

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

MARIO ACOSTA, *Applicant*

vs.

**ACME CORPORATION;
SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ1565410 (SAL 0116080); ADJ916013 (SAL 0095929)
Salinas District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by defendant Subsequent Injuries Benefits Trust Fund (SIBTF). This is our Opinion and Decision After Reconsideration.

SIBTF seeks reconsideration of the August 23, 2019 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found in relevant part that applicant is entitled to SIBTF benefits (finding no. 4) and that there is sufficient evidence in the record to show that applicant met his burden of proof of all elements of SIBTF eligibility, including evidence of a prior labor disability (finding no. 7).

SIBTF contends that (1) the Findings and Award fail to make all the necessary findings; (2) applicant failed to prove the opposite and corresponding threshold of 5% standard disability; (3) applicant failed to prove that he had a preexisting labor disabling disability; (4) the WCJ erroneously relied on a medical report not admitted in evidence and erroneously concluded that the doctor should have used the 1997 Permanent Disability Rating Schedule (1997 PDRS) instead of the American Medical Association Guides to the Evaluation of Permanent Impairment (AMA Guides) to rate the prior disability; and (5) the WCJ erroneously awarded commutation of SIBTF benefits and attorneys' fees in violation of Labor Code¹ section 5100.5.

¹ All subsequent statutory references are to the Labor Code unless otherwise noted.

We received an answer from applicant Mario Acosta. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted for the limited purpose of setting aside the commutation of attorney's fees.

We have considered the Petition for Reconsideration, the Answer and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we rescind the August 23, 2019 Findings and Award and substitute it with a Findings of Fact that finds that applicant sustained an industrial injury, that applicant's SIBTF claim is not barred by any limitations period, and that defers all other issues.

FACTS

On February 25, 2009, based on Stipulations and Request for Award, applicant was awarded 23% permanent disability for a specific injury on September 7, 2006 involving his left shoulder. (Exhibit D17, Stipulations with Request for Award for injury dated September 7, 2006.)

Applicant seeks SIBTF benefits based on the following preexisting injuries: (1) a 1995 injury to his right shoulder, (2) diabetes, hypertension, high cholesterol, and coronary artery disease, and (3) a 2002 brain injury. (Answer, p. 2:3-24.)

Right Shoulder Injury

Carl E. Henning, M.D., reported that applicant climbed on the dock, stepped on a fruit pallet, lost his balance, and fell off the dock, sustaining a contusion to his knee and his right elbow and shoulder that did not bother applicant until September 1995. (Exhibit A7, Dr. Henning's report dated December 7, 1995, p. WCH000095.) The date of applicant's fall is not mentioned in Dr. Henning's report. (*Ibid.*) Dr. Henning diagnosed applicant with right shoulder impingement syndrome with a through and through tear of the distal portion of the supraspinatus tendon. (*Id.* at pp. WCH000096.) On December 7, 1995, Dr. Henning performed an open subacromial decompression and direct repair of the rotator cuff tear. (*Id.* at pp. WCH000096, WCH000015.)

In May 2018, Andrew K. Burt, M.D., orthopedist, opined that applicant suffered from a 15% whole person impairment (WPI) of the upper extremity, which it appears that he attributed entirely to the right shoulder. (Exhibit A1, Dr. Burt's report dated May 3, 2018, pp. 22-23.) Dr. Burt further opined that the "restrictions [and impairments] outlined represent actual work restrictions at the time, not retroactive prophylactic work restrictions," although the basis for this conclusion is unclear. (*Id.* at p. 22.)

Internal Diseases

Benjamin Potkin, M.D., successfully performed a percutaneous transluminal coronary angioplasty for treatment of symptomatic obstructive atherosclerotic coronary disease on June 20, 2000. (Exhibit A8, Dr. Potkin’s June 20, 2000 report.)

