WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

VINCENT WATTS, *Applicant*

vs.

MENDOCINO FOREST PRODUCTS; XL SPECIALTY INSURANCE, administered by SEDGWICK, CMS, INC., *Defendants*

Adjudication Number: ADJ10856264
Santa Rosa District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant Mendocino Forest Products, by and through its insurer, XL Specialty Insurance, seeks reconsideration of the May 10, 2021 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that applicant Vincent Watts sustained 100% permanent disability as a result of an admitted injury on March 24, 2014, to his bilateral shoulders, elbows, wrists, hands left middle finger, but not his cervical spine, while employed as a forklift operator.

Defendant contests the finding of permanent total disability, which was based on the rebuttal of the AMA Guides rating of 62%, contending first, that such rebuttal is precluded by Labor Code section 4660.1. Second, defendant argues that the vocational evidence underlying the rebuttal is not supported by the medical work restrictions, as there is too large a gap between the medical impairment and the vocational expert's findings. Third, defendant contends the finding of permanent total disability fails to consider the medical apportionment of applicant's right shoulder disability. Finally, defendant argues that the vocational expert relied upon non-industrial factors to conclude applicant is precluded from gainful employment.

We have reviewed applicant's Answer to defendant's petition. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the allegations and arguments of the Petition for Reconsideration, as well as the Answer thereto, and have reviewed the record in this matter and the WCJ's Report and Recommendation on Petition for Reconsideration of, which considers, and responds to, each of the defendant's contentions. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate as the decision of the Board, we will affirm the WCJ's Findings and Award, and deny the petition for reconsideration.

Additionally, we observe that the record supports the WCJ's determination that applicant successfully rebutted the scheduled rating of his permanent disability, and that Dr. Tran's apportionment of applicant's right shoulder impairment does not preclude a finding of permanent total disability.

First, the WCJ's determination is based in part upon her observation of applicant's unrebutted testimony, supported by his wife's testimony, that his condition deteriorated significantly since he was last evaluated by the Qualified Medical Evaluator, Dr. Tran. The WCJ's findings that are based upon her assessment of applicant's credibility are entitled to be accorded great weight and should be rejected only on the basis of contrary evidence of considerable substantiality. (*Lamb v. Workmen's Comp. Appeals Bd*. (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].) As trier of fact, the WCJ is in the best position to evaluate the credibility and reliability of both expert and lay witnesses. (*Garza v. Workmen's Comp. App. Bd*. (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500].)

In his initial evaluation in September of 2017, Dr. Tran reviewed the history of applicant's injury and the surgical treatment for bilateral carpal tunnel syndrome, ulnar nerve neuropathy, and in his left shoulder, "extensive tearing of the infraspinatus tendon with anterior labral tear and subcoracoid impingement and calcific tendinitis." (Jt. Ex. 3, 9/16/17 Dr. Tran QME Report, p. 2.) At the time of his evaluation, Dr. Tran described applicant's pain complaints in his bilateral shoulders, elbows and wrists as being aggravated by "heavy lifting, overhead activities, activities involving gripping, grasping, holding onto things, and repetitive activities." He characterized applicant's complaints then as "slight, moderate, and intermittent, progressing to moderate and frequent with those precipitating factors." Dr. Tran precluded applicant from heavy work, and repetitive activities involving "gripping, grasping, holding, or any overhead or over shoulder activities." (Jt. Ex. 3. p. 11.)

Two years later, Dr. Tran re-evaluated applicant due to a worsening of his condition. At that time, though applicant had continued complaints of pain in his bilateral upper extremities, Dr. Tran noted applicant could still drive, shop, and do housework with limitation, and that his wife provided significant assistance around the house and with dressing and tying his shoes. (Jt. Ex. 1, 10/18/19 Dr. Tran QME Report, p. 2.) Reviewing the reports of applicant's treating physician, Dr. Mazur, Dr. Tran noted applicant's bilateral hand complaints and his inability to make a fist with his dominant right hand. Dr. Tran found applicant had more restricted range of motion and more weakness in his handgrip. He characterized applicant's complaints "as moderate and intermittent, progressing to moderate, severe, and frequent with those precipitating factors." (Jt. Ex. 1, p. 12.) He noted applicant was potentially in need of additional surgical intervention. Despite the worsening of applicant's condition, Dr. Tran did not alter his work restrictions or change his impairment ratings.

