

**WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA**

**GEORGIA PECK, *Applicant***

**vs.**

**KERN HIGH SCHOOL DISTRICT, SELF-INSURED SCHOOLS  
OF CALIFORNIA, *Defendants***

**Adjudication Number: ADJ7557888  
Bakersfield District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.<sup>1</sup>

In the Findings of Fact, Awards and Orders of January 28, 2020, the Workers' Compensation Judge ("WCJ") found that applicant, while employed as a dance instructor during the period December 4, 2000 through December 2, 2010, sustained industrial injury to her right shoulder and in the form of bilateral hearing loss, resulting in permanent disability of 23% and the need for further medical treatment.

Defendant filed a timely petition for reconsideration of the WCJ's decision. Defendant contends that neither the law nor substantial medical evidence supports new or additional body parts being added to applicant's claim of cumulative trauma injury during the period December 4, 2000 through December 2, 2010, and that to adjudicate this case, the Board should consider the status of applicant's claims in case numbers ADJ7558061, ADJ7557093, and ADJ5697886.

The Board did not receive an answer from applicant.

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<sup>1</sup> Commissioner Deidra E. Lowe signed the Opinion and Order Granting Petition for Reconsideration dated March 17, 2020. As Commissioner Lowe is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

The WCJ submitted a Report and Recommendation (“Report”). We adopt and incorporate the sections entitled “Introduction” and the “Statement of Facts,” except the final paragraph of the latter section. That paragraph and the remainder of the Report is not adopted or incorporated.

As noted in the WCJ’s Report, after applicant amended her Application for Adjudication of Claim on June 6, 2011 to include - in addition to bilateral hearing loss - a claim of right shoulder, hand, vertigo and bilateral hip injury during the cumulative trauma period December 4, 2000 through December 2, 2010, the parties entered into a Stipulated Award on May 10, 2013. The Stipulated Award settled the claim for hearing loss but did not resolve any of the other claimed body parts.

In the instant petition for reconsideration, defendant does not raise a Statute of Limitations defense in reference to the amended Application filed by applicant on June 6, 2011, in which she claimed injury to her right shoulder during the cumulative trauma period December 4, 2000 through December 2, 2010. Since the right shoulder was not resolved by the Stipulated Award of May 10, 2013, that part of applicant’s claim remained open. Accordingly, applicant only needed to file a Declaration of Readiness to Proceed (“DOR”), not a Petition to Reopen, to seek judicial resolution of her right shoulder claim. Stated another way, the parties’ silence on the right shoulder claim in the Stipulated Award of May 10, 2013 was not the equivalent of a denial of injury or a denial of permanent disability in connection with the right shoulder, contrary to defendant’s apparent contention herein. Further, the fact that applicant asserted her amended claim of right shoulder injury in the form of a Petition to Reopen, as opposed to filing a DOR to seek judicial resolution of her amended Application, does not operate to bar the claim. This is because workers’ compensation pleadings are liberally construed to achieve substantial justice, e.g., avoiding forfeiture of an unresolved, uncompensated claim of injury. (See *Garcia v. St. John Knits* (2022) 2022 Cal. Wrk. Comp. P.D. LEXIS 114, citing *Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 925-926 (72 Cal.Comp.Cases 778) [pleadings should liberally construed, in order not to defeat or undermine an injured employee's right to make a claim].)

As for the WCJ’s finding that applicant sustained industrial injury to her right shoulder during the period December 4, 2000 through December 2, 2010, we conclude that further development of the medical record is required. We note the parties chose Dr. Sohn as their Agreed Medical Evaluator (AME) in orthopedics. Of course, the AME’s opinion ordinarily is entitled to considerable weight because the parties choose an AME based on the AME’s expertise and

neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

In this case, however, we observe that Dr. Sohn never addressed whether applicant's employment contributed to her right shoulder injury during the period December 4, 2000 through December 2, 2010. In his report of June 7, 2016, Dr. Sohn diagnosed applicant with osteoarthritis of the right shoulder, with arthrofibrosis. The doctor attempted to address the cause of applicant's right shoulder problems in his discussion of apportionment. Though Dr. Sohn stated that 30% of applicant's right shoulder disability is due to underlying degenerative changes, he further stated that the industrial factors consisted of "multiple injuries breaking up fights and a slip and fall, but I think these are inextricably intertwined and I think it would be highly speculative to apportion between all the different injuries." (Defense Exhibit B, p. 10.) Although Dr. Sohn's opinion suggests that applicant sustained some kind of industrial injury or injuries to her right shoulder within the period December 4, 2000 through December 2, 2010, the doctor did not identify which date or dates of injuries he was referring to, so his opinion is insufficient to support a finding of cumulative trauma during that time. Nevertheless, "the Board may not leave undeveloped matters which its acquired specialized knowledge should identify as requiring further [inquiry or] evidence." (*Telles Transport, Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159, 1164 [66 Cal.Comp.Cases 1290].)

We therefore conclude that the WCJ must further develop the record by obtaining a supplemental report from Dr. Sohn that squarely addresses whether applicant sustained an industrial cumulative trauma injury to her right shoulder during the period December 4, 2000 through December 2, 2010. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 [Appeals Board en banc].) At the same time, we agree with defendant's contention that Dr. Sohn and the WCJ must address the issues of cumulative trauma injury and permanent disability in light of the status of applicant's claims of injury in the other cases - ADJ7558061, ADJ7557093, and ADJ5697886. (It appears that the latter two cases remain unresolved.) We express no final opinion on the merits in this case or in the other cases.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact, Awards and Orders of January 28, 2020 are **RESCINDED**, and this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

I CONCUR,

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 9, 2022**

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

**GEORGIA PECK  
HONAKER LAW FIRM  
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

**JTL/ara**

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

## **REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION**

### **INTRODUCTION**

Trial in the primary proceedings was held on October 30, 2019. The matter was submitted for decision to WCJ Christopher M. Brown on December 7, 2019. Workers' Compensation Judge Christopher M. Brown issued a Findings of Fact, Orders and Awards; Opinion on Decision on January 28, 2020. Defendant filed a timely, verified and properly served Petition for Reconsideration on February 18, 2020. The Petition does not cite the legal basis for the Petition, but the arguments are consistent with Labor Code Section 5903 (c).

Specifically, Petitioner contends there is no substantial medical evidence to support new body parts, and the law does not allow the addition of body parts to Applicant's cumulative trauma injury dated from December 4, 2000 to December 2, 2010.

### **STATEMENT OF FACTS**

Applicant filed an Application for Adjudication of Claim alleging injury to her head, ear, neck, back and lower extremities as a result of cumulative trauma beginning December 4, 2000 and ending on December 2, 2010. (Applicant's Ex. 1) An Amended Application for Adjudication of Claim alleging injury to Applicant's right shoulder, hand, vertigo and bilateral hips was filed on June 6, 2011. (Applicant's Ex. 2) The claim was resolved in part by Stipulations with Request for Award filed on May 10, 2013. An Award issued on May 10, 2013. (WCAB Exs. 1 & 2) The Stipulations resolved Applicant's claim for bilateral hearing loss and did not resolve issues regarding any of the other body parts alleged to be injured in the Amended Application for Adjudication of Claim. (WCAB Ex. 1)

Applicant filed a timely Petition to Reopen for New and Further Disability on November 9, 2015. (Applicant's Ex. 4) Applicant was evaluated by Dr. Roger Sohn as the Agreed Medical Examiner. Dr. Sohn issued reports dated October 12, 2011, June 26, 2012, October 24, 2012 and June 7, 2016. (Applicant's Ex. 3; Defendant's Ex. B) Dr. Sohn found Applicant has 13% Whole Person Impairment in her right shoulder and that 30% of her right shoulder permanent partial disability should be apportioned to non-industrial factors and the remaining 70% should be apportioned to industrial factors which are inextricably intertwined between the dates of injury. (Defendant's Ex. B Pages 10 – 11)

Judicial Notice was taken of Applicant's other claims of industrial injury in ADJ7558067 (DOI 12/4/2000), ADJ7557093 (DOI 12/3/2009) and ADJ5697886 (DOI 10/11/2002). Applicant's right shoulder permanent partial disability was not resolved or settled in any of these claims.

Applicant has 18% permanent partial disability in her right shoulder as a result of her employment with Defendant. (Defendant's Ex. B Page 9; Defendant's Points and Authorities Page 5 Lines 9 – 12; Applicant's Points and Authorities Page 5 Lines 6 – 9) Applicant has 6% permanent partial disability in the form of bilateral hearing loss as a result of her employment with Defendant. These

two disabilities produce 23% permanent partial disability after application of the Combined Values Chart. (Defendant's Points and Authorities Page 5 Lines 12 – 15; Applicant's Points and Authorities Page 5 Lines 8 – 12)

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DATE: FEBRUARY 26, 2020

**Christopher Brown**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE