qualifications and that attorneys clearly communicate to clients and opposing counsel the scope of expert engagement. Attorneys must also ensure that expert testimony complies with ethical rules regarding candor to the tribunal and bases for expert opinions. An attorney who retains a vocational expert known to engage in impermissible apportionment practices or to use outdated or unreliable methodology violates ethical duties to clients and the tribunal.

B. Vocational Expert Professional Standards and Codes of Ethics

Vocational experts holding certifications from the Commission on Rehabilitation Counselor Certification (CRCC) or achieving Certified Vocational Evaluator (CVE) status are subject to professional codes of ethics requiring that opinions be based on current, reliable data, that experts disclose limitations and assumptions, and that experts do not venture beyond their expertise. The CVE certification, available through CRCC, requires completion of specific educational modules on vocational evaluation, adherence to professional standards, and demonstration of competence in applying evidence-based methodologies.[50][51]

Vocational experts should be discouraged from making statements in reports or testimony that impermissibly suggest independent apportionment determination. Language such as "the disability is entirely caused by the industrial injury" or "non-industrial factors play no role in employability" should be revised to focus on vocational feasibility of the industrial restrictions considered in isolation.

C. Conflicts of Interest and Bias Management

Vocational experts who have financial relationships with vocational rehabilitation providers, educational programs, or job placement services should disclose such relationships. Prior practice as a defendant-oriented expert should not disqualify an expert from applicant-side engagement, but bias can be relevant to credibility and weight of evidence. Disclosure of fee arrangements (hourly rate, total compensation in the case, prior testimony history) is essential to credibility.

X. Risk Warnings and Inherent Limitations

A. Irreversible Consequences of Impermissible Apportionment Findings

A vocational expert report that impermissibly substitutes vocational apportionment for medical apportionment can undermine an entire case, even if other evidence is strong. The Nunes prohibition is definitively established and uniformly applied; no circuit split or significant case law uncertainty provides escape routes. Applicant counsel should carefully review all vocational expert reports before submission to ensure compliance with the Nunes framework.

B. Labor Market Data Reliability and Temporal Limitations

Labor market data more than two years old is increasingly vulnerable to challenge and may not support the assumptions regarding job availability underlying vocational opinions. The COVID-19 pandemic, post-pandemic labor market shifts, artificial intelligence automation, and regional economic changes can rapidly render labor market analyses obsolete. Vocational experts must commit to keeping data current and must be prepared to explain temporal limitations in the data they rely upon.

C. Functional Capacity Evaluation Limitations

Functional capacity evaluations provide objective data but also present risks: if an injured worker performs better on an FCE than medical restrictions would suggest, the insurer may use the FCE to argue that restrictions are overstated. Conversely, if an injured worker performs poorly but subjective complaints seem inconsistent with objective findings, credibility issues arise. Applicant counsel should understand that an FCE, while useful for clarifying disputed restrictions, introduces an additional expert opinion that may be contested.

D. Interdependency of Medical and Vocational Evidence

Vocational expert opinions are only as strong as the medical evidence they rest upon. If the medical record is incomplete, if apportionment is speculative, or if work restrictions are ambiguous, vocational expert analysis necessarily suffers. Applicant counsel must ensure that medical development is complete before finalizing vocational expert engagement.

XI. Conclusion: Synthesizing Doctrine and Practice

Vocational experts remain essential participants in California workers' compensation proceedings, particularly in cases where permanent disability rating schedule rebuttal is pursued. However, the framework governing vocational evidence has become significantly more rigorous in the period from 2023 through 2026, with the Nunes prohibition on vocational apportionment and the Havanis four-step framework establishing clear boundaries that did not exist previously.

The critical lesson for practitioners is that vocational evidence succeeds only when integrated into a comprehensive strategy that includes rigorous medical evidence on causation and apportionment, clear establishment of work restrictions, and documented labor market research. Vocational experts are not sufficient unto themselves; they are tools within a larger evidentiary architecture. Practitioners who treat vocational experts as autonomous fact-finders operating independent of medical evidence will find their opinions rejected as insubstantial.

For applicant counsel, the path forward involves: (1) obtaining clear medical causation and apportionment findings before vocational engagement; (2) ensuring vocational experts understand the Nunes constraints and apportionment incorporation requirements; (3) documenting labor market research thoroughly and keeping data current; (4) conducting rigorous transferable skills analysis; and (5) preparing vocational experts for depositions and cross-examination regarding methodology and factual foundations.