However, at trial on March 1, 2021, applicant testified that the condition of his hands, elbows and shoulders had worsened since his last evaluation by Dr. Tran, such that he can hardly move them, and cannot raise his arm without pain. In his normal resting position, his hands are always curled. Applicant testified that he stopped driving because he cannot grip or turn a steering wheel, and he cannot hold his arms out in front of him. He cannot grab anything, turn a house key or hold a pen. He cannot pick up a piece of paper from a flat surface. He has learned to use his hands almost as claws. Applicant's wife, Marilyn Watts, corroborated applicant's testimony that his condition had worsened in the previous six to eight months.

The WCJ found applicant's credible trial testimony supported the opinion of applicant's vocational expert, Mr. Greenberg, that applicant was not amenable to participate in vocational rehabilitation and had lost 100% of his ability to compete in the open labor market. This was substantial evidence to support the rebuttal of the scheduled rating of applicant's permanent disability. Defendant's argument that Mr. Greenberg's opinion of applicant's physical capacity exceeded the medical restrictions placed by Dr. Tran, does not address the evidence of significant deterioration of applicant's condition beyond that identified by Dr. Tran in 2019.

With regard to the issue of apportionment, we concur with the WCJ's assessment that applicant's non-amenability to vocational rehabilitation and preclusion from gainful employment was due to applicant's loss of use of his hands, unrelated to the limited range of motion in his right shoulder.

Additionally, Dr. Tran's apportionment determination cannot be considered substantial medical evidence in view of the absence of any substantive discussion of the nature of the disability caused by the prior non-industrial surgery to his right shoulder. Dr. Tran noted applicant's history of right shoulder surgery, stating:

> His work was physically demanding with quite a lot of repetitive physical stress to both upper extremities. He did have a history of right shoulder arthroscopy in 2000, then a right shoulder open surgery for impingement in 2012. Otherwise, he has been working full-time without any other industrial injuries or other motor vehicle accidents or traumatic incidents involving his bilateral upper extremities.
> (Jt. Ex. 3. p. 10.)

From this history, Dr. Tran provided 50% apportionment for the right shoulder disability, stating, in full:

> Mr. Watts has had previous right shoulder surgery in 2000 and 2012 for impingement issues. I would apportion 50% to this past injury. Otherwise, there is no other apportionment for bilateral elbows, wrists, and left shoulder, since he has been working for the same company for 45 years and most of his wear and tear is work-related due to cumulative trauma.
> (Jt. Ex. 3. p. 11.)

This apportionment determination cannot be found to be substantial medical evidence as it provides no analysis to explain how and why applicant's current level of disability in his right shoulder is causally related to the prior surgeries, as required by *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (en banc). All that can be understood from Dr. Tran's determination is the fact that applicant had the prior surgeries, in the absence of any discussion of the nature of the physical limitations that caused 50% of his current shoulder disability.

Accordingly, we affirm the WCJ's Findings and Award and will deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the May 10, 2021 Findings and Award is **DENIED.**

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 26, 2021

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

VINCENT WATTS
PETERSEN LAW OFFICE
MULLEN & FILIPPI

SV/*pc*

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

I

INTRODUCTION

Defendant, Mendocino Forest Products, insured by XL Specialty Insurance administered by Sedgwick CMS, Inc., through their attorney of record, Dana Miller, filed a timely, verified Petition for Reconsideration challenging the Findings and Award dated May 10, 2021.

Applicant suffered an industrial injury to his back, left knee, psych, and reproductive system as a result of a specific injury on March 24, 2014 during the course of his employment as a forklift operator for the employer, Mendocino Forest Company. He went to work in February of 2014 and found it difficult to turn on the ignition switchon his forklift, and then subsequently reported the injury on March 24, 2014. He was age 66 on the date of injury.