In July 2017, Norman Panting, M.D., Qualified Medical Evaluator (QME) in cardiology, internal medicine, and rheumatology, opined as follows with respect to applicant’s internal diseases: (1) diabetes – 10% WPI using the AMA Guides or 40% standard rating using work restrictions; (2) hypertensive cardiovascular disease – 9% WPI using the AMA Guides or 20% standard rating using the “old Schedule of Permanent Disability”; (3) coronary heart disease – 25% WPI using the AMA Guides or 40% standard rating using the old Schedule of Permanent Disability. (Exhibit A2, Dr. Panting’s report dated July 27, 2017, pp. 8-13.) Dr. Panting further provided the following chart, which does not include the right shoulder injury:

SIF Summary Table				
Condition	Onset	Whole Person Impairment	Non-Industrial Causation	Industrial Causation
Hypertension	1987	9%	100%	0%
Diabetes Mellitus	1995	10%	100%	0%
Obesity	1980	--	--	--
Hyperlipidemia	1995	0%		
Coronary Heart Disease	2000	25%	100%	0%
Congenital Learning Disability	1962	75%	100%	0%
Traumatic Brain Injury	1/02	--	0%	100%
Rotator Cuff Tear, complete, left shoulder	9/06	23%	0%	100%
Total WPI		142%		

(*Id.* at pp. 13-14.)

Brain Injury

Michael D. Goldfield, M.D., provided a comprehensive psychiatric medical legal evaluation of applicant in January 2011. (Exhibit D12, Dr. Goldfield’s report dated January 26,

2011; Exhibit D13, Dr. Goldfield's report dated February 3, 2011.) He reported that on January 22, 2002, applicant fell off a mechanical sweeper and lost consciousness. (Exhibit D12, Dr. Goldfield's report dated January 26, 201, p. 1.) He had hit his head and blood was coming out of his ears. (*Ibid.*)

Dr. Goldfield opined that applicant has (1) a slight to moderate disability in Work Function I, the ability to comprehend and follow instructions; (2) a slight disability in Work Function II, the ability to perform simple and repetitive tasks; (3) a moderate to severe disability in Work Function III, the ability to maintain a work pace appropriate to a given workload; (4) a moderate disability in Work Function IV, the ability to perform complex and varied tasks; (5) a slight disability in Work Function V, the ability to relate to other people beyond giving and receiving instructions; (6) a slight disability in Work Function VI, the ability to influence people; (7) a moderate disability in Work Function VII, the ability to make generalizations, evaluations or decisions without immediate supervision; and (8) and a moderate disability in Work Function VIII, the ability to accept and carry out responsibility for direction, control, and planning. (Exhibit D12, Dr. Goldfield's report dated January 26, 2011, p. 8.) Dr. Goldfield assigned applicant a GAF of 52, which is equivalent to 27% WPI. (*Ibid.*) He apportioned 75% of applicant's current permanent psychiatric and cognitive disability to his 2002 brain injury and 25% of applicant's current permanent psychiatric disability to a preexisting learning handicap. (*Ibid.*)

Robert G. Perez, Ph.D., QME in psychology and neuropsychology, diagnosed applicant as follows: (1) cognitive disorder not otherwise specified with linguistic, attention/concentration, memory and concept formation difficulties; (2) pain disorder with mixed physical and psychological features; (3) traumatic brain injury; and (4) congenital learning disability. (Exhibit A3, Dr. Perez's report dated October 9, 2017, p. 19.) Applicant's cognitive disorder is 100% attributable to his 2002 brain injury. (*Id.* at pp. 5, 20.) Applicant's pain disorder is equally apportioned to his 2002 traumatic brain injury and his 2006 shoulder injury. (*Id.* at p. 20.) Dr. Perez rated applicant's pain disorder at 3% WPI. (*Ibid.*) He rated applicant's cognitive impairment as follows:

Work Function	Level of Impairment	Supporting Data
1. Ability to comprehend and follow instructions.	Slight to moderate.	History, presentation, mental status, neuropsychological testing battery.
2. Ability to perform simple and repetitive tasks.	Slight.	
3. Ability to maintain a work pace appropriate to workload.	Slight to moderate.	See #1 (particularly history and presentation).
4. Ability to perform complex and varied tasks.	Slight to moderate.	
5. Ability to relate to others beyond giving and receiving instructions.	Very slight to slight.	
6. Ability to influence people.	Very slight to slight.	
7. Ability to make generalizations, evaluations and decisions.	Slight to moderate.	
8. Ability to carry out responsibility for direction, control and planning.	Slight to moderate.	

(Dr. Perez's report dated October 9, 2017, pp. 27-28.) Per Dr. Perez's report, this rating translates to 75% WPI, which is then apportioned 75% to the 2002 traumatic brain injury and 25% to applicant's congenital disability. (*Id.* at p. 20.)

Joseph R. Giallo, Ed.D., QME in psychology and neuropsychology, diagnosed applicant with (1) mild neurocognitive disorder; (2) adjustment disorder with mixed anxiety and depressed mood; (3) pain disorder associated with both psychological factors and a general medical condition; (4) stress of ongoing unresolved medical problems; (5) GAFT 60 moderate depression and anxiety, moderate difficulty with social and occupational functioning. (Exhibit D5, Dr. Giallo's report dated September 5, 2011, p. 28.) Dr. Giallo rated applicant as follows:

Post-Injury		
Work Function	Level of Impairment	Supporting Data
1. Ability to comprehend and follow instructions.	Moderate.	
2. Ability to perform simple and repetitive tasks.	Slight.	
3. Ability to maintain a work pace appropriate to workload.	Slight to moderate.	
4. Ability to perform complex and varied tasks.	Moderate.	
5. Ability to relate to others beyond giving and receiving instructions.	Very slight.	
6. Ability to influence people.	Very slight.	
7. Ability to make generalizations, evaluations and decisions.	Moderate.	
8. Ability to carry out responsibility for direction, control and planning.	Moderate.	

Pre-Injury		
Work Function	Level of Impairment	Supporting Data
1. Ability to comprehend and follow instructions.	Minimal.	
2. Ability to perform simple and repetitive tasks.	None.	

3. Ability to maintain a work pace appropriate to workload.	None.	
4. Ability to perform complex and varied tasks.	Very slight.	
5. Ability to relate to others beyond giving and receiving instructions.	None.	
6. Ability to influence people.	Minimal.	
7. Ability to make generalizations, evaluations and decisions.	Very slight.	
8. Ability to carry out responsibility for direction, control and planning.	Very slight.	

(Exhibit D5, Dr. Giallo's report dated September 5, 2011, pp. 32-33.) Dr. Giallo apportioned 25% of applicant's post-injury impairment to non-industrial causes. (*Id.* at p. 30.)

Oscar N. Abeliuk, M.D., QME in neurology, opined that applicant's post-traumatic head syndrome is moderate with a standard rating of 50% using the 1997 PDRS and 29% WPI using the AMA Guides. (Exhibit D15, Dr. Abeliuk's report dated January 3, 2010, p. 28.) This rating does not include applicant's psychiatric or cervical or lumbar disabilities. (*Ibid.*) Dr. Abeliuk apportioned 25% of applicant's cognitive portion of his post-traumatic head syndrome to preexisting conditions. (Exhibit D16, Dr. Abeliuk's report dated August 14, 2011, p. 30.) Further, Dr. Abeliuk recommended that applicant undergo a smell test for his complaint of loss of smell and a hearing test for his tinnitus. (Exhibit D15, Dr. Abeliuk's report dated January 3, 2010, p. 28; Exhibit D16, Dr. Abeliuk's report dated August 14, 2011, p. 29.)

David X. Schindler, M.D., QME in Otolaryngology, opined that applicant has a 5% loss of smell under the 1997 PDRS and AMA Guides. (Exhibit D11, Dr. Schindler's report dated July 2, 2012, p. 18.) Dr. Schindler further opined that applicant has a 36.9% binaural hearing loss under the 1997 PDRS and the AMA Guides but also opined that applicant's hearing loss was not the

result of his 2002 brain injury. (*Id.* at pp. 18-19.) Dr. Schindler did not find any physiological basis for applicant's claim of loss of taste. (*Id.* at p. 18.)

