

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

WILBUR HOLMES JR., *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
CENTINELA STATE PRISON, legally uninsured, administered by STATE
COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ9507174
San Diego District Office**

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

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on April 29, 2021, wherein the WCJ found in pertinent part that applicant's June 26, 2013 bilateral wrist injury caused 83% permanent partial disability, and that applicant was entitled to an un-apportioned award of permanent disability benefits.

Defendant contends that the reports and deposition testimony of orthopedic qualified medical examiner (QME) Joseph Anthony Matan, M.D., are not substantial evidence regarding the issues of the date of injury and permanent disability; that for the purpose of calculating commutation, the correct permanent disability indemnity start date is November 27, 2019; and that a clerical error in the F&A should be corrected to properly identify applicant.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be granted for the limited purpose of correcting the permanent disability payment start date in the DEU Commutation calculation, and to correct the "footer" clerical error to properly identify applicant, and otherwise that the Petition be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings

consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.¹

BACKGROUND

Applicant claimed injury to his bilateral wrists as a result of “repetitive trauma on the job” while employed by defendant as a correctional officer on June 26, 2013. (see June 25, 2014 Application for Adjudication of Claim.)

QME Dr. Matan evaluated applicant on April 16, 2015. (Joint Exh. 1, Dr. Matan, April 16, 2015.) Dr. Matan examined applicant, took a history, and reviewed the medical record. He diagnosed applicant as having, “Bilateral carpal tunnel syndrome postoperative status with residual signs and symptoms” and stated:

It is my opinion that Mr. Holmes' condition is permanent and stationary / MMI.
¶ ... It is my opinion that his condition is 100 percent caused by his accident falling off the ATV [all-terrain vehicle] and repetitive use of his hands while working as a correctional officer and correctional sergeant for Centinela State Prison.
(Joint Exh. 1, p. 8.)

On January 23, 2018, Dr. Matan re-evaluated applicant. (Joint Exh. 2, Dr. Matan, January 23, 2018.) Dr. Matan re-examined applicant, took an interim history and diagnosed:

1) Postoperative status bilateral carpal tunnel syndrome with residual signs and symptoms. 2) Bilateral ulnar neuritis [ulnar nerve entrapment], more severe on the right than left.
(Joint Exh. 2, p. 6.)

The doctor then stated that because of the worsening of applicant’s condition, he was temporarily totally disabled, and that:

Absent evidence of severe diabetic neuropathy, it is my opinion that Mr. Holmes' conditions of bilateral carpal tunnel and bilateral ulnar nerve problems are 100 percent related to his injury of June 26, 2013. This date of injury was a specific injury when he was thrown off an ATV cart while doing training, coming down on both arms.
(Joint Exh. 2, p. 8.)

¹We previously issued an Opinion and Order Dismissing Petition for Removal on May 5, 2021. Deputy Commissioner Patricia A. Garcia was a member of the panel. A new panel member has been assigned in her place.

After reviewing the June 12, 2018 electrodiagnostic studies, Dr. Matan submitted a supplemental report wherein he stated:

Dr. Bullock's electrodiagnostic studies confirm the clinical findings of bilateral median and ulnar neuritis which I found at my most recent QME. ...¶ It is my opinion that these are all due to his work at the state prison. I see no evidence for apportionment. There is no evidence that this is due to diabetic neuropathy. (Joint Exh. 3, Dr. Matan, July 5, 2018, p. 3)

On March 13, 2020, applicant was again re-evaluated by Dr. Matan. (Joint Exh. 4, Dr. Matan, March 13, 2020.) Regarding the cause of applicant's bilateral wrist injury, Dr. Matan said:

In my opinion, the applicant's condition is 100 percent caused by the injury of June 26, 2013. ¶ The symptoms starting in August 2013, at work in my opinion were not the cause of the present disability but reflect the damage that occurred at the time of the fall from the ATV. ¶ I see no evidence of apportionment. (Joint Exh. 4, p. 10.)

In his May 8, 2020 supplemental report Dr. Matan explained that in addition to the disability he had previously described, applicant had permanent disability due to his loss of right upper extremity dexterity. (Joint Exh. 5, Dr. Matan, May 8, 2020.)

Dr. Matan's deposition was taken on December 11, 2020. (Joint Exh. 6, Dr. Matan, December 11, 2020, deposition transcript.) His testimony included:

Q. Okay. And then for the causation you attributed 100 percent to the ATV accident around June 2013, correct?

A. I believe that I stated that in at least one of my reports. In general, those kinds of nerve problems tend to be more due to repetitive work and he did do repetitive hand work, but it seemed to have started with the ATM [sic] accident and so I used that as the date of injury and the causation.

(Joint Exh. 6, p. 7.)

Q. So Doctor, does it remain your opinion that the cause of Applicant's bilateral ulnar and median nerve neuropathy is the ... ATV accident on the job of June 26 of 2013?

A. Yes.

Q. And the permanent disability which you described for purposes of that injury is 100 percent related to that injury without apportionment. Does that remain your opinion?

A. Yes.

(Joint Exh. 6, p. 13.)

Dr. Matan was provided additional medical records to review and in his February 22, 2021 supplemental report he stated:

It was my opinion the applicant's condition was 100 percent caused by the accident falling off the ATV and repetitive use of his hands while working as a correctional officer and correctional sergeant for Centinela State Prison. I saw no evidence for apportionment. ¶ I would note that Mr. Holmes had been working for the State Department of Correction and Rehabilitation doing the same type of work since 1995 so all of these previous symptoms of carpal tunnel came on while he was doing that type of work. It was only when he required surgical treatment that any real interest was put in it.
(Joint Exh. 7, Dr. Matan, February 22, 2021, p. 3 [review of previous reports].)