For defense counsel, the strategy involves: (1) demanding clear work restriction assignments from physicians before accepting vocational expert testimony; (2) scrutinizing vocational expert reports for impermissible apportionment language; (3) conducting depositions that establish vulnerabilities in labor market research and methodological assumptions; (4) retaining rebuttal vocational experts when applicant evidence presents genuine vulnerabilities; and (5) preserving arguments on appeal regarding medical evidence insufficiency and vocational expert overreach.

The regulatory landscape is also evolving, with proposed 2026 amendments to vocational and return-to-work counselor standards potentially influencing professional qualifications and accountability mechanisms. Practitioners should monitor final adoption of these regulatory changes for implications regarding broader vocational expert standards.

XII. Appendices

Appendix A: California Labor Code Sections 4660-4664 (Complete Text)

[Full statutory text of Labor Code sections 4660-4664 would be inserted here, including all subdivisions and amendment history through March 2026.]

Appendix B: Title 8, California Code of Regulations, Section 10685 (Complete Text)

[Complete regulatory text governing vocational expert report requirements and procedures would be inserted here.]

Appendix C: Key WCAB Decisions - Holdings Summary

Nunes I (June 22, 2023): Labor Code Section 4663 authorizes only physicians to make apportionment determinations. Vocational experts may not substitute "vocational apportionment" for medical apportionment. Vocational evidence must address apportionment but may not reject medical apportionment findings based on lack of prior work disability.

Nunes II (August 29, 2023): En banc reaffirmation. Vocational evidence must consider valid medical apportionment. If no physician has identified medical apportionment, vocational expert may not independently impose apportionment.

Ogilvie v. WCAB (2011): Applicants may rebut permanent disability rating schedule by establishing through vocational evidence that industrial injury renders worker not amenable to vocational rehabilitation, resulting in greater diminished future earning capacity than reflected in schedule.

Havanis v. Kelly (2024): Four-step burden for schedule rebuttal: (1) substantial medical evidence of work restrictions; (2) vocational evidence that restrictions preclude rehabilitation; (3) vocational evidence that restrictions preclude open labor market competition; (4) substantial medical evidence of 100% industrial causation of restrictions.

Fiore v. Los Angeles Community College District (2024): Parties must provide vocational experts with clear, agreed work restrictions. If disagreement exists between medical experts on restrictions, parties must resolve disagreement before vocational analysis proceeds. Vocational experts cannot make independent medical determinations regarding work restrictions.

Cano v. Ecology Control Industries, Inc. (2024): If vocational expert identifies work restriction issues requiring medical clarification, parties must return to physicians. Vocational expert flagging of medical issues is permissible; independent medical determination by vocational expert is not.

Appendix D: Vocational Expert Report Checklist (Compliance with 8 CCR Section 10685)

[ ] Mandatory declaration of truth and accuracy signed and dated

[ ] Disclosure of county wherein declaration was signed

[ ] Complete curriculum vitae or qualification summary

[ ] Statement regarding non-clerical preparation (or permitted delegation)

[ ] List of names and qualifications of any persons who assisted with report

[ ] Dates of evaluations, interviews, testing

[ ] Complete history of injury

[ ] Employee's vocational history and prior work experience

[ ] Injured employee's complaints and functional limitations

[ ] Complete listing of medical, vocational, and other records reviewed

[ ] Medical history summary including diagnoses, treatments, restrictions, apportionment

[ ] Findings and opinions on evaluation

[ ] Detailed reasoning for opinions with reference to factual bases

[ ] Statement regarding apportionment consideration

[ ] Signature of vocational expert

Appendix E: Labor Market Survey Documentation Requirements

Labor market surveys must include: (1) specific job titles searched; (2) geographic radius of search; (3) dates of research; (4) methodology (online job boards, employer contacts, employment agency referrals); (5) specific job postings or employer contacts identified; (6) wage data sources and current wage rates; (7) sample size and saturation point; (8) limitations and assumptions underlying research; (9) whether identified jobs are actually available and at what frequency; (10) documentation of employer contacts (names, dates, confirmations).

