WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

PETER SCATENA, ***Applicant***

vs.

TOWER OF HILLSBOROUGH, permissibly self-insured, and the CITIES GROUP, ***Defendants***

Adjudication Number: ADJ12221781
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 9, 2021

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

PETER SCATENA
LAW OFFICES OF LINDA J. BROWN
LITTLER & MENDELSON

PAG/bea

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

Defendant seeks reconsideration of my November 25, 2020, Findings and Award. Therein, I concluded, *inter alia*, (1) that applicant's otherwise admitted industrial injury has resulted in Complex Regional Pain Syndrome (hereinafter "CRPS") and (2) that the level of permanent partial disability (PPD) arising from the industrial injury is 73 percent. The latter finding formed the basis for the award. On reconsideration, defendant contends that the evidence at trial does not support these two findings because the CRPS diagnosis made by the state-assigned Qualified Medical Evaluator (QME) was inconsistent with the fifth edition of the *American Medical Association Guides to the Evaluation of Permanent Impairment* (hereinafter "*AMA Guides*"). The petition is timely and appears to be verified. A verified answer has been filed.

FACTS

1. Procedural background.

While working for defendant as a police officer, applicant sustained an admitted injury to his right arm. In subsequent litigation, the parties were unable to reach agreement on his level of PPD and, separately, whether the injury caused him to develop CRPS. It was these two disputes that brought the case to trial before me.

2. Evidence at trial.

Given the parties' agreement on most aspects of the claim, the record was appropriately limited to medical opinions and the testimony of the injured worker. Applicant offered a total of four medical treatment reports from several physicians, which are summarized on pages 5-7 of the November 25, 2020, Opinion on Decision (hereinafter "the Opinion"). The most comprehensive of these is an evaluation report issued by Dr. Gabriel Schonwald when he took over as applicant's primary treating physician in March 2016 (applicant's exhibit 1 at pp. 2-30). As

discussed on page 5 of the Opinion, Dr. Schonwald relied on the Budapest Criteria[1] to find that applicant suffers from CRPS. In general, I found the report to reflect a high level of expertise in the diagnosis and treatment of the condition. The treatment reports in applicant's exhibits 2 and 3, issued between 2016 and 2019, also all reflect the CRPS diagnosis, as does Dr. Schonwald's brief 2018 report at pages 32-33 of applicant's exhibit 1.

More germane to the contentions on reconsideration, the parties jointly offered into evidence a QME report issued by Albert Retodo, M.D., as well as the transcript of his deposition. The report, found in joint exhibit 1, is summarized on page 2 of the Opinion. In it, after conducting a physical examination of the injured worker and reviewing a substantial volume of medical records, Dr. Retodo reaches the diagnosis of right wrist injury "with subsequent development of [CRPS]," established with reasonable medical probability. He goes on to use the CRPS portion of chapter 16 of the *AMA Guides* to calculate 75 percent upper extremity impairment, or 45 percent whole person impairment (WPI).

As discussed in detail on pages 3-5 of the Opinion, Dr. Retodo was cross-examined by the parties and the resulting transcript was admitted as joint exhibit 2. Much of the questioning by defense counsel centered on the QME's methodology in establishing the CRPS diagnosis. Dr. Retodo testified that he observed a number of signs of CRPS, but several others were documented based solely on applicant's self-reporting, which is to say he did not observe them on examination. The QME also acknowledged that he was not provided with any bone scan studies or x-rays as part of this evaluation. Referring to the 11 CRPS diagnostic criteria set forth in chapter 16 of the *AMA Guides*, Dr. Retodo testified, on page 15 of the transcript, that he only considered eight, of which he documented seven as present. Identifying the other three criteria would have required a bone scan and/or x-ray. He went on to testify that he does not consider having eight of the 11 criteria to be a requirement before a CRPS diagnosis can be made and, furthermore, that he did not find it

[1] 1 See 1 *Lawyer's Guide to AMA Guides and CA Workers' Comp* § 8.05 (2019) ["The Budapest Criteria is now adopted by the medical community to diagnose Complex Regional Pain Syndrome"]. See also *Trujillo v. Coca-Cola Co.* (2020) 2020 Cal. Wrk. Comp. P.D. LEXIS 66 at *9.

necessary to order any x-rays, bone scans, or nerve tests as part of applicant's evaluation here. Dr. Retodo felt "absolutely confident" that applicant suffers from CRPS, based on his expertise in physical medicine and rehabilitation, having treated "hundreds" of patients with the condition (pp. 24-25 of the transcript in joint exhibit 2).