In the F&A, the undersigned WCJ found that the applicant's injury caused total permanent disability of 100% based on the opinions of the applicant's vocational expert, Joel Greenberg, M.S.

Petitioner contends:

a. The legislative changes defining permanent disability as of January 1, 2013 no longer allow consideration of "diminished future earning capacity", "inability to work", or "amenability to rehabilitation". (Petition p. 5, line 3- p. 6, line 11.)

b. Even if vocational rebuttal is allowed for post-January 1, 2013 dates of injury, the award of 100% permanent total disability, and the vocational expert report upon which it relies, is not supported on a medical basis, as the medical opinions describe only "moderate impairment" vs. the vocational conclusion of 100% permanent total disability, in violation of the principles of *Soohun Kim v. Valentino* (2019) Cal. Wrk. Comp. P.D. Lexis 143. (Petition p. 6, line 12- p. 9, line 14.)

c. The current award of 100% permanent total disability improperly ignores the apportionment mandates of Labor Code 4663 and binding case law opinions. (Petition p. 9, line 15 top. 11, line 6.)

d. The conclusion of 100% lack of amenability to rehabilitation by applicant's vocational counselor improperly uses non-industrial factors in his conclusion. (Petition, p. 11, lines 7-19.)

II

FACTS

Applicant Vincent Watts suffered an injury in the course of his employment as a forklift operator for Mendocino Forest Products to his bilateral wrists, bilateral shoulders, bilateral elbows, left middle finger and bilateral hand on March 24, 2014. Although he was experiencing prior symptoms in his bilateral upper extremities, he went to work in February of 2014 and found it difficult to turn on the ignition switch on his forklift. (Jt. Exh. 3, Dr. Tran, 9/16/17.) The applicant last worked on February 14, 2014 (MOH/SOE, p. 6, line 6.) He subsequently reported the injury on March 24, 2014, which was pled as the date of injury. (Jt. Exh. 3, Dr. Tran, 9/16/17.)

The applicant subsequently underwent conservative treatment modalities to no avail. On August 28, 2014, Dr. Mazur performed a right carpal tunnel release and right elbow ulnar release as well as a flexor tenosynovectomy of the second, third, fourth, and fifth digits and right ring finger trigger release. (Jt. Exh. 1, Dr. Tran, 10/18/19.) Six months later, on February 26, 2015, the applicant underwent a left carpal tunnel release and left elbow ulnar nerve release. (Id.) Subsequently, on August 27, 2015, Dr. Mazur performed a left shoulder arthroscopic subacromial decompression with distal clavicle resection and rotator cuff repair. Finally, the applicant underwent left shoulder manipulation under anesthesia to prevent capsulitis and frozen shoulder on January 16, 2016. (Id.) The applicant has been retired medically since 2015 due to no work accommodation. (Id.)

Michael Tran, M.D. acted as the parties orthopedic Qualified Medical Evaluator (QME). The applicant was deemed permanent and stationary at the time of the initial QME evaluation on December 16, 2017 (Jt. Exh. 3, Dr. Tran, 12/16/17.) Dr. Tran issued whole person impairment ratings for each of the affected joint or body parts of the applicant's bilateral upper

extremities. (Id.) He apportioned 50% of the right shoulder range of motion impairment to a prior injury. (Jt. Exh. 3, Dr. Tran, 12/16/17.)

In his most recent evaluating report, Dr. Tran noted a more restricted range of motion and weakness in the applicant's handgrip. (Jt. Exh. 1, Dr. Mazur, 10/18/19.) Dr. Tran reported an increase in the applicant's right shoulder pain and an exacerbation of his conditions due to daily living activities. (Id.) He opined that the applicant has sustained a disability to his bilateral shoulders, elbows, and wrists, precluding him from heavy work and also precluding him from repetitive type of activities, including gripping, grasping, holding, or any overhead/over shoulder activities. (Id.) However, his prior impairment ratings remained unchanged.