Appendix F: Transferable Skills Analysis Methodology

Transferable skills analysis should utilize standardized occupational classification systems (Dictionary of Occupational Titles or O*NET) and should map prior work activities to potential occupations. Categories of transferable occupations include: directly transferable (same work fields, same skills), closely transferable (similar work fields, some skill overlap), generally transferable (related work fields, generalized skills), directly related (same general field, requires additional training), and generally related (related field, significant retraining needed). Applicant's prior education, training, and demonstrated aptitudes should inform which categories are realistic for retraining purposes.

References

[1] Sullivan Attorneys, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (https://www.sullivanattorneys.com/blog/wcab-clarifies-roles-physicians-vocational-experts-ogilvie) (2024)

[2] State of California Department of Industrial Relations, "Jesse Cano SR v. Ecology Control Industries, Inc." (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Jesse-CANO-SR-ADJ9983378.pdf) (2024)

[3] CCMPT, "Ogilvie v. City and County of San Francisco" (https://ccmpt.com/ogilvie-v-city-and-county-of-san-francisco/) (2011)

[4] State of California Department of Industrial Relations, "Nunes v. State of California Department of Motor Vehicles (En Banc)" (https://www.dir.ca.gov/wcab/EnBancdecisions2023/Nunes-Grace-August2023.pdf) (August 29, 2023)

[5] State of California Department of Industrial Relations, "Workers' Compensation Appeals Board - Panel Decisions" (https://www.dir.ca.gov/wcab/wcab-Decisions.htm) (2026)

[6] IEATRAINING, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (https://ieatraining.org/wcab-clarifies-roles-of-physicians-and-vocational-experts-under-ogilvie/) (November 20, 2024)

[7] Sullivan Attorneys, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (https://www.sullivanattorneys.com/blog/wcab-clarifies-roles-physicians-vocational-experts-ogilvie) (2024)

[8] State of California Department of Industrial Relations, "Title 8, Section 10685: Vocational Experts' Reports as Evidence" (https://www.dir.ca.gov/t8/10685.html)

[9] State of California Department of Industrial Relations, "Kelly Havanis v. Applicant" (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Kelly-HAVANIS-ADJ3802146.pdf) (2024)

[10] State of California Department of Industrial Relations, "Michael Fiore v. Los Angeles Community College District" (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf) (2024)

[11] LFLM, "The Rise of Rebutting the PDRS and Derailing the Path to a 100% Award" (https://www.lflm.com/news-knowledge/the-rise-of-rebutting-the-pdrs-and-derailing-the-path-to-a-100-award/)

[12] California Medical Legal Report Writing, "Medical Legal Report Writing - Catastrophic Cases" (https://www.caaa.org/docDownload/2675543) (2024)

[13] Employees First Labor Law, "Labor Code Section4663 - Apportionment of Permanent Disability" (https://employeesfirstlaborlaw.com/labor-code-%C2%A74663-apportionment-of-permanent-disability/)

[8] State of California Department of Industrial Relations, "Title 8, Section 10685: Vocational Experts' Reports as Evidence" (https://www.dir.ca.gov/t8/10685.html) (Reaffirmed 2025)

[14] Division of Workers' Compensation, "DWC Posts Draft Regulations Updating SJDB/RTW Rules" (https://www.dir.ca.gov/DIRNews/2025/2025-103.html) (October 20, 2025)

[15] WorkComp Medical, "Labor Code Section 4663: Apportionment of Permanent Disability" (https://workcompmedical.com/wp-content/uploads/2013/08/Labor-Code-4663.pdf) (Complete text)

[16] Justia, "California Labor Code Section 5708 (2025)" (https://law.justia.com/codes/california/code-lab/division-4/part-4/chapter-5/section-5708/)

[17] Enlyte, "California Utilization Review Regulation Updates Effective April 1, 2026" (https://www.enlyte.com/insights/news-release/utilization-management/california-utilization-review-regulation-updates-effective-2026)

[8] State of California Department of Industrial Relations, "Title 8, Section 10685: Vocational Experts' Reports as Evidence" (https://www.dir.ca.gov/t8/10685.html) (Regulations incorporated by reference)

[18] State of California Department of Industrial Relations, "Escobedo v. Marshalls (2005)" (https://www.dir.ca.gov/dwc/Apportionment-Webinar/70-Cal-Comp-Cases-604.docx) (PDF)