It is my opinion that Mr. Holmes's median and ulnar nerve problems are due to repetitive and heavy use on the job over some 20 years. Although they did preexist the June 26, 2013 date of injury, cumulative trauma problems always preexist the date of injury since the date of injury is used at the time they are reported as industrial.
(Joint Exh. 7, p. 6.)

I will now address the questions posed by Ms. Stewart.

- 1) It is my opinion that the cumulative trauma of June 26, 2013, was a new injury and not a preexisting condition.
- 2) I see no evidence for apportionment. Mr. Holmes was doing the same type of work for 20 years and had work-related symptoms for an extended period of time until he finally underwent surgery.
(Joint Exh. 7, p. 6.)

The parties proceeded to trial on March 2, 2021. The parties stipulated that on June 26, 2013, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his wrists. (Minutes of Hearing and Summary of Evidence (MOH/SOE), March 2, 2021, p. 2.) Applicant testified at the trial and the WCJ's summary of applicant's testimony included:

He has been treating for carpal tunnel for a while. He was diagnosed in 2012 by Dr. Teske ... Mr. Holmes understood that it was arthritis, and he does not recall any doctor saying that it was job related.
(MOH/SOE, p. 5.)

...There was an incident at work on June 26, 2013. He was doing an emergency run along with others to the Level 1 Yard. ... They were detailed to go out and restrain violent inmates. There was a golf cart. The applicant and one other person sat on the back, and they were fully equipped. The golf cart flipped up, and the applicant fell out the back. He fell on the asphalt, which was rough. The

numbness in both of his hands in 2012 got worse after the golf cart incident. (MOH/SOE, pp. 6 – 7.)

The issues submitted for decision included permanent disability/apportionment and defendant's objection to the trial going forward without further discovery. (MOH/SOE, p. 3.)

DISCUSSION

Labor Code section 3208.1 defines injury as follows:

An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.

(Lab. Code § 3208.1.)

Although defendant argues that Dr. Matan's reports are not substantial evidence regarding the date of injury, it appears that the actual issue being raised by defendant is whether applicant had a specific injury, a cumulative injury, or both.

As noted above, Dr. Matan initially concluded that applicant's bilateral wrist condition was the result of the June 26, 2013 ATV accident. However, during his deposition Dr. Matan stated that the type of "nerve problems" applicant had "tend to be more due to repetitive work and he did do repetitive hand work" but since the symptoms started after the ATV accident he "used that as the date of injury and the causation." (Joint Exh. 6, p. 7.) Also, in his February 22, 2021 report Dr. Matan stated, it was his opinion the applicant's condition was 100 percent caused by the ATV accident "and repetitive use of his hands while working as a correctional officer" and:

It is my opinion that Mr. Holmes's median and ulnar nerve problems are due to repetitive and heavy use on the job over some 20 years. Although they did preexist the June 26, 2013 date of injury, cumulative trauma problems always preexist the date of injury since the date of injury is used at the time they are reported as industrial. ¶ It is my opinion that the cumulative trauma of June 26, 2013, was a new injury and not a preexisting condition. ... Mr. Holmes was doing the same type of work for 20 years and had work-related symptoms for an extended period of time until he finally underwent surgery. (Joint Exh. 7, p. 6.)

An award, order, or decision of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code, §§ 5903, 5952(d);

Appeals Bd. (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination and an accurate history, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).

Here, applicant claimed injury to his wrists as a result of “repetitive trauma on the job” on June 26, 2013 (the date of the ATV accident) and defendant stipulated the applicant sustained an injury on June 26, 2013. More importantly, as discussed above, Dr. Matan initially stated that applicant’s bilateral wrist/nerve condition was caused by the June 26, 2013 ATV accident. (See e.g. Joint Exhs. 1, 2, and 4.) Subsequently, he explained why it was caused by more than 20 years of repetitive and cumulative trauma. (See Joint Exhs. 6 and 7.) At no time did he explain the apparent inconsistency in his stated opinions. Having reviewed the entire record, it is clear that applicant sustained an injury AOE/COE to his bilateral wrists but we are unable to determine whether applicant’s condition is the result of a specific injury, a cumulative injury, or both. This is a threshold issue that must be determined and Dr. Matan’s reports and deposition testimony do not constitute substantial evidence upon which the decision can be made.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or where there is insufficient evidence to determine an issue. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) When the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Upon return of this matter, it would be appropriate for the parties to request that Dr. Matan submit a supplemental report to clarify his opinion as to whether applicant sustained a specific injury, a cumulative injury, or both. If Dr. Matan does not adequately clarify his opinion, it may be in the parties’ interest to have applicant evaluated by an agreed medical examiner or in the alternative, for the WCJ to appoint a regular physician. (Lab. Code § 5701.)

Finally, return of this matter to the WCJ will give her the opportunity to correct the permanent disability payment start date in the DEU Commutation calculation, and to correct the clerical errors in the “footer” and the Award, to properly identify applicant and defendant.

Accordingly, we grant reconsideration, rescind the F&A, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on April 29, 2021, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 29, 2021 Findings and Award is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 19, 2021

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

**WILBUR HOLMES, JR.
O'MARA HAMPTON
STATE COMPENSATION INSURANCE FUND**

TLH/pc

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