WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

AMY GUNNOE, *Applicant*

vs.

BEST BUY; XL INSURANCE, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants*

Adjudication Number: ADJ9447334
Van Nuys 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.[1]

In the Findings and Award of November 29, 2021, the workers' compensation administrative law judge ("WCJ") found that on May 5, 2013, applicant, while employed by Best Buy as a Vice President of Marketing, sustained industrial injury to her head, neck, back and psyche, that applicant is entitled to 104 weeks of temporary total disability indemnity beginning May 15, 2014 through May 14, 2016, and that the industrial injury resulted in permanent and total disability. In addition, the WCJ found, in relevant part, that "there is no basis for vocational apportionment and there is a basis for medical apportionment," that due to the finding of permanent and total disability, the issue of whether the psyche injury was the result of a violent act or a catastrophic event is moot per *Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393 [Appeals Board en banc], that the Employment Development Department ("EDD") is entitled to recover its lien of $55,000.00 against unpaid temporary and permanent disability benefits, and that applicant's attorney is entitled to a fee of $317,178.59, to be commuted from the side of the award as set forth in a commutation done by the Disability Evaluation Unit ("DEU"), which was attached to the WCJ's decision.

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[1] Commissioners Deidra E. Lowe and Craig Snellings signed the Opinion and Order Granting Petition for Reconsideration dated February 22, 2022. Commissioner Snellings has been recused, and Commissioner Lowe is no longer a member of the Appeals Board. New panel members have been substituted in place of the two Commissioners.

Defendant filed a timely Petition for Reconsideration of the WCJ's decision. Defendant contends that the WCJ erred in determining applicant's entitlement to temporary disability, that the WCJ's finding of permanent and total disability is not supported by substantial evidence, that there is no basis for including any psychiatric disability in the WCJ's finding of permanent and total disability, that to avoid duplication the permanent disability ratings resulting from applicant's injury must be combined and not added, that under Labor Code section 4660.1 there is no legal basis to award permanent and total disability on vocational grounds, that further development of the medical record is appropriate because there are no medical treatment reports after 2015 addressing applicant's substantial weight loss and the medical reports of the Agreed Medical Evaluator ("AME") and Panel Qualified Medical Evaluator ("PQME") have become stale, that there is no evidence to support reimbursement of EDD's lien, and that the attorney's fee awarded by the WCJ was improperly calculated by the DEU.

Applicant filed an answer.

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

Based on our review of the record and applicable law, we will affirm the WCJ's findings on injury and temporary disability but we will return this matter to the trial level for further proceedings and new decision by the WCJ on permanent disability, apportionment and other outstanding issues. This disposition is based on our conclusion that the WCJ must revisit the issue of whether any psychiatric impairment is properly included in rating applicant's permanent disability, and the WCJ also must revisit the issue of apportionment consistent with our recent en banc decision in *Nunes v. State of CA Department of Motor Vehicles* (June 22, 2023) 2023 Cal. Wrk. Comp. LEXIS 30 [88 Cal.Comp.Cases --] ("*Nunes*").

FACTUAL BACKGROUND

In section (II) of her Report, the WCJ provides a thorough description of the relevant facts:

> Applicant, Amy Gunnoe, was vice-president of marketing for defendant, Best Buy, for several years. On 05/05/2013, the applicant sustained a work-related injury as a result of a slip and fall. On that date, the applicant attended an awards dinner when she slipped and fell backwards striking the back of her head on concrete. She was taken to the ER and provided with medical treatment. The applicant's employer was able to provide her with a modified assignment at home but she was unable to do the modified job and received a severance package.

The matter came to trial over a three-day period and culminated with the applicant, Amy Gunnoe's, live and in-person testimony on 11/04/2021. The matter was submitted on that date. Applicant's evidence included vocational reports authored by vocational expert, Paul Broadus, (Applicant's Exhibits 1-3) and petitioner submitted a sole report authored by vocational expert, Debbie Abitz (Defendant's Exhibit A). Page 34 is missing from petitioner's VE report and it was brought to petitioner's attention post-trial. Petitioner did not submit page 34. The missing page dealt with "Home Based Employment/Training Options", i.e. a sheltered work environment. The pages were not mis-numbered as the author was mid-thought when that discussion abruptly ended.