Applicant received consistent medical treatment from his primary treating physician, Kai-Uwe Mazur, M.D. Dr. Mazur opined that the applicant had reached maximum medical improvement on March 29, 2016. (Jt. Exh. 4, Dr. Mazur, 3/29/16) In a treatment report over two years later, Dr. Mazur recommended repeat Nerve Conduction Studies for further diagnosis and treatment based on the applicant's worsening condition. (Def. Exh. A, Dr. Mazur, 9/17/19.)

Applicant was evaluated by two vocational experts, Joel Greenberg as the applicant's expert and Emily Tincher as the defendant's expert. Mr. Greenberg opined that solely due to the effects of the industrial injury, the applicant is not amenable to vocational rehabilitation. (App. Exh. 1, Joel Greenberg, 11/18/20.) Specifically, he noted that the applicant has lost 100% of his ability to be employed in the labor market and has lost 100% of his earning capacity as a result of his on-the-job injury of March 24, 2014. (Id.)

Ms. Tincher, on the other hand, concluded that the applicant is amenable to vocational rehabilitation. (Def. Exh. Y, Ms. Tincher, 9/9/20.) According to Ms. Tincher, when the applicant's nonindustrial or Montana factors are omitted from the formulations, the applicant retains a reasonable opportunity to return to work in the open labor market and there are sufficient jobs which can accommodate his work restrictions. (Id.)

This matter was tried on the issues of injury arising out of and in the course of employment to his cervical spine, permanent disability, apportionment, need for further medical treatment and attorney fees.

At trial, applicant testified in substance as follows. His elbows hurt constantly. (MOH/SOE, p. 5, line 42.) He cannot raise his right arm. (MOH/SOE, p. 5, line 45.) According

to the applicant, his hands are regularly swollen. His hands are currently bruised from trying to wipe and clean himself. (MOH/SOE, p. 6, lines 23-25.) He has not driven in the last six or seven months because he cannot grip a steering wheel. (MOH/SOE, p. 6, lines 42-43.) He cannot turn the steering wheel and he cannot hold his arms out in from of him. (MOH/SOE, p. 6, lines 43-45.)

The applicant credibly testified that his hands are always curled when he is in his normal resting position. (MOH/SOE, p. 7, line 11.) The applicant is right handed but cannot grab anything, including turning his house or truck keys. (MOH/SOE, p. 7, lines 16-17.) The applicant is only able to reach out with his elbows by his sides and forearms stretched from his body. (MOH/SOE, p. 8, lines 7-8.) He has learned to use his hands almost as claws. (MOH/SOE, p. 7, line 36.)

Marilyn Watts, the applicant's wife, also offered testimony at trial. Ms. Watts credibly testified that the applicant is unable to grab a lot of things. (MOH/SOE, p. 9, line 26.) His hands are curled to hold utensils; which he just balances on his hands. (MOH/SOE, p. 9, lines 27-28.) According to Ms. Watts, the applicant's condition has gotten worse in the last six to eight months. (MOH/SOE, p. 9, lines 23-24.)

An F&A issued finding that the strict AMA Guides rating of 62% permanent disability had been rebutted and applicant's injury caused total permanent disability of 100% based on the opinion vocational expert, Joel Greenberg, M.S.

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

III

DISCUSSION

A. VOCATIONAL EXPERT EVIDENCE IS RELEVANT AND ADMISSIBLE FOR DATES OF INJURY POST JANUARY 1, 2013.

Petitioner broadly asserts that "consistent with the desire to eliminate more arbitrary considerations of DFEC or labor market considerations the clear language of LC §4660.l expressly omits all language or inference allowing vocational amenability or labor market components". (Petition, p. 5, line 26- p. 6, line 3.)

Yet, this ignores the ample case law that mandates the opposite conclusion. The court in *County of Alameda v. WCAB* held that Labor Code §4660.l does not preclude consideration of

vocational evidence for the purpose of rebutting a schedule permanent disability rating to establish permanent total disability. (*County of Alameda v. WCAB* (Williams) (2020) 85 CCC 792.)

