

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

**MARIA BETANCOURT, *Applicant***

**vs.**

**GARDEN GROVE UNIFIED SCHOOL DISTRICT, permissibly self-insured, *Defendants***

**Adjudication Number: ADJ7384117  
Los Angeles 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.

In the Amended Findings and Award of March 15, 2019, the Workers' Compensation Judge (WCJ) found that on March 19, 2009, applicant sustained industrial injury to her lumbar and cervical spine, with pain radiating to the shoulders, and to her psyche, as well as headaches and sleep apnea, causing temporary total disability from March 19, 2009 to June 18, 2010, permanent disability of 39 percent after apportionment, and the need for further medical treatment.

Defendant filed a timely petition for reconsideration of the WCJ's decision. Defendant contends, in substance, that the medical evidence does not justify the WCJ's finding that applicant sustained an industrial injury to her psyche, and that applicant is not entitled to permanent disability and further medical treatment for her alleged psyche injury.

Applicant filed an answer.

The WCJ submitted a Report and Recommendation ("Report").

We have considered the allegations of defendant's Petition for Reconsideration and the contents of the Report of the WCJ with respect thereto. Based on our review of the record, and for the reasons stated herein and in the WCJ's Report, which we adopt and incorporate with the clarifying comments set forth below, we will affirm the Amended Findings and Award of March 15, 2019.

We begin by noting that the issue of whether defendant sought reconsideration of the first Findings and Award of July 6, 2018 does not affect our decision concerning the outcome herein. However, it appears the WCJ's Report is incorrect in stating that defendant failed to seek reconsideration of the July 6, 2018 Findings and Award. The record in the Electronic Adjudication Management System (EAMS) shows the following: (1) applicant informally petitioned for reconsideration of the July 6, 2018 Findings and Award by sending a letter to the WCJ, seeking inclusion of an award of psychiatric permanent disability consistent with the WCJ's finding that applicant sustained an industrial injury to her psyche; (2) the WCJ accepted applicant's informal letter-petition and in response rescinded the July 6, 2018 Findings and Award and set the matter for conference; and (3) defendant likewise informally petitioned for reconsideration of the July 6, 2018 Findings and Award by sending a letter to the WCJ, alleging that "Dr. Feldman's psyche AME report of 4/16/14 fails to meet the 51% causation threshold."<sup>1</sup>

The WCJ is correct in stating that defendant objected about "the 51% causation threshold" only after applicant challenged the WCJ's July 6, 2018 decision for failure to include psychiatric permanent disability. However, it is incorrect to suggest that "defendant did not dispute these [psychiatric] findings in the original Findings and Award." (WCJ's Report, p. 5.) We comment on the issue because the WCJ mentions it several times in her Report. It appears, however, that the issue arose in the first place because the WCJ apparently approved the filing of informal petitions for reconsideration. This practice is not recommended because it leads to confusion in the record, as happened here.

We also observe that on pages four and five of her Report, the WCJ seems to suggest that it was sufficient for Dr. Feldman, the AME in psychiatry, to address industrial causation of the psychiatric injury by providing an opinion on apportionment of the psychiatric permanent impairment. To the extent the WCJ does suggest this, we disagree. It is settled law that the percentage to which an applicant's injury is causally related to his or her employment is not necessarily the same as the percentage to which an applicant's permanent disability is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions may be different. (*Reyes v. Hart Plastering* (2005) 70

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<sup>1</sup> Under Labor Code section 3208.3(b)(1), applicant must "demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined [,]" which means that work-related cause(s) must be more than 50% of the entire set of causal factors. (*Department of Corrections/State of California v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356].)

Cal.Comp.Cases 223 [Significant Panel Decision].) This analytical approach of distinguishing between causation of injury and causation of permanent disability applies to all claims of injury, whether physical or psychiatric. (See *Garcia v. Lyons Magnus* (2021) 2021 Cal. Wrk. Comp. P.D. LEXIS 208.)

Although we have found it useful to clarify the WCJ's Report on several issues, otherwise we do not find merit in the substance of defendant's petition for reconsideration. Specifically, we reject defendant's contention that the WCJ's finding of psychiatric injury should be overturned because Dr. Feldman's April 16, 2014 report does not support it. (Joint exhibit Y.)