The parties also utilized the following physicians as either AME's, PQME's or PTP's: Dr. Robert Shorr (Court Exhibits X1 – X5) as an AME in neurology; Dr. Marcel Ponton (Court Exhibit Y) as a consult in neuropsychology; Dr. Robert Kahn-Rose (Court Exhibit Z1 – Z2) as a PQME in psychiatry; Dr. George Hatch (Court Exhibit XX) as an AME in orthopedics; and Dr. Andrew Berman (Court Exhibit YY) as an authorized PTP in otorhinolaryngology.

Although petitioner admitted the injury to applicant's head, neck, psyche and back, the extent of the applicant's permanent disability was disputed with the applicant asserting that she was rendered permanently and totally disabled as a result of her injuries. In addition, petitioner claimed that the applicant is not entitled to psychiatric permanent disability as a result of her fall per section 4660.1. Also raised were temporary total disability and the lien of EDD. In addition, petitioner asserted that the medical evidence is not substantial as well as stale. The parties were afforded the opportunity to provide trial briefs.

Dr. Shorr, the AME in neurology, indicated that the applicant sustained a closed head trauma with mild traumatic brain injury, post traumatic head syndrome with speech and word-finding difficulties including post-traumatic migraine headaches. At his deposition, the AME testified that the applicant's injury was a "direct blow to the head, which then results in a blow to the brain. So there's energy to the brain that causes diffuse damage microscopically to the brain that can lead to a number of problems, to put it just simply." Further, this was a "contrecoup" injury and as such imaging studies alone do not accurately assess which led to a neuropsyche evaluation (Exhibit X3 6:11-15) with Dr. Marcel Ponton acting in that capacity. In his neuropsyche report, Dr. Ponton indicated that the applicant put forth good effort on all of the tests and as such motivation is not a factor (Exhibit Y at p. 30). Dr. Ponton indicated the applicant was TTD through 6/01/2015.

Dr. Berman, the ENT PTP (Court Exhibit YY) indicated that the applicant's hyperacusis (sensitivity to noise) is related to post-concussive disorder and not ENT related. The testing section of the report states that "lights were off during the testing. Please note abnormally low discomfort levels. Custom hearing protection recommended at this time" in a handwritten note.

As stated in the undersigned's Opinion, the "psyche PQME, Dr. Robert Kahn-Rose issued two reports (Court Exhibits Z1 and Z2) finding the applicant TPD from the date of injury until May 2014 and then TTD through 10/13/2016. Dr. Kahn-Rose found the applicant was motivated to return to work and that her "presentation is consistent with the phenomenology of Post-Concussive Syndrome." Moreover Dr. Kahn-Rose did not detect malingering and found that the applicant was "believable and genuine". The PQME stated, "It would make very little sense to postulate that she would choose to leave a very high-level executive position, and the attendant personal and financial benefits, to lead a very restricted and markedly less functioning lifestyle." (Underline added.) This fact operates as a litmus test for sincerity in this case." (Opinion at p. 7.)

Dr. Hatch, the orthopedic AME (Court Exhibit XX) also believed the applicant was "forthright" but due to her significant head injury there was an overlay to her orthopedic complaints. All of the various examining doctors found the applicant genuine. As the trier-of-fact, the undersigned is tasked with determining the credibility of the applicant per *Garza*. The undersigned deemed the applicant credible and nothing in the record or the petition refutes that.

Petitioner relied on their vocational report (Exhibit A) dated 7/17/2019 as evidence that the applicant is not PTD. That report was not deemed substantial medical evidence not only for its inappropriate suggestions as to potential occupations for the applicant and the missing page which may or may not have been favorable to the applicant with respect to a sheltered work environment; petitioner's VE also misstates the evidence that the applicant was doing her usual and customary job at home (*Id*. at p. 33). The applicant testified that her job was modified (Minutes of Hearing/Summary of Evidence, 11/04/2021, 3:15-19; 6:8-9). Due to the misstatement of the facts, the lack of completeness on such a critical issue as well as the illogical reasoning and conclusions contained therein, the report was not deemed substantial.