In *Henessey v. Compass* (2019) 84 CCC 756, the WCAB held that "while applicant's vocational evidence was not substantial evidence to rebut a schedule permanent disability rating, it rejected defendant's argument that Labor Code 4660.l eliminated the rebuttal mechanism for determining permanent disability from a vocational standpoint for injuries after 1/1/13".

Similarly, the WCJ's Report and Recommendation in *Hanus v. URS/AECOM Corp.,* (2018) 83 CCC 1836 stated:

> The only difference in the way permanent disability is currently rated for injuries on or after January 1, 2013 involves the modifier for diminished further earning capacity (DFEC). … For injuries on or after January 1, 2013, section 4660.l(b) essentially did away with the complicated DFEC modifier by providing that all whole person impairments would be multiplied by an adjustment factor of 1.4. While it is true that this change eliminated much of the uncertainty and litigation surrounding an impact of an injured worker's DFEC on the final rating of permanent disability, it did not create a new schedule and it did not eliminate a party's ability to rebut the 2005 schedule.
> *(Hanus v. URS/AECOM Corp.* (2018) 83 CCC 1836.)

Even Ms. Tincher, petitioner's retained vocational expert, states the purpose of her professional assessment is to "determine if the estimated loss of earning capacity is captured by the standard rating" notwithstanding the post 1/1/13 date of injury. (Def. Exh. Y, Ms. Tincher, 9/9/20.) Accordingly, the court remains unconvinced that the 1.4 modifier automatically eliminated the ability to rebut the scheduled rating by vocational evidence.

B. <u>THE REPORT OF APPLICANT'S VOCATIONAL EXPERT, JOEL GREENBERG, IS SUBSTANTIAL AND SUPPORTS A FINDING OF PERMANENT TOTAL DISABILITY.</u>

An applicant could rebut the scheduled rating by showing the injury impaired her amenability to rehabilitation. (*Contra Costa County v. Workers' Compensation Appeals Board (Dahl)* (2015) 240 Cal. App. 4th 746.) The court in *Dahl* concluded that an employee may

challenge the presumptive scheduled percentage of permanent disability prescribed to an injury ... by demonstrating that due to industrial injury the employee is not amenable to rehabilitation and therefore has suffered a greater loss of future earning capacity than reflected in the scheduled rating. (Id.)

Here that showing is made. The comprehensive vocational assessment offered by Mr. Greenberg relies upon his own objective testing, substantial medical evidence, and an individualized valuation of the applicant's employability to effectively rebut the scheduled rating.

Petitioner, relying on a report over five years old, implies that there is 'too big of a gap' between the underlying medical impairment of 62% and a finding of permanent total disability. (Petition p. 8, lines 24-26.) Yet, the petitioner fails to cite any legal authority that mandates a minimum AMA rating as a condition precedent to invoking a vocational analysis set forth in *Dahl.* To the contrary, the value of the underlying medical impairment is not dispositive when determining whether the applicant has effectively rebutted the permanent disability rating schedule. Even a strict AMA rating as low as 16% did not preclude the ultimate finding of permanent total disability. *(Sutter Medical Foundation v. WCAB (Moulthrop)* (2014) 79 CCC 1570.) Instead, the proper inquiry in finding PTD is whether the injured worker was or was not amenable to vocational rehabilitation. *(Contra Costa County v. WCAB (Dahl)* (Supra) 80 CCC 1119.).

Petitioner oddly refers to 'lack of objectivity' to dispute the finding of 100% permanent total disability. This plainly misstates the record. Dr. Tran's rendition of the applicant's numerous objective factors of disability include:

1. Loss of cervical range of motion.
2. Shoulder MRI indicating rotator cuff tear and impingement syndrome.
3. Bilateral elbow ulnar nerve irritation.
4. EMG/nerve conduction studies indicating bilateral carpal tunnel syndrome andulnar nerve neuropathy.
5. Restriction of bilateral wrist range of motion.
6. Hypoesthesia and dysesthesia involving the second, third, and fourth fingers.
7. Restriction of range of motion of bilateral second, third, and fourth fingers.(Jt. Exh. 1, Dr. Tran, 10/18/19.)