As correctly noted by the WCJ in her Report, when this matter proceed to trial on May 15, 2018, defendant stipulated that applicant sustained an industrial injury to her psyche on March 19, 2009, in addition to the injuries she sustained to her neck, back, headaches, and sleep disorder. (Minutes of Hearing, 5/15/18, p. 2.) Defendant entered into this stipulation having known about Dr. Feldman's opinion on causation of the psychiatric injury for about four years. However, there is no indication in the record that defendant made any attempt to clarify the doctor's opinion on causation during that interval.

The general rule is that stipulations are binding on the parties absent a showing of good cause. (*Robinson v. Workers ' Comp. Appeals Bd.* (1987) 194 Cal.App.3d 784 [52 Cal.Comp.Cases 419].) More specifically, it has been held that a new medical opinion that contradicts a stipulation based upon a prior medical opinion is not good cause to disregard the stipulation. (See *Brannen v. Workers' Comp. Appeals Bd.* (1996) 46 Cal.App.4th 377 (61 Cal. Comp. Cases 554) [party not permitted to withdraw from stipulation merely because new expert had different medical opinion].) All the more so, a mere change of mind by defendant to belatedly contest injury based on *the same medical opinion* is not good cause to relieve defendant of the stipulation. We will affirm the WCJ's decision.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Amended Findings and Award of March 15, 2019 is **AFFIRMED**.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR



/s/ CRAIG SNELLINGS, COMMISSIONER

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

**OCTOBER 29, 2021**

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

**MARIA BETANCOURT  
THE DOMINGUEZ LAW FIRM  
FAMIGLIETTI & VOLPE**

**JTL/bea**

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

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

## **I**

### **INTRODUCTION**

Defendant, Garden Grove Unified School District, by and through their attorneys of record, Famigletti & Wolfe, APC, have filed a timely, verified Petition for Reconsideration contending that the evidence does not justify the Amended Findings of Fact, and that the Findings of Fact do not support the Findings, Award and Order.

The Applicant, born August 17, 1968, is a 50 year old food service worker, who sustained injury to her cervical and lumbar spine with radiating pain to her shoulders, and sustained headaches, sleep apnea and psychiatric injury, due to a work related injury sustained on March 19, 2009, in Garden Grove, California, while working for the Garden Grove Unified School district, permissibly self-insured. The Applicant's claim of injury originally went to trial and was submitted on May 15, 2018 (Minutes of Hearing and Summary of Evidence, EAMS DOC ID 67173791). Thereafter, formal rating instructions were provided to the Disability Evaluation Unit, and a formal permanent disability rating was received (EAMS DOC ID 67217543). Findings and Award was originally issued on July 6, 2018 (EAMS DOC ID 67520838). Thereafter, on July 20, 2018, Applicant's counsel filed a letter requesting that psychiatric impairment be included in the permanent disability determination, as they believed it had been inadvertently omitted (EAMS DOC ID 26842744). Defendant responded on July 25, 2018, requesting that Applicant's request to add permanent disability for psychiatric disability be denied, as it did not reach the threshold of 51% industrial causation (EAMS DOC ID 67736947). Based on these letters from Applicant and Defendant, the original Findings and Award was rescinded on July 25, 2018, and the matter was set for conference (EAMS DOC ID 67692710). The matter was resubmitted for decision on January 17, 2019. An Amended Findings and Award issued on March 14, 2019, reflecting a modification to the permanent disability to include the psychiatric

permanent disability. The findings regarding causation as to the psychiatric injury was unchanged (EAMS DOC ID 67736947). It is from this Amended Findings and Award, finding permanent impairment for the psychiatric injury, that Defendant seeks reconsideration.

## II

### FACTS

It was stipulated by the parties at trial that the Applicant, while working as a food service worker for Garden Grove Unified School District, permissibly self-insured, sustained injury arising out of and in the course of employment to her neck and back, and sustained headaches, and sleep apnea as a result of her orthopedic injuries, on March 19, 2009.. The Applicant also asserted injury to her shoulders, which was disputed by the Defendant. See Minutes of Hearing and Summary of Evidence page 2, lines 3-7, EAMS DOC 10 67173791). Evidence was presented at trial, and the matter was submitted for decision on May 15, 2018. Psychiatric injury was not disputed by the parties at the time of trial, as is indicated in the Minutes of Hearing and Summary of Evidence. It is this judge's practice at every trial to have the parties audibly confirm that the Stipulations and Issues as read into the record are correct. The trial does not proceed until the parties have confirmed that the Stipulations and Issues as read into the record are accurate.

The original Findings and Award was issued July 6, 2018, which did not include permanent impairment for the psychiatric injury, although it did include a finding of psychiatric injury and need for psychiatric treatment. A letter was subsequently received from Applicant requesting modification of the permanent impairment rating to include the psychiatric injury, as they believed it had been inadvertently omitted. This was accurate, as the psychiatric injury was causally related to the applicant's orthopedic injuries, and would be barred by statute after 2013. However, the date of injury was in 2009. Defendant's objected to the inclusion of the psychiatric permanent impairment, indicating that the 51% threshold for industrial causation had not been met. This was not an issue raised at trial, nor was it the subject of a Petition for Reconsideration by Defendant.

Based on the requests received from the parties, the original Findings and Award was vacated and rescinded and the case was set for conference and trial. No additional evidence was presented and the matter was again submitted. An Amended Findings and Award issued on March 15, 2019, which was modified to reflect the change in permanent impairment to include the psychiatric injury. Modifications from the original order are indicated by bold type. No modification to the assessment of industrial causation of the psychiatric injury was indicated in the Amended Findings and Award. Defendant, thereafter, filed a Petition for Reconsideration disputing causation and the finding of permanent impairment of the psychiatric injury.

### III

#### **DISCUSSION**

Defendant's petition for Reconsideration is limited to the finding of industrial causation and permanent impairment of the psychiatric injury only. No other finding is disputed. Defendant did not dispute industrial causation at the time of trial on the issues, and in fact, stipulated that the Applicant sustained psychiatric injury as part of her industrial injury sustained on March 19, 2009.

Defendant did not file a Petition for Reconsideration after receipt of the original Findings and Award which found industrial causation and a need for treatment as to the Applicant's psychiatric injury. Defendant's only objection came in response to the Applicant's request for correction of the omission of permanent impairment associated with the finding of psychiatric injury. As the injury was sustained in 2009, prior to the change in the law regarding psychiatric injuries stemming from physical injuries, the request was found to have merit, and the modification was made, with an Amended Findings and Award. Defendant then raised the issue of predominant cause in their Petition for Reconsideration.

As stated, this injury occurred in 2009, prior to the changes in the law regarding psychiatric injuries stemming from orthopedic injuries. The Applicant's need for psychiatric treatment, based on her testimony at trial and the report of Dr. Donald Feldman (EAMS DOC ID 67144834), stemmed from the industrial injury she sustained on March 19, 2009. Applicant's inability to work and

contemporaneous need for treatment, both orthopedically and psychiatrically, stemmed from the work related injury she sustained on March 19, 2009. Dr. Feldman ascertained that the Applicant's psychiatric permanent disability should be apportioned between industrial and non-industrial factors, which was included in the rating of permanent impairment. These statements are made at page 49 of the April 16, 2014 report, in the assessment of "psychiatric disability". Although the determination of causation of several of the attributions, such as the orthopedic injuries, the headaches, her pituitary disorder and "seizure" disorder etc., are left to specialists in other fields to determine, Dr. Feldman indicates the apportionment of "permanent impairment" in this section of the report. Although many of these aspects were present when the Applicant was evaluated on April 16, 2014, which required that they be addressed in the apportionment of permanent disability, Dr. Feldman notes on page 3 of his report, that the Applicant was diagnosed with a pituitary adenoma and meningioma in 2011. This is two years after the date of the admitted industrial injury. She had surgery for these issues in 2011. She had additional surgeries to her eyes in 2013 and 2014. Therefore, since these issues did not exist in 2009 when she sustained her orthopedic industrial injury, they were not a contributing cause at the time of injury. These factors, as indicated by Dr. Feldman, occurred subsequently and are properly addressed in apportionment of permanent disability.

Defendant stipulated that the Applicant sustained psychiatric injury as a result of her 2009 industrially caused orthopedic injury on March 19, 2009. Defendant did not dispute these findings in the original Findings and Award. Defendant's dispute arose with the addition of permanent impairment associated with the admitted psychiatric injury, an assessment which was proper, since the injury occurred in 2009. The rating properly included the assessed apportionment as noted by Defendant and indicated in the report of Dr. Feldman.



**IV**

**RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied for the reasons stated above.

Respectfully submitted,

Lori Alison Oesterreich  
Workers' Compensation Judge

Date: June 7, 2019