Applicant's vocational expert report authored by Paul Broadus demonstrated that the applicant is non-feasible for vocational rehabilitation solely due to the industrial injury per *LeBoeuf*. Testing was deemed unnecessary in this case due to the applicant's background. The

> VE also properly addressed vocational apportionment and found that the sole cause of the applicant's inability to compete in the open labor market is the industrial injury; no nonindustrial factors were identified (Applicant's Ex. 1-3). Although Broadus found several occupations which would utilize her transferable skills e.g. marketing manager, human resources manager and also listed several unskilled jobs such as dishwasher, the VE ultimately concluded that even the low-level occupations are no longer feasible for her due to her multiple complaints. "Unlike many employees, she attempted to continue working after her hospitalization and recovery. She returned to her usual & customary employer, Best Buy, in a sheltered environment, working in a closed room where she could adjust the lights and air conditioning. However that did not prove to be feasible, so she retired shortly thereafter." (Applicant's Exhibit 1, at p. 16.)
>
> After reviewing the evidence in this case, the undersigned issued a Findings of Fact & Award on 11/29/2021 finding that the applicant was rendered permanently and totally disabled as a result of her fall. […]

DISCUSSION

LABOR CODE 4660.1 DOES NOT PRECLUDE VOCATIONAL EVIDENCE

At the outset we reject defendant's contention that for post-January 1, 2013 injuries, Labor Code section 4660.1 does not provide a legal basis to award permanent and total disability on vocational grounds. We reject the contention for the reasons stated in Footnote 8 of the Board's en banc opinion in *Nunes*:

> "We further observe that notwithstanding the statutory changes to the calculation of diminished future earning capacity (DFEC) made by section 4660.1, the holding in [*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624] (*Ogilvie*)], which provides that vocational evidence may be offered to rebut the permanent disability rating schedule, continues to apply to all dates of injury, including those occurring on or after January 1, 2013. (See *County of Alameda v. Workers' Comp. Appeals Bd.* (*Williams*) (2020) 85 Cal.Comp.Cases 792 [2020 Cal. Wrk. Comp. LEXIS 64] (writ den.); *The Conco Companies v. Workers' Comp. Appeals Bd.* (*Sandoval*) (2019) 84 Cal.Comp.Cases 1067 [2019 Cal. Wrk. Comp. LEXIS 112] (writ den.); *Hennessey v. Compass Group* (2019) 84 Cal.Comp.Cases 756 [2019 Cal. Wrk. Comp. P.D. LEXIS 121].)"

THE WCJ CORRECTLY DETERMINED THE ISSUE OF TTD

Based on Part (F) of the WCJ's Report, which we adopt and incorporate as set forth below, we also reject defendant's contention that the WCJ erred in finding applicant entitled to 104 weeks of temporary total disability indemnity from May 15, 2014 through May 14, 2016:

> The [WCJ] did not award [temporary partial disability "TPD"]. The [WCJ] did award [temporary total disability "TTD"] beginning on 5/15/2014 – the date the applicant's modified job ended. The TTD continued for 104 weeks per the statutory cap and not through 10/13/2016 which was the end date of TTD based upon Dr. Kahn-Rose as it would have violated the statutory cap. Defendant was provided with credit for salary paid during that time that consisted of 9 months of salary as part of the applicant's severance package as well as credit for payments made by EDD. Defendant's assertion that the applicant is entitled to 81 days of TTD is not based upon the evidence or the law as TPD is not included in the 104 TTD week cap.

THE WCJ MUST REVISIT PERMANENT DISABILITY/APPORTIONMENT

Turning to the issue of permanent disability, defendant is correct in pointing out that for injuries after January 1, 2013, the impairment rating for a psychiatric disorder arising out of a compensable physical injury "shall not increase." (Lab. Code § 4660.1(c)(1).) Specifically, defendant contends that the WCJ erred in relying upon applicant's vocational expert, Mr. Paul Broadus, who found applicant unemployable based partly on the determination of Dr. Kahn-Rose (PQME in psychiatry) that applicant suffers from mild-to-moderate psychiatric impairment.