The entire medical record, inclusive of these objective factors, provide support for the conclusion that the applicant is not amenable to vocational rehabilitation. After carefully

considering the reports of both Mr. Greenberg and Ms. Tincher, it was determined the opinion of Joel Greenberg was most consistent with the limitations imposed by the physicians and the applicant's credible testimony at trial.

C. APPLICANT IS TOTALLY DISABLED AFTER CONSIDERATION OF APPORTIONMENT.

The defendant claims the award of 100% permanent total disability improperly ignores the apportionment mandates of Labor Code §4663 and binding case law. (Petition, p. 9, lines 15-16.) The court disagrees.

Here, the applicant's right shoulder impairment was rated based on range of motion restriction. (Jt. Exh. 3, 12/16/17.) However, it is not the limited range of motion in the applicant's right shoulder that prevents the applicant from physically sustaining regular employment, even at a sedentary exertional level. Instead, his infeasibility to benefit from rehabilitation derive from the limitations as set forth by Dr. Tran and Dr. Mazur, including the avoidance of any repetitive forceful grasping bilaterally, as well as gripping, grasping and handling. (App. Exh. 1, Joel Greenberg, 11/18/20.)

In this case, Mr, Greenberg did not merely 'ignore or nullify the medical opinion' regarding apportionment. (Petition, p.11, lines 4-6.) Even a cursory review of the record renders this argument futile. Mr. Greenberg considered apportionment and opined, "while Dr. Tran indicates that there is a 50% apportionment due to past injuries he described, it is my opinion that the current injury has resulted in his being unable to be employed due to the additional pain and limitations that developed". (App. Exh, 1, Joel Greenberg, 11/18/19.)

A vocational expert is not guilty of ignoring a medical opinion simply because it is not followed, As here, it is only required that the vocational report include the injured employee's medical history, including injuries and conditions and residuals thereof, and the reasons behind the vocational opinion. (CCR §l0685(c).)

D. THE DIMINISHED FUTURE EARNING CAPACITY WAS DIRECTLY ATTRIBUTED TO THE WORK-RELATED INJURY.

In *Ogilvie,* the court concluded the *LeBoeuf* approach was limited to cases "where the employee's diminished future earnings are directly attributable to the employee's work-related injury, and not due to nonindustrial factors such as general economic conditions, illiteracy,

proficiency in speaking English, or an employee's lack of education." *(Oglivie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal. App. 4th.)

It is alleged, without basis, that Mr. Greenberg considered non-industrial factors including the applicant's lack of education and skills as contributing to his inability to find other jobs and lack of amenability to vocational rehabilitation. (Petition p. 11, lines14-16.)

In this case, as noted by Mr. Greenberg, the applicant's limited education did not prevent or even impede his successful and stable 45-year career in the same industry with the same employer, Mendocino Forest Products. (App. Exh. I, Joel Greenberg, 11/18/20.)

It was only after suffering an industrial injury that the applicant could no longer physically perform and sustain the requisite job duties of a forklift operator.

The medical impairment of 62% was not "completely dismissed in favor of an arbitrary conclusion" as asserted by petitioner. (Petition, p. 6, lines 6-7.) Instead, based on the record as a whole, the court properly relied upon the opinion of Mr. Greenberg to conclude that the applicant was not amenable to vocational rehabilitation and had a total loss of labor market access based solely upon the effects of his industrial injury.

Further, on questions of credibility, judgment is deferred to the WCJ, who is in the best position to observe the demeanor of the witness. *(Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal. 3d 312, 318.) Having the opportunity to observe the applicant's conduct at trial, his testimony is considered reliable and credible. Defendant failed to provide sub rosa videos or any other evidence that would contradict or impeach applicant's testimony regarding his pain level or its impact on his daily ability to function.

Finally, any contention that the undersigned WCJ failed to fully explain the basis for its opinion is remedied by this report and recommendation. *(Smales v. WCAB* (1980) 45 CCC 1026 (writ denied).)

RECOMMENDATION

It is respectfully recommended that the Petition for Reconsideration be denied.

Dated: June 10, 2021
Katie F. Boriolo
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE