

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

REBECCA MILLS, *Applicant*

vs.

**STATE COMPENSATION INSURANCE FUND, Permissibly Self-Insured,
Administered by AIMS, *Defendants***

**Adjudication Number: ADJ10774716
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 10, 2023

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

**REBECCA MILLS
GOLDMAN, MAGDALIN & KRIKES, LLP
BROWN & DELZELL, LLP
BOEHM & ASSOCIATES**

AS/ara

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

**REPORT & RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

A. INTRODUCTION

- 1. IDENTITY OF PETITIONER:** Defendant
- 2. TIMELINESS:** Petition was timely filed.
- 3. VERIFICATION:** A verification is attached.
- 4. DATE OF INJURY (DOI):** CT – 2/4/2002 – 12/30/2016
- 5. INJURY:** Stroke & Psychiatric Injury
- 6. OCCUPATION AT DOI:** Claims Adjuster
- 7. PETITIONER’S CONTENTIONS:** The WCJ erred by finding applicant had sustained industrial injury in the form of a stroke and psych injury while working as a claims adjuster. Also, defendant requests “the report of Dr. Kamrath dated 3/1/2017, Exhibit 17, be correctly identified as to be not contemporaneous to the CVA of 1/1/2017 as a matter of fact.”

B. DISCUSSION - RESPONSE TO DEFENDANT’S CONTENTION

I’m not clear as to defendant’s request that “the report of Dr. Kamrath dated 3/1/2017, Exhibit 17, be correctly identified as to be not contemporaneous to the CVA of 1/1/2017 as a matter of fact.” Exhibit 17 is the deposition transcript of Dr. Kamrath date 5/30/22.

At page 8:16-19, of defendant’s Petition for Reconsideration, it is stated, “Further, the Trial Judge fails to provide an analysis of why his opinion, as written in that report, or subsequently expressed in his testimony (Exhibit 17, page 16, line19-25 and page 17, line 1-14) are probative when Dr. Kamrath testified that he was not aware of Applicant’s job title or job duties (line 210-19, page 25, Exhibit 17.)” However, as the excerpt from the deposition below indicates Dr. Kamrath was aware of applicant’s “job title.”

Question by Attorney Singh: “In your understanding, what was Ms. Mills’ job?”

Answer by Applicant: “I think she was a claims supervisor or claims manager.”

In his deposition testimony, Dr. Kamrath, provides a thorough explanation as to what type of stress applicant was under at work just prior to her stroke. In addition, he explains in depth how it is possible for work stress to be at least one factor of causation for a stroke, such as the one suffered by applicant. (This is discussed in more detail in my Opinion on Decision set forth below.)

The basis for the remaining aspects of my decision with which defendant disagrees is set forth in my Opinion on Decision as set forth below:

OPINION ON DECISION

I. Facts

Rebecca Mills, born [], while employed during the cumulative trauma period 2/4/2002 to 12/30/2016 as a claims adjuster, Occupational Group Number 111, at Sacramento, California, by State Compensation Insurance Fund, sustained injury arising out of and in the course of employment in the form of a stroke as well as a psychiatric injury as a compensable consequence of the stroke.

STIPULATED CHRONOLOGY OF EVENTS:

<u>DATE</u>	<u>DESCRIPTION OF EVENT</u>
01/01/2017	Applicant admitted in ER.
02/27/2017	Application filed.
03/28/2017	Claim delayed.
06/06/2017	Claim denied based on lack of substantial medical of factual evidence.
07/05/2017	Applicant seen by PQME Dr. Scott Anderson in internal medicine.
07/20/2017	Claim denied based on report of PQME Dr. Anderson.
08/27/2017	Supplemental report of Dr. Anderson.
09/06/2017	Deposition of PQME Dr. Anderson.
11/01/2017	Applicant seen by Dr. Scott Anderson in a Panel QME reevaluation in internal medicine.
11/27/2017	Supplemental report of Dr. Anderson.
01/28/2019	Deposition of Robert Douglas, Assistant Claims Manager.
03/28/2019	Deposition of George Hollie, Claims Supervisor.

10/28/2019 Claim denied.

10/14/2020 Deposition of PQME Dr. Anderson.

01/05/2021 Minutes and order for additional Panel QME in psychiatry.

05/28/2021 Evaluation with Panel QME Dr. Dawnmarie Risley.