In her Report, the WCJ states in response to defendant's contention: "Although Broadus reviewed psyche evidence, the finding of [permanent and total disability] was based on vocational evidence, [*LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 (48 Cal.Comp.Cases 587)] and a sheltered work limitation."

We are not persuaded that the WCJ's response fully addresses the contention. Dr. Kahn-Rose concluded that applicant suffers from mild impairment in the Activities of Daily Living, social and recreational functioning, travel, interpersonal relationships, and concentration, persistence and pace, as well as moderate impairment in resilience and employability.[2] (Exhibit Z1, Kahn-Rose report dated 9/13/17, pp. 13 & 16.)

[2] The various mild impairments and one moderate impairment described by Dr. Kahn correspond to Domains I though VI in Tables 14-11 through 14-16 of the AMA Guides.

In his report dated July 9, 2018, Mr. Broadus reviewed Dr. Kahn-Rose's report and then discussed applicant's employability and rehabilitation potential as follows:

> Additionally, the concentration problems resulting from the pain compound those difficulties that she is otherwise experiencing due her post-concussional syndrome, and mild traumatic brain injury. *Nearly all of the doctors report a cognitive disorder, independent of the pain diagnoses. Added to that are impairments in Concentration, Persistence, and Pace; Adaptation; and Resilience And Employability, as reported by Dr. Ponton and Dr. Kahn-Rose.*
>
> Ms. Gunnoe is obviously a very skilled individual. In her pre-injury employment, she held much higher-level jobs with a greater degree of responsibility than do most injured workers. This naturally translates to more transferable skills, and a more job options, had she not been injured.
>
> The problem for her now is that even low-level jobs with minimal responsibilities are no longer feasible for her, due to her combination of impairments. Unlike many employees, she attempted to continue working after her hospitalization and recovery. She returned to her usual & customary employer, Best Buy, in a sheltered environment, working in a closed room where she could adjust the lights and air conditioning. However, that did not prove to be feasible, so she retired shortly thereafter.
>
> She now spends most of the time at home. She needs a dark room. Traffic and lights give her headaches. She has a speech impairment and is unable to formulate words on occasion, which was evident in my interview with her.
>
> Even if she were to attempt work at a job that has very little responsibility, with limited demands and only simple tasks, *she would not be able to escape the pain issues, concentration difficulties, and other problems as noted above. Accordingly, it is my opinion as a vocational expert that Ms. Gunnoe is not amenable to rehabilitation, and is not employable in the open labor market*.
>
> (Applicant's Exhibit 1, p. 16, italics added.)

In our view, it is clear that Mr. Broadus relied, in part, on Dr. Kahn-Rose's evaluation of applicant's psychiatric impairment in concluding that she is not amenable to rehabilitation and unemployable in the open labor market. In turn, the WCJ relied on Mr. Broadus to find applicant permanently and totally disabled. Therefore, we conclude that the WCJ must revisit the question whether her finding of permanent and total disability is consistent with the proscription of section

4660.1(c)(1) that the impairment rating for a psychiatric disorder arising out of a compensable physical injury "shall not increase." (Lab. Code § 4660.1(c)(1).)

Our inquiry does not end there, however, because "the proscription against an increased rating for psychiatric injuries in section 4660.1(c) does not apply to psychiatric injuries directly caused by events of employment." (*Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393, 404 [Appeals Board en banc].) Further, subdivision (g) of section 4660.1 provides, "[t]his section does not preclude a finding of permanent total disability in accordance with Section 4662."

In this case, we conclude that the record raises an unresolved question as to whether applicant's psychiatric disorder was directly caused by the injury she sustained after falling and hitting her head on the concrete surface, which undoubtedly qualifies as an "event of employment."