Richard F. Gravina, M.D., Agreed Medical Examiner (AME) in neurology, opined that the 2002 brain injury resulted in posttraumatic vertigo and posttraumatic headache. (Exhibit D4, Dr. Gravina's report dated August 9, 2013, p. 11.) The headache syndrome resulted in 3% WPI using the AMA Guides or 5% WPI using the 1997 PDRS. (*Ibid.*) The vertigo resulted in 0% WPI using the AMA Guides or 10% WPI using the 1997 PDRS. (*Ibid.*) Dr. Gravina pointed out that he did not rate applicant on memory impairment as applicant did not report such an impairment to him. (Exhibit D2, Dr. Gravina's report dated October 7, 2011, p. 2.) However, Dr. Gravina deemed Dr. Malhotra's 25% WPI for memory impairment as appropriate. (Exhibit D1, Dr. Gravina's report dated August 9, 2011, p. 19.) Dr. Malhotra's medical report was not admitted into evidence but Dr. Gravina summarized Dr. Malhotra's February 1, 2006 report as part of his review. (*Id.* at p. 18.) Dr. Gravina apportioned 90% of applicant's headache syndrome to the 2002 brain injury and 10% to preexisting conditions. (Exhibit D3, Dr. Gravina's report dated March 14, 2012, pp. 7-8.) He apportioned 100% of the vertigo to the 2002 injury. (*Id.* at p. 8.) He further opined that applicant's complaints to his cervical and lumbar spine are unrelated to the 2002 accident. (*Id.* at p. 8.)

On October 6, 2014, the parties entered into Stipulations and Request for Award and the court awarded applicant 75% permanent disability for his 2002 brain injury. (Exhibit D17, Stipulations with Request for Award for injury dated October 6, 2014.) This award came more than five years after the February 2009 award for the left shoulder injury.

On July 16, 2019, the parties went to trial on the issue of applicant's entitlement to SIBTF benefits, among other issues. (Minutes of Hearing and Summary of Evidence dated July 16, 2019, p. 2:12.) On August 23, 2019, the WCJ issued a Findings and Award, finding that applicant is entitled to SIBTF benefits (finding no. 4) and that there is sufficient evidence in the record to show that applicant met his burden of proof of all elements of SIBTF eligibility, including evidence of a prior labor disability (finding no. 7). (Findings and Award.)

The WCJ's Opinion in Decision provided:

Based on the medical evidence, Applicant has met his burden of proof of the elements required to establish liability of the Subsequent Injuries Benefit Trust Fund: (1) The combination of disability caused by the 9/7/06 injury and the pre-existing disability

has caused Applicant to be permanently totally disabled (100%), which overall disability is greater than that caused by the 9/7/06 injury alone (e.g., Dr. Burt found that combining the left shoulder disability with pre-existing disabilities rendered Applicant unemployable. Dr. Panting concluded that as a combination of non-industrial pre-existing disabilities and the industrially caused disability, Applicant is not able to compete in the open labor market). (2) There was previous disability affecting the right shoulder, and the disability caused by the current injury to the opposite and corresponding left shoulder is at least 5%. This is supported by Dr. Burt, especially on p. 22 of his 5/3/18 report, Ex. A-1. (3) There was a contemporaneous ratable report for the 2002 head injury, written by Dr. Malhotra on 2/1/06, described on p. 10 of Dr. Burt's report. Dr. Malhotra applied the AMA Guides in error and should have applied the 1997 PDRS, based on the date of the head injury. Under the 1997 Schedule, it is likely that the cognitive and other problems Applicant presented to Dr. Malhotra would have qualified as a moderate post-traumatic head syndrome, calling for a 50% standard rating, which adjusts for age and occupation to 56%. (Opinion on Decision.)

It is from this Findings and Award that SIBTF seeks reconsideration.

DISCUSSION

SIBTF is codified in section 4751, which provides:

If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, he shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered

alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total. (§ 4751.)

In *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581-582 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc), we stated:

In a claim for SIBTF benefits, an employee must establish that a disability preexisted the industrial injury. (§ 4751.) Evidence of a preexisting disability may include prior stipulated awards of permanent disability or medical evidence. In order to be entitled to benefits under section 4751, an employee must prove the following elements:

- (1) a preexisting permanent partial disability;
- (2) a subsequent compensable injury resulting in additional permanent partial disability:
 - (a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or
 - (b) the subsequent permanent disability must equal to 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;
- (3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and
- (4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. (§ 4751.)