01/31/22 Supplemental report from psych Panel QME Dr. Dawnmarie Risley.

05/20/2022 Deposition of Dr. Kamrath.

06/08/2022 Supplemental report from PQME Dr. Scott Anderson.

II. Issues

The issues to be determined in this case are:

- Whether Applicant's injury in the form of a stroke and compensable consequence of her psychiatric compensable consequence arose out of and occurred in the course of Applicant's employment (AOE/COE) with Defendant during the cumulative trauma period ending 12/30/2016.
- Whether Applicant is entitled to temporary disability from the period of 12/30/2016 to 7/5/2017.
- Whether applicant attorney is entitled to attorney's fees.
- Whether applicant has a need for further Medical Treatment for her industrial injuries.
- Whether the deposition of applicant's primary care physician, Dr. Kamrath, should be ordered into evidence.

III. Medical Evaluators

The following physicians served as medical evaluators in this case:

PQME - Internal Med - Dr. Scott Anderson - PQME

PCP - Endocrinology - Dr. Richard Kamrath - Primary Care Physician

PQME - Psychiatry - Dr. Dawnmarie Risley – PQME

IV. Legal Analysis

A. Applicant Has Met Her Burden of Proof Regarding Industrial Causation

Applicant began working for SCIF as a claims examiner on 2/4/2002 and continued to work in that capacity until Friday, 12/30/2016, when she suffered a debilitating stroke, at which time she was

put on medical leave. Her symptoms had begun at work that day and escalated to the point where she was admitted to the hospital on Sunday 1/1/2017. She has not been able to return to work and currently lives in an assisted living facility.

In the case of *South Coast Framing v. WCAB (Clark)*, (2015) 80 Cal Comp Cases 489, the California Supreme Court stated, “All that is required [to prove industrial injury] is that the **employment be one of the contributing causes** without which the injury would not have occurred.” (Emphasis added.)

As discussed in more depth below, applicant’s employment with defendant involved extreme stress on a daily basis over a cumulative period of fourteen years. The medical evidence establishes that this stressful work environment contributed to and ultimately resulted in her Cardiac Vascular Accident (CVA) injury. Therefore, applicant has met her burden of proving that her stroke arose out of employment and has occurred in the course of employment.

B. Medical Evidence in Support of AOE/COE

1. Report of Psychiatrist OME in this case, Dr. Dawnmarie Risley

The Psychiatrist QME in this case, Dr. Dawnmarie Risley in her report of 6/20/2021 (Exhibit 14 at page 20-21), sets forth the work stress under which applicant was working:

“Based on the history that the applicant presented, psychological testing and my mental status examination, the applicant meets DSM criteria for Adjustment Disorder, unspecified, resolved. Mrs. Mills was under stress and tension at work. She developed headaches, found herself penalized for the job her supervisor failed to do, pushed herself more than her peers to get the work completed, found herself in tears over her frustration having to go around her supervisor to get her job complete, and developed physical symptoms of left hand numbness and tingling. She also had a claimant threaten to commit suicide in front of her. This disrupted her sleep as she could not tum off her mind to fall asleep easily. She was hypervigilant, feeling tense and on guard, having her husband transport her to and from work and never leaving work alone. Trying to complete her job for her clients, she found her supervisor’s behaviors interfering with her results. Her appetite increased as she used food to deal with the stress.

Prior to her stroke, she was given additional tasks that belonged to three people, finalize a case load of 225 people, all before the turnover of the computer system which would cause loss of the case files if not finalized and saved. This is in addition to the usual training exercises due. She recalls a shortened mood, increased headaches, sore neck and back, tired, anergic, anxious, irritable, hostile, and angry and used foul language, uncharacteristic of her; having gastrointestinal symptoms. On the day of her stroke, was working to complete all the tasks that were due, frustrated that her supervisor left her claims sitting on his desk, and unable to tell anyone about her left arm becoming heavy as she was the only one who remained in the office as all had left by then.”

2. Applicant's PCP Dr. Kamrath First Report of Occupational Injury

Applicant's PCP (primary care physician) for over 30 years, Dr. Kamrath issued the "Doctor's First Report of Occupational Injury or Illness" (Exhibit 16) as he was her designated PCP at the time of her injury. Once he realized that this injury was industrial, he relinquished care, to allow the medical system provided by the workers' compensation system to take over applicant's medical treatment, since he is not part of that system. In his first report of Industrial Injury, Dr. Kamrath commented as follows:

17. DESCRIBE HOW THE ACCIDENT OR EXPOSURE HAPPENED. "Patient experiencing stress at her workplace for 6 months prior to injury, d/t, deadlines, mandatory training, increased case load. On 12-30-16, patient noticed numbing of left hand while working on her computer."