Dr. Kahn-Rose determined in his report dated October 13, 2016 that applicant had a diagnosis of mild cognitive disorder due to *traumatic brain injury and post-concussive syndrome*, as well as depression. (Exhibit Z2, p. 16, italics added.) In addressing causation, Dr. Kahn-Rose stated that applicant's temporary total disability "predominantly arose out of and was *caused by events occurring during the course of her employment* at Best Buy, Inc." (Exhibit Z2, p. 18, italics added.) In his final report dated September 13, 2017, Dr. Kahn-Rose repeated that applicant's presentation was "consistent with the phenomenology of post-concussive syndrome." (Exhibit Z1, p. 9.) In addition to post-concussive syndrome, the doctor again diagnosed applicant with a mild neurocognitive disorder due to *traumatic brain injury*, and a *single, severe episode* of major depressive disorder. (Exhibit Z1, p. 11, italics added.) In specifically addressing "causation and apportionment," Dr. Kahn-Rose again stated that applicant's "psychiatric impairment predominantly arose out of and was caused by events occurring during the course of her employment at Best Buy, Incorporated." However, Dr. Kahn-Rose also stated that he "would apportion 100% of [applicant's] psychiatric impairment to *compensable consequences* of the industrial injury she sustained while working for Best, Buy Incorporated on May 5, 2013." (Exhibit Z1, p. 13, italics added.)

We further observe, however, that Dr. Kahn-Rose's one-time reference to applicant's psychiatric injury as a compensable consequence injury appears to be inconsistent with applicant's trial testimony. Applicant testified that while walking out of the banquet hall hosted by her employer, she slipped and fell backwards and hit her head on the concrete. At the hospital emergency room shortly following the accident, applicant was diagnosed with traumatic brain

injury and post-concussive syndrome. (Summary of Evidence, 11/4/21, pp. 2-3.) This is the same diagnosis later made by Dr. Kahn-Rose; the doctor also diagnosed applicant with a single, severe episode of major depression.

Based on applicant's testimony and the immediate diagnoses made at the emergency room, later confirmed by Dr. Kahn-Rose, and given that applicant's striking her head on concrete was an event of employment that knocked her unconscious, we conclude that the WCJ must determine whether or not applicant's psychiatric injury was directly caused by this event of employment. If so, the proscription against an increased rating for psychiatric injuries in section 4660.1(c) does not apply. We further note that the WCJ did not reach the issue of whether applicant suffered a "catastrophic injury" or "severe head injury" as described in section 4660.1(c)(2)(B). We conclude that the WCJ must do so, consistent with *Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393 [Appeals Board en banc].) In addition, we noted before that section 4660.1(g) provides that the statute does not preclude a finding of permanent total disability in accordance with section 4662. The WCJ must address the applicability of section 4660.1(g) in the factual context of this case as well. To resolve these questions, the WCJ may further develop the record as she deems necessary or appropriate. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [Appeals Board en banc].)

Turning next to the issue of apportionment, we note the WCJ made an express finding that "there is no basis for vocational apportionment and there is a basis for medical apportionment." Based on our review of Mr. Broadus's discussion of "vocational apportionment," the WCJ's finding is problematic because it is inconsistent with the Board's holding in *Nunes* that vocational evidence may not substitute impermissible "vocational apportionment" in place of otherwise valid medical apportionment.

Reviewing Mr. Broadus's report dated July 9, 2018, it is clear that the pain resulting from applicant's injury played a major role in the vocational expert's conclusion that she is not amenable to rehabilitation and is not employable in the open labor market. Mr. Broadus stated that pain is a major issue for applicant, and that her pain was diagnosed by multiple specialists, including Dr. Hatch, who noted it on an orthopedic basis. (Exhibit 1, p. 15.) On the next page of the same report, Mr. Broadus discussed apportionment as follows:

> As noted in the previous section of this report, apportionment is only an issue in regard to her orthopedic impairment. Specifically, Dr. Hatch concluded that 1/3 of her lumbar spine impairment "can be considered due

> to nonindustrial causes in the form of preexisting degenerative changes in the lumbar spine and other contributing factors such as morbid obesity." However, this is not significant for the vocational analysis. As I discussed above, if only the orthopedic factors were considered, Ms. Gunnoe would be able to return to work, even if there were no apportionment. It is her other impairments which in combination prevent her from working, and these have all been determined to be 100% industrial.

