

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

RONALD FERREL, *Applicant*

vs.

**NORTH KERN STATE PRISON; administered by STATE COMPENSATION
INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ10668908
Bakersfield District Office**

**OPINION AND ORDER
GRANTING PETITION FOR RECONSIDERATION
AND DECISION AFTER RECONSIDERATION**

Applicant Ronald Ferrel seeks reconsideration of the February 2, 2021 Findings of Fact, Awards and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a correctional officer, sustained an industrial cumulative trauma injury to over the period June 1, 1996 through October 28, 2016, resulting in 96% permanent disability. The WCJ awarded permanent disability indemnity at the rate of \$290.00 per week in the total sum of \$246,282.50, less an attorney's fee of \$29,533.90. The WCJ issued an Amended Award on March 1, 2021, providing for a life pension of \$278.31 per week after payment of the permanent disability award, and increased the award of the attorney's fee to \$35,692.14.

Applicant contests the WCJ's rating of applicant's permanent disability, contending that the opinion of Qualified Medical Evaluator Dr. Bronshvag supports an award of 100% permanent disability.

We have not received an Answer from defendant State of California, Department of Corrections and Rehabilitation. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration to amend the award to find applicant is entitled to an award of 100% permanent disability.

FACTS

Applicant sustained an admitted cumulative trauma injury to his heart over the period ending October 28, 2016. In unchallenged findings, the WCJ found applicant is entitled to the presumption of industrial causation in Labor Code sections 3212.2 and 3212.10, which bars apportionment as provided in Labor Code section 4663(e).

Applicant's impairment and permanent disability rating was based on the reporting of Dr. Bronshvag, the QME in internal medicine, whose reports and deposition testimony were admitted into evidence in the WCJ's evidentiary rulings 1 through 14.

When Dr. Bronshvag first examined applicant in 2017, he noted applicant had been diagnosed with coronary heart disease with two separate stent placements, in 2004 and again in 2016. He noted applicant had a normal physical examination and was working full time, and deferred further comment pending a medical record review. Subsequently, he noted the disease in applicant's left circumflex artery had progressed since 2004, and the disease in his left anterior descending artery "is clearly a new event and explains claimant's more recent symptoms." (Jt. Ex. 11, 5/30/17 Supplemental Report, p. 3.) In addition to the diagnosis of coronary heart disease, applicant also has borderline hypertension, which Dr. Bronshvag concluded was industrially caused, without apportionment.

After reviewing applicant's relevant medical records, Dr. Bronshvag provided alternative ratings in his September 16, 2019 Supplemental Report:

The claimant could be rated out in Chapter 4 [sic: Chapter 3],¹ page 36, as Class 4 coronary heart disease because of the presence of the several vessel abnormalities and surgeries and recovery from coronary artery bypass surgery and continuing to require treatment and have symptoms as described above.

Alternately, the claimant could be regarded as having hypertension and hypertensive cardiovascular disability (which is somewhat different than coronary artery disease) and would be emplaced in Class 3 (30-49% Impairment of the Whole Person). The most reasonable approach is to consider the claimant to be in Class 4 relevant to coronary heart disease (50-100% level of WPI). Absent the hypertension, the claimant would best be described as having a 50% level of WPI. However, the combination of the 50% level of WPI and the 30-49% level of WPI relevant to the high blood pressure makes a 75% level of WPI most appropriate.

¹ In his deposition testimony, Dr. Bronshvag corrected this reference to Chapter 3 for coronary heart disease, not Chapter 4, for hypertensive heart disease. (Jt. Ex. 14. 4/24/20 Deposition Transcript, 7:2-9.)

Ongoing conservative care is indicated. It is “not impossible” that the claimant will require more heart surgery in the future. He is permanent, stationary, stable and ratable at this time and is unable to return to his job. He is not precluded from full-time sedentary work but more active or effortful occupations would pose a significant risk.

(Jt. Ex. 4. 9/16/19 Supplemental Report, p. 3.)

In his deposition testimony, Dr. Bronshvag discussed his choices for rating applicant’s coronary heart disease and his hypertension, noting that Chapter 3 and Chapter 4 both provide a range of 50-100% WPI rating for Class 4 level of impairment.

And this man has hypertension and heart disease. You could give him Class 4 for hypertension or Class 4 for heart disease, but there’s an overlap. You’re rating the same thing twice.

Since I don’t make the laws -- maybe that’s --okay. Just doesn’t seem correct. He’s got one heart, and he’s between 50 and 100 percent WPI, and seems simple.

...

He’s got one heart. It’s worse than it should be. And whether he’s Chapter 3 or Chapter 4, he’s between 50 and 100, and 75 is in the middle of the box and seems most accurate.

...

I think he’s got one heart, and whether you go on Chapter 3 or Chapter 4, it’s 75 percent seems to best describe his level of severity. If somebody else sees it some other way, that’s fine.

(Jt. Ex. 14. 4/24/20 Deposition Transcript, 9:13-20, 10:1-14.)

Q: . . . So in this case, it’s more, appropriate to provide the 75 percent whole person rating than it would be to try to split it up?

A. Right. Because I don’t think there’s a medically reasonable way to split it up. I mean, you can play with the numbers any way you want, but he’s got one heart and one underlying blood pressure condition, and so he should have one rating.

(Jt. Ex. 14. 4/24/20 Deposition Transcript, 11:1-8.)

In his final report, Dr. Bronshvag again reiterated his 75% WPI rating, explaining that it provides the most reasonably accurate rating for applicant’s coronary heart disease and hypertension.

Stepping back for a second to the Almaraz/Guzman “concept” - which tells you to have a look at the patient - his heart disease clearly does not render him 100% impaired (which would mean that he is a basket case), and a 50% level of WPI (the lower end of the box) might be a bit of an underestimate. Taking note of the fact that he has Class 3 hypertension (Chapter 4) and, at the very least, a 30%

level of WPI, giving him a 75% level of WPI (employing the one-stop shopping method) seems reasonably accurate.

Alternately, one could state that he has a 60% level of WPI relevant to Chapter 3 heart disease and a 30% level of WPI relevant to his reasonably well tolerated hypertension (which has damaged his body).

Noting that 60% and 30% “combine” to 72% (they add up to 90%), I still like 75%.

Going back to the old California method, the phrase “precluded from substantial work” meant that the person was deprived of three-quarters (75%) of his ability for lifting and work.

To me, “substantial” therefore - at least in one context - means 75%, and I think that this claimant has a 75% level of WPI relevant to his combination of documented heart disease and documented hypertension with documented hypertensive heart disease.

(Jt. Ex. 1. 5/13/20 Supplemental Report, p. 5.)

On this record, the WCJ concluded that applicant was entitled to the presumption of industrial causation afforded correctional officers in Labor Code sections 3212.2 and 3212.10, which precludes apportionment to other factors. Relying upon Dr. Bronshvag’s “alternative” rating discussed in his May 13, 2020 report, the WCJ found his report to constitute substantial medical evidence to support a permanent disability rating of 96%. The WCJ further explained that he rejected Dr. Bronshvag’s *Almaraz/Guzman* rating, which would rate 100% permanent disability, because Dr. Bronshvag’s did not “clearly explain the basis for his opinion” other than referring to a “one-stop shopping method.” The WCJ noted that “Dr. Bronshvag’s opinion that Applicant is not 100% impaired contradicts his insufficiently explained finding of 75% WPI.”

DISCUSSION

Applicant argues that Dr. Bronshvag provided sufficient justification for utilizing Table 3-6 in Chapter 3 to rate applicant’s impairment at 75% whole person impairment due to the severity of his coronary artery disease, contesting the WCJ’s determination that Dr. Bronshvag’s “split-up” rating as the most accurate depiction of applicant’s impairment.

Applicant further disputes the WCJ’s characterization that Dr. Bronshvag’s Chapter 3 rating falls under an *Almaraz/Guzman* analysis, and is not an accurate rating of applicant’s impairment.

In his Opinion on Decision, the WCJ explained his rejection of Dr. Bronshvag's 75% WPI rating, noting that Dr. Bronshvag's statement that applicant was not 100% impaired precluded a 100% permanent disability rating. "Dr. Bronshvag's expert opinion that Applicant is not 100% impaired contradicts his insufficiently explained finding of 75% WPI. Therefore, Applicant did not prove by a preponderance of the evidence that the AMA Guide rating establishing 96% permanent partial disability is wrong, or that he is actually 100% permanently totally disabled."

As Dr. Bronshvag was opining on applicant's whole person impairment, not his permanent disability rating, his comment that applicant was not 100% impaired was not an opinion on the extent of his permanent disability. There is no contradiction in his opinion.

Further, we do not agree with the WCJ's description of the QME's 75% WPI rating as falling under an *Almaraz/Guzman* analysis, which would require Dr. Bronshvag to provide an explanation for relying upon an alternative chapter to rate applicant's impairment. Dr. Bronshvag did not depart from application of the rating method for coronary heart disease. As he explained, his preferred rating was based on application of Table 3-6 on page 36 in Chapter 3 for coronary artery disease, though he also noted alternatively, applicant's impairment could also be rated using both Chapter 3 and Chapter 4. "Alternately, one could state that he has a 60% level of WPI relevant to Chapter 3 heart disease and a 30% level of WPI relevant to his reasonably well tolerated hypertension (which has damaged his body). Noting that 60% and 30% "combine" to 72% (they add up to 90%), I still like 75%." (Jt. Ex. 1. 5/13/20 Supplemental Report, p. 5.)

As he stated in his 2019 supplemental report (Jt. Ex. 4. 9/16/19 Supplemental Report, p. 3.), he relied on Chapter 3, "because of the presence of the several vessel abnormalities and surgeries and recovery from coronary artery bypass surgery and continuing to require treatment and have symptoms,":

The most reasonable approach is to consider the claimant to be in Class 4 relevant to coronary heart disease (50-100% level of WPI). Absent the hypertension, the claimant would best be described as having a 50% level of WPI. However, the combination of the 50% level of WPI and the 30-49% level of WPI relevant to the high blood pressure makes a 75% level of WPI most appropriate.

In his deposition, Dr. Bronshvag explained the reason he chose a single rating under Chapter 3, "I think he's got one heart, and whether you go on Chapter 3 or Chapter 4, it's 75 percent

seems to best describe his level of severity.” (Jt. Ex. 14. 4/24/20 Deposition Transcript, 9:13-20, 10:1-14.)

We concur with Dr. Bronshvag that his determination that a 75% WPI based on Class 4, Table 3-6a in Chapter 3 of the AMA Guides, best describes the level of severity of applicant’s coronary heart disease in the presence of hypertension, and should have been applied in the Findings of Fact, Awards and Order.

Accordingly, we will grant reconsideration, rescind the Findings and Award and return this matter to the trial level for a new final award based on Dr. Bronshvag’s 75% WPI rating, which provides an adjusted 100% permanent disability rating.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the February 2, 2021 Findings of Fact, Awards and Order is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, the February 2, 2021 Findings of Fact, Awards and Order is **RESCINDED** and the matter is **RETURNED** to the trial level for a new final award of permanent disability based on Dr. Bronshvag's 75% WPI rating.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 20, 2021

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

**RONALD FERREL
LAW OFFICES OF ADAMS, FERRONE & FERRONE
STATE COMPENSATION INSURANCE FUND**

SV/pc

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

CS