[19] Visionary Law Group, "Functional Capacity Evaluation Workers Comp: What It Is and How It Works" (https://visionarylawgroup.com/functional-capacity-evaluation-workers-comp/) (2024)

[20] Visionary Law Group, "How Vocational Data Determines Disability and Return-to-Work" (https://visionarylawgroup.com/vocational-expert-workers-comp-guide/) (2024)

[21] WorkCompCentral, "Escobedo and the Slippery Slope of Irrelevancy" (https://ww3.workcompcentral.com/columns/show/id/u128d05h600742wx4f7jos) (2024)

[22] PLBH, "The Role of Functional Capacity Evaluations in Workers' Compensation Claims" (https://www.plblaw.com/the-role-of-functional-capacity-evaluations-in-workers-compensation-claims/) (2024)

[23] Cheryl Foden & Associates, "Labor Market Field Consultation in Santa Cruz, CA" (https://www.cherylfoden.com/labor-market-field-consultation)

[24] Justia, "Acme Steel v. WCAB - California Case Law" (https://law.justia.com/cases/california/court-of-appeal/2013/a137915.html) (2013)

[25] Redula Law Office, "Contra Costa v. WCAB (Dahl)" (https://www.redulalawoffice.com/post/contra-costa-v-wcab-dahl) (2024)

[26] IARP, "Labor Market Survey Methodology and Applications" (https://iarp-rehabpro.scholasticahq.com/article/146888-labor-market-survey-methodology-and-applications.pdf) (PDF)

[27] PBW Law, "Apportionment Case Law Update: January 2017" (https://www.pbw-law.com/apportionments/apportionment-case-law-update-january-2017/) (2017)

[28] State of California Department of Industrial Relations, "Puni v. PAU (2025)" (https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Puni-PAU-ADJ9159725-ADJ7757931.pdf) (January 2025)

[20] Visionary Law Group, "How Vocational Data Determines Disability and Return-to-Work" (https://visionarylawgroup.com/vocational-expert-workers-comp-guide/) (2024)

[29] Justia, "LeBoeuf v. Workers' Compensation Appeals Board (1983)" (https://law.justia.com/cases/california/supreme-court/3d/34/234.html) (1983)

[30] Bradford Barthel Law, "AMA Guides, California PDRS Can Differ on Rating Instructions" (https://bradfordbarthel.com/2025/03/25/ama-guides-california-pdrs-can-differ-on-rating-instructions/) (March 25, 2025)

[31] RPC Consulting, "Transferable Skills Analysis in Personal Injury Litigation" (https://rpcconsulting.com/transferable-skills-analysis/)

[7] Sullivan Attorneys, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (https://www.sullivanattorneys.com/blog/wcab-clarifies-roles-physicians-vocational-experts-ogilvie) (2024)

[32] State of California Department of Industrial Relations, "Schedule for Rating Permanent Disabilities" (https://www.dir.ca.gov/dwc/pdr.pdf) (PDF)

[33] Michigan Bar Journal, "The Basics: Cross-examining the Vocational Expert" (https://www.michbar.org/journal/Details/The-basics-Cross-examining-the-vocational-expert?ArticleID=4653) (2024)

[34] Justia, "Nielsen v. Workmen's Compensation Appeals Board" (https://law.justia.com/cases/california/court-of-appeal/3d/36/756.html) (1974)

[7] Sullivan Attorneys, "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (https://www.sullivanattorneys.com/blog/wcab-clarifies-roles-physicians-vocational-experts-ogilvie) (2024)

[35] Expert Pages, "How to Make Effective Use of a Vocational Expert" (https://www.expertpages.com/library/how-to-make-effective-use-of-a-vocational-expert)

[36] RGW Law Firm, "Employers Lose on Apportionment at High Ct., but Win at 1st DCA" (https://www.rgwlawfirm.com/news/97) (2024)

[5] State of California Department of Industrial Relations, "Workers' Compensation Appeals Board - Panel Decisions" (https://www.dir.ca.gov/wcab/wcab-Decisions.htm) (2026)

[37] California Bar Association, "September 2020 Ethically Speaking - Documenting the Engagement" (https://www.ocbar.org/All-News/News-View/ArticleId/3907/September-2020-Ethically-Speaking-Documenting-the-Engagement) (2020)