With respect to impairment, Dr. Retodo made three important statements in his deposition. First, when asked to consider solely applicant's loss of motion in the upper extremity, he calculated a WPI of 9 percent (page 14). Next, referencing Table 13-16 of the AMA Guides, he testified that applicant's self-reported functional limitations would place him somewhere in the middle of Class 3, which covers a range of 25 to 29 percent WPI (pages 21-22). Most significantly, Dr. Retodo testified that neither of these two scenarios yields a rating that reflects applicant's actual level of impairment as accurately as his original CRPS-based method. On page 28 of the transcript, he indicates that the industrially-caused disability he documented and considered in calculating applicant's WPI would be present no matter the diagnosis. He specifically testified that the range- of-motion-based rating of 9 percent WPI does not accurately reflect applicant's actual impairment.

Applicant was the only trial witness and his testimony is summarized on pages 7-8 of the Opinion. In relevant part, he testified that, with respect to his right upper extremity, (1) it has become much more sensitive to various stimuli since the injury, (2) the skin changes color, (3) the hair is more coarse, (4) the fingernails grow at a different rate and have a different quality, (5) it is cooler than the left, and (6) the hand sweats more. He also described a number of physical limitations relative to the right hand and wrist, as a result of which he now primarily uses his non- dominant left hand for everyday tasks.

3. Trial decision.

Having considered the above-discussed evidence, I found that applicant has demonstrated the existence of a CRPS diagnosis by a preponderance of the evidence. In reaching this conclusion, I noted that every physician whose opinions are part of the record either concurred in the diagnosis or established it through

independent analysis. I also found that Dr. Retodo, in his deposition, convincingly explained how and why he diagnosed applicant with CRPS without looking for all 11 of the criteria listed in the *AMA Guides*. With respect to PPD, I concluded that the evidence supports the QME's impairment calculations as set forth in the report in joint exhibit 1, irrespective of whether applicant suffers from a particular condition. As such, I adopted the Disability Evaluation Unit expert rater's opinion and found that the 45 percent WPI described in that QME report yields a final rating of 73 percent PPD, after adjustment for age and occupation.

4. Contentions on reconsideration.

In its petition, defendant argues that applicant's clinical findings do not meet the *AMA Guides* standard for establishing a CRPS diagnosis, that the QME improperly relied "almost entirely" on subjective complaints, that Dr. Retodo's impairment analysis does not comport with *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (Guzman) (2010) 187 Cal. App. 4th 808, and that my reliance on *MV Transportation v. Workers' Comp. Appeals Bd.* (Williams) (2010) 75 Cal. Comp. Cases 656 was misplaced because the medical expert in *Williams* "did a good job of justifying the ratings" despite the lack of clinical findings consistent with the *AMA Guides* criteria.

DISCUSSION

1. Applicant met his burden of proof with respect to the CRPS diagnosis through competent, unrebutted medical evidence.

Contrary to defendant's characterization, the diagnostic criteria set forth in the CRPS section of the *AMA Guides* are not a legal standard. The *AMA Guides* represent an impairment rating methodology that is currently one of the means of establishing PPD under the Labor Code. They are not, however, a diagnostic tool. *MV Transportation v. Workers' Comp. Appeals Bd.* (Williams) (2010) 75 Cal. Comp. Cases 656, 659. Thus, while it is undisputed that the medical evidence does not reflect eight or more of the 11 criteria being documented on examination, the question before me was whether substantial medical evidence supports the allegation that applicant suffers from CRPS. As discussed beginning on page 8 of the Opinion,