(*Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581-582 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc).)

The preexisting disability may be congenital, developmental, pathological, or due to either an industrial or nonindustrial accident. (*Escobedo, supra*, 70 Cal.Comp.Cases at p. 619.) It must be “independently capable of supporting an award” of permanent disability, “as distinguished from [a] condition rendered disabling only as the result of ‘lighting up’ by the second injury.” (*Ferguson, supra*, 50 Cal. 2d at p. 477.) (*Todd, supra*, 85 Cal. Comp. Cases at p. 581.)

Furthermore, the “previous disability or impairment” contemplated by section 4751 ““must be actually ‘labor disabling,’ and that such disablement, rather than ‘employer knowledge,’ is the pertinent factor to be considered in determining whether the employee is entitled to subsequent injuries payments under the terms of section 4751.” (*Ferguson v. Indus. Acc. Comm.* (1958) 50 Cal.2d 469, 475, 477; *Escobedo v. Marshall* (2005) 70 Cal.Comp.Cases 604, 619 (Appeals Board en banc).) The court further noted that ““the prior injury under most statutes should be one which, if industrial, would be independently capable of supporting an award. It need not, of course, be reflected in actual disability in the form of loss of earnings [as this court has already held in *Smith v. Industrial Acc. Com.* (1955) 44 Cal.2d 364, 367 [2, 3] [288 P.2d 64]], but if it is not, it should at least be of a kind which could ground an award of permanent partial disability. . . .” (*Ferguson*, at p. 477, quoting Larson’s Workmen’s Compensation Law (1952) § 59.33 (vol. 2, p. 63).)

Section 5313 requires the WCJ to,

. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (§ 5313.)

Section 5313 requires the WCJ to state the “reasons or grounds upon which the [court’s] determination was made.” (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIA 74].) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Furthermore, the WCJ is charged with preparing the minutes of hearing and a summary of evidence at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10566; *Hamilton, supra*, at p. 476.) The minutes of hearing and summary of evidence must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10566; *Hamilton, supra*, at p. 476.)

Here, the Findings and Award lack the specific findings to support applicant's entitlement to SIBTF benefits. Although the Opinion on Decision sheds light as to the basis for the conclusory findings, it is still not sufficient. For instance, the Findings and Award do not identify the percentage of disability of the subsequent left shoulder injury. It also fails to identify the preexisting injuries and the percentage of permanent disability of each preexisting injury. As such, we are unable to determine whether applicant met the eligibility threshold requirements and we are unable to determine the combined permanent disability under section 4751. We are further unable to determine the basis for the conclusion in the Opinion on Decision that applicant is permanently totally disabled. We note that there are several medical reports relating to applicant's brain injury and we are unsure whether any of them were relied upon, and if not relied upon, the basis for not relying on them.

Furthermore, the Findings and Award fails to address whether the preexisting injuries were labor disabling at the time of the subsequent injury. We note that the majority of the medical evidence were dated after the subsequent left shoulder injury. We further note that applicant's permanent disability award for his 2002 brain injury was dated after his permanent disability award for his subsequent left shoulder injury.

Accordingly, we rescind the August 23, 2019 Findings and Award and substitute it with a Findings of Fact that finds that applicant sustained an industrial injury, that applicant's SIBTF claim is not barred by any limitations period, and that defers all other issues.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, we **RESCIND** the August 23, 2019 Findings and Award and **SUBSTITUTE** it with the following Findings of Fact:

Findings of Fact

1. Applicant, Mario Acosta, while employed on September 7, 2006 as a forklift driver, occupational group 351, at Watsonville, California, by ACME Corporation, sustained injury arising out of and occurring in the course of his employment to his left shoulder.
2. Applicant's claim for benefits from the Subsequent Injuries Benefits Trust Fund is not barred by any limitations period.
3. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 16, 2021

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

**MARIO ACOSTA
SAMARRON & SCHWARTZAPFEL
DIR OFFICE OF THE DIRECTOR LEGAL**

LSM/pc

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