[38] Occupational Assessment Services Inc., "Importance of a Vocational Expert in Calculating Loss of Earning Capacity" (https://www.oasinc.org/the-importance-of-a-vocational-expert-in-calculating-loss-of-earning-capacity)

[39] Department of Defense, "Loss of Wage-Earning Capacity (LWEC)" (https://www.dcpas.osd.mil/sites/default/files/2024-10/ic_session_-_loss_of_wage_earning_capacity_lwec_final.09172024_-_508.pdf) (PDF, September 2024)

[40] California Bar Association, "What to Include in an Expert Retention Agreement" (https://calawyers.org/solo-small-firm/what-to-include-in-an-expert-retention-agreement/) (February 5, 2021)

[41] California Lawyers, "Apportionment Now: Where We After Justice, Hikida, and Lindh" (https://calawyers.org/workers-compensation/apportionment-now-where-we-after-justice-hikida-and-lindh/) (2024)

[42] [State of California Department of Industrial Relations, "Steve Faustina v. [Applicant]"](https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Steve-FAUSTINA-ADJ10627978-ADJ10627984-ADJ10627961.pdf) (2025)

[43] Employees First Labor Law, "Supplemental Job Displacement Benefits - Retraining Voucher" (https://employeesfirstlaborlaw.com/supplemental-job-displacement-benefits-retraining-voucher/)

[44] Employees First Labor Law, "Supplemental Job Displacement Benefits - Retraining Voucher" (https://employeesfirstlaborlaw.com/supplemental-job-displacement-benefits-retraining-voucher/) (2024)

[8] State of California Department of Industrial Relations, "Title 8, Section 10685: Vocational Experts' Reports as Evidence" (https://www.dir.ca.gov/t8/10685.html) (Reaffirmed 2025)

[45] WCAB En Banc, "WCAB En Banc Rejects 'Vocational Apportionment'" (https://calawyers.org/workers-compensation/wcab-en-banc-rejects-vocational-apportionment/) (June 22, 2023)

[46] Division of Workers' Compensation, "DWC Supplemental Job Displacement Benefits" (https://www.dir.ca.gov/dwc/sjdb.html) (December 2024)

[47] WorkCompCentral, "Court Upholds WCAB Discretion to Award Expert Report Costs" (https://ww3.workcompcentral.com/columns/show/id/31215055815965d396be06dcf98aa55fj) (January 15, 2026)

[48] Sullivan Attorneys, "Establishing Permanent Total Disability with Medical & Vocational Evidence" (https://www.sullivanattorneys.com/blog/establishing-permanent-total-disability-medical-vocational-evidenc) (2024)

[49] PBW Law, "California: A Critical Assessment of 'Vocational Apportionment'" (https://www.pbw-law.com/wp-content/uploads/2021/07/Article_on_Vocational_Apportionment.pdf) (PDF)

[50] CRCC, "CVE - Get Certified" (https://crccertification.com/cve-get-certified/) (2026)

[28] State of California Department of Industrial Relations, "Puni v. PAU (Decision After Reconsideration)" (https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Puni-PAU-ADJ9159725-ADJ7757931.pdf) (January 2025)

[1] Sullivan Attorneys, "Nunes v. State of CA DMV - Vocational Apportionment Invalid" (https://www.sullivanattorneys.com/blog/special-report-nunes-dmv-vocational-apportionment-invalid) (2023)

[51] CRCC, "CVE-Certification" (https://crccertification.com/cve-certification/) (2026)

[52] IARP, "Evidence-Based Vocational Evaluation Recommendations for the California Workers' Compensation System" (https://iarp-rehabpro.scholasticahq.com/article/146963-evidence-based-vocational-evaluation-recommendations-for-the-california-workers-compensation-system.pdf) (PDF)

[53] Simon Group Consulting, "Depositions and Trial Testimony | California's Vocational Experts" (https://simongroupconsulting.com/vocational-expert-services-california/depositions-and-trial-testimony/) (2024)

[54] Myers Law Group, "Independent Medical Doctor Disagrees - The Myers Law Group" (https://www.myerslawgroup.com/independent-medical-doctor-disagrees/) (2024)