> insofar as I am empowered to adopt a medical expert's opinion (as opposed to independently verifying a diagnosis, which I am not), I conclude that applicant has met his burden of proof on this question.
>
> As noted in the foregoing summary of evidence, every physician whose opinions are part of the record either diagnosed Mr. Scatena with CRPS or acknowledged the existence of such a diagnosis. This includes the panel QME, who was steadfast in his opinion even after a thorough cross-examination by defense counsel, as well as sometime PTP Dr. Schonwald, whose initial report in applicant's exhibit 1 makes it clear that he considered and ruled out other potential diagnoses. None of the remaining doctors disagree with, or even question, the existence of CRPS.
>
> To the extent defendant disputes the validity of the CRPS diagnosis due to Dr. Retodo's inability to document at least eight of the 11 "objective diagnostic criteria" identified in Table 16-16 of the *AMA Guides*, I find that the QME gave a thorough and persuasive explanation, in his deposition, as to why he (1) did not find it appropriate to look for all 11 and (2) arrived at the CRPS diagnosis on the basis of his professional training and specialized experience with treatment of the condition. Although the *AMA Guides*, in section 16.5e, appear to require a finding that at least eight criteria are present, Dr. Retodo testified that the text is considered by physicians to be a guideline and not a universal bright-line standard.

Moreover, there is no reason to view the approach incorporated into the *AMA Guides* as the only means of arriving at a CRPS diagnosis. Dr. Retodo said as much during his deposition, when he testified that physicians in his field do not view the *AMA Guides* approach as "an end-all for what is" or is not CRPS (joint exhibit 2 at page 23). In fact there is evidence in this case of at least one other accepted diagnostic test: as noted above, Dr. Schonwald applied the Budapest Criteria and explained the specific aspects of applicant's presentation that are consistent with a CRPS diagnosis under that test (see block quotation on page 6 of the Opinion). Those aspects are fully consistent not only with the findings that led Dr. Retodo to diagnose CRPS, but also with applicant's credible and unrebutted testimony at trial. To the extent defendant appears to cast doubt on such testimony, it has not pointed to any inconsistencies or other possible reasons to discount applicant's statements on the witness stand and I found none.

2. The finding of 73 percent PPD is supported by substantial evidence.

With respect to the finding of 73 percent PPD, petitioner's contention that it is unsupported by the evidence is without merit because (1) for the reasons discussed above, Dr. Retodo was justified in making the CRPS diagnosis and (2) the record shows that the QME evaluated applicant's permanent impairment on the basis of his actual symptoms and functional limitations, arriving at a WPI value that most accurately represents his level of disability. I continue to stand by the following analysis, found on pages 10-11 of the Opinion, regarding the relevance and applicability of Appeals Board precedent such as *Guzman*, *supra*, 187 Cal. App. 4th 808, and *Williams*, *supra*, 75 Cal. Comp. Cases 656, with respect to the validity of Dr. Retodo's impairment opinion:

> In *Williams*, *supra*, 75 Cal. Comp. Cases 656, as here, several physicians concurred with the CRPS diagnosis and the parties' Agreed Medical Evaluator ruled out other possible ways to account for the applicant's presentation. The Board in *Williams* found it appropriate to view the CRPS-based rating through the lens of *Guzman*, *supra*, 187 Cal. App. 4th 808, even in the absence of an explicit expert opinion invoking that "alternative rating" methodology. Here, while Dr. Retodo's testimony could have been clearer, I nevertheless find that he specifically and persuasively rebutted the only other possible impairment value on this record (range of motion) as less accurate than the CRPS approach he used. This is certainly within the spirit of *Guzman*. Moreover, the QME specifically testified that his impairment findings would not change depending on the diagnosis, which demonstrates that he assessed applicant's actual disability and did not apply some cookie-cutter CRPS rating.

Thus, even if applicant had not met his burden of proof with respect to the CRPS diagnosis, the evidence shows that Dr. Retodo found 45 percent WPI to be the most accurate representation of his level of impairment, having considered and ruled out at least two other rating approaches during his deposition.

RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on December 21, 2020, be denied.

Eugene Gogerman
Workers' Compensation Judge
Workers' Compensation Appeals Board

DATED: January 11, 2021
SERVED: January 12, 2021