However, Mr. Broadus's discussion of apportionment is inconsistent with other aspects of his vocational opinion. As noted before, Mr. Broadus emphasized that pain plays a major role in applicant's inability to benefit from rehabilitation and her inability to compete in the open labor market, including the orthopedic pain reported by Dr. Hatch. Though Mr. Broadus acknowledged Dr. Hatch's conclusion that one-third of applicant's lumbar spine impairment is non-industrial due to pre-existing degenerative changes and morbid obesity, Mr. Broadus did not consider it significant for his vocational analysis; even in the absence of orthopedic disability, reasoned Mr. Broadus, applicant's "other impairments…in combination prevent her from working, and these have all been determined to be 100% industrial."

However, Mr. Broadus's exclusion of Dr. Hatch's apportionment does not square with his substantial reliance on applicant's residual pain to find her unemployable, including the pain reported by Dr. Hatch. Moreover, it appears that Mr. Broadus has substituted his own "vocational apportionment" in place of the valid medical apportionment found by Dr. Hatch, contrary to the Board's holding in *Nunes*. As discussed in *Nunes*, the analysis described in applicable case law requires an evaluation of all factors of apportionment, so long as they are otherwise supported by substantial medical evidence, and irrespective of whether they were the result of pathology, asymptomatic prior conditions, or whether those factors manifested in diminished earnings, work restrictions, or an inability to perform job duties. (*Nunes, supra,* 2023 Cal. Wrk. Comp. LEXIS 30, slip opinion at pp. 24-25.) We therefore conclude that the WCJ must revisit and resolve the issue of whether there is any basis for legal apportionment of applicant's permanent disability in this matter. As noted before, the WCJ may further develop the medical and vocational record as she deems necessary or appropriate to resolving this issue.

Finally, we note that the WCJ expresses uncertainty about EDD's lien in her Report. Therefore, we will amend the WCJ's decision as necessary to reflect that EDD's lien is deferred. In reference to attorney's fees, it appears that the parties had no notice of the commutation that

included calculation of the fee until the DEU's spreadsheet was served along with the WCJ's decision. We will defer the issue of attorney's fees on the permanent disability award, which is deferred pending further proceedings and new determination by the WCJ. This will provide the parties with notice and opportunity to be heard on attorney's fees, including but not limited to an opportunity for defendant to brief the WCJ on why defendant may have standing to contest the fee. It should be noted that we express no final opinion on the unresolved issues addressed in this decision. When the WCJ issues new findings on the unresolved issues, any aggrieved party may seek reconsideration as provided by Labor Code sections 5900 *et seq*.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award of November 29, 2021 is **AFFIRMED,** except that said decision is **AMENDED** in the following particulars:

FINDINGS OF FACT

3. Applicant's injury caused 104 compensable weeks of temporary total disability beginning 05/15/2014 and through and including 5/14/2016 payable at the rate of $1066.73 per week before the *Hoffmeister* increase and less credit for days worked or paid subject to proof, less credit for payments made by EDD (if any), and less 15% attorneys' fees on any new and unpaid TTD, all to be adjusted by the parties with jurisdiction reserved in the event of a dispute.

4. The issue of permanent disability is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

5. Consistent with Finding 4 above, the issue of whether or not the industrial injury resulted in permanent and total disability is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

6. The issue of apportionment is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

7. The issue of whether or not the proscription against an increased rating for psychiatric injuries in Labor Code section 4660.1(c) applies herein, and the issue of the applicability of section 4660.1(g), is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

9. The lien of the Employment Development Department is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

10. The issue of the reasonable value of the services and disbursements of applicant's attorney is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and new determination of the outstanding issues by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 29, 2023

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

AMY GUNNOE
LEWIS MARENSTEIN WICKE SHERWIN & LEE
TESTAN LAW

JTL/*ara*

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