[55] IARP, "Evidence-Based Vocational Evaluations - Review and Analysis of Medical Documents" (https://iarp-rehabpro.scholasticahq.com/article/147010-evidence-based-vocational-evaluations-review-and-analysis-of-medical-documents-california-workers-compensation.pdf) (PDF)

[56] Simon Group Consulting, "Vocational Expert Services California" (https://simongroupconsulting.com/vocational-expert-services-california/) (2024)

[57] Visionary Law Group, "What to Do When Your Personal Doctor Disagrees Company Doctor" (https://visionarylawgroup.com/personal-doctor-disagrees-company-doctor/)

[45] California Bar Association, "WCAB En Banc Rejects 'Vocational Apportionment'" (https://calawyers.org/workers-compensation/wcab-en-banc-rejects-vocational-apportionment/) (June 23, 2023)

[58] Sullivan Attorneys (Companion Blog), "WCAB Clarifies Roles of Physicians and Vocational Experts Under Ogilvie" (https://www.sullivanoncomp.com/blog/wcab-clarifies-roles-of-physicians-and-vocational-experts-under-ogilvie) (2024)

[59] LFLM, "WCAB Rejects Concept of 'Vocational Apportionment' in Rare En Banc Decision" (https://www.lflm.com/news-knowledge/wcab-rejects-concept-of-vocational-apportionment-in-rare-en-banc-decision/) (June 23, 2023)

[60] State of California Department of Industrial Relations, "Workers' Compensation Appeals Board - Significant Panel Decisions" (https://www.dir.ca.gov/wcab/wcab_panel.htm) (2026)

[10] State of California Department of Industrial Relations, "Michael Fiore v. Los Angeles Community College District" (https://www.dir.ca.gov/wcab/Panel-Decisions-2024/Michael-FIORE-ADJ9647382.pdf) (2024)

[36] RGW Law Firm, "Employers Lose on Apportionment at High Ct., but Win at 1st DCA" (https://www.rgwlawfirm.com/news/97) (2024)

[61] Bay Area Vocational Experts, "Standards of Practice" (https://www.bavocationalexperts.com/Standards-of-Practice) (2024)

[62] [State of California Department of Industrial Relations, "Darren Hailey v. [Applicant]"](https://www.dir.ca.gov/wcab/Panel-Decisions-2025/Darren-HAILEY-ADJ11207109-ADJ11207111.pdf) (2025)

[63] California Workers' Compensation Institute, "Analysis of California Workers' Compensation Reforms" (https://www.cwci.org/document.php?file=129.pdf) (PDF)

[64] Burnham Brown, "Guidelines for Working with Experts" (https://burnhambrown.com/site/files/Guidelines%20for%20Working%20with%20Experts.pdf) (PDF)

[65] PBW Law, "California Apportionment Case Law Outline (July 2024 Edition)" (https://www.pbw-law.com/wp-content/uploads/2024/06/Apportionment-Case-Law-Update-July-2024-logo.pdf) (PDF)

[66] WorkCompCentral, "Differences in Workers' Compensation Ratings - WorkCompCentral" (https://www.workcompcentral.com/pdf/2004/misc/leigh_study_full.pdf) (PDF)

[67] Sullivan Attorneys, "Unpublished Opinions Are Not Citable" (https://www.sullivanoncomp.com/blog/unpublished-opinions-are-not-citable) (2024)

[20] Visionary Law Group, "How Vocational Data Determines Disability and Return-to-Work" (https://visionarylawgroup.com/vocational-expert-workers-comp-guide/) (2024)

[68] California Work Injury Law Center, "Settlement vs. Trial: Comparing Litigation Strategies for California Workers' Compensation Claimants" (https://cwilc.com/settlement-vs-trial-comparing-litigation-strategies-for-california-workers-compensation-claimants/) (2024)

[69] State of California Department of Industrial Relations, "Workers Compensation Appeals Board Decisions" (https://www.dir.ca.gov/wcab/wcab_dars.htm) (2026)

[70] Nugent Lawyers, "How Vocational Experts Influence Disability Decisions" (https://www.nugentlawyers.com/blog/2025/08/how-vocational-experts-influence-disability-decisions/) (August 2025)

[71] Apex, "Settlement Strategy, Rating Manipulation, and Post-Award Fraud Monitoring" (https://apexpi.com/e-learning-courses/settlement-strategy-rating-manipulation-and-post-award-fraud-monitoring/) (2024)