18. SUBJECTIVE COMPLAINTS. On 20-30-16, while working at computer. Patient reported numb left hand. Patient reports increased stress at work up to and including the day her hand became numb.

19. OBJECTIVE FINDINGS. "(A) On 1-1-17, Patient was admitted to North Bay Hospital d/t stroke. She suffered the following injuries: left facial droop, left arm/hand numbness/weakness, Inability to move Left foot, Left lower extremity, Left hip, Left arm, Left finger, GI distress, causing faintness, double vision, and additional stress. Patient also had difficulty swallowing. Systolic BP in ER >200. It is probable that patient's job-related stress led to her CVA.
(B) MRI 1/1/17 should acute infarct posterior (R) Ventricular nucleus"

20. Diagnosis: "CVA, HTN (401.1) ICD-9 Code 434-91"

21. Are your findings and diagnosis consistent with patient's account of injury?
Yes."

Dr. Kamrath's deposition was taken on May 20, 2022 (Exhibit 17, Page 16, line 19-25, page 17 line 1-14 page 17 line 21-25 and page 18 line1,) wherein he explained the how the stress a person might experience could cause that individual to sustain a CV A as follows:

"Question by Applicant Attorney: And you believe in general that there is correlation between stress and stroke?

Answer by Dr. Kamrath: Yes.

Question: And can you explain the medicine behind that? Why is that the case?

Answer: I can explain that to some degree, the theories that have been expressed about why stress can bring on a stroke. The medical literature suggests that it can increase blood pressure. Stress can increase blood pressure. Stress can increase the coagulability of the blood, what we call a hypercoagulable. Stress can cause spasm of the arteries.

And in someone with - either with or without underlying issues, such as diabetes or hypertension, stress has been associated in the medical literature with stroke....

Question: Okay. And is it your opinion with reasonable medical probability that for Ms. Mills, her work stress was a contributing factor in her stroke that occurred on December 30, 2016?"

Answer: There's no question in my mind that it's a contributing factor."

Given that the doctor's first report of injury is relatively contemporaneous with applicant's CVA, it is deemed most reliable as far as causation of injury is concerned. It indicates that applicant's stroke began while she was at work on Friday 12/30/2016 and escalated from there. As her primary care physician for over 30 years, Dr. Kamrath has no question in his mind that the stress she experienced from her work environment is a contributing factor to her stroke. It should be noted Dr. Klamath's conclusion is based on the correct legal standard for all medical opinions, "reasonable medical probability." With this information, applicant has clearly met her burden of proof that her CV A was industrial.

C. Defendant argues that the PQME in internal medicine, Dr. Scott Anderson, should be followed to find no industrial injury to applicant in this case.

Although defendant argues that the PQME in internal medicine, Dr. Scott Anderson, should be followed to find no industrial injury to applicant in this case, it is curious that Dr. Anderson seems to agree with applicant's PCP Dr. Klamath in finding a causal connection between increased level of emotional stress at work and an increased risk of stroke.

This is discussed in depth in his deposition which occurred on Wednesday, 9/6/2017. (Exhibit 4, page 11:3 to 14:6) After reviewing Dr. Klamath's first report of injury, establishing applicant's increased level of stress contemporaneous with her stroke, in particular the fact that upon entering the Emergency Room, her systolic blood pressure was greater than 200, the PQME, Dr. Anderson, admits that these indicators described by Dr. Klamath contemporaneous with applicant's stroke could have been induced by work related stress as follows:

"Question by Applicant Attorney: And is this the first time that you are seeing that a doctor has opined that her job related stress led to her CVA?

Answer by Dr. Anderson: To the best of my recollection. Yes.

Question: So looking at her history in this report, there's discussion regarding the stress in the six month prior to 12/30/2016. There's also emphasis placed on stressful events of that day.

And in looking through your report there's no discussion regarding the stress in that she was under on that particular day, instead of focusing on some difficulties she had with a manager.

So did you actually obtain a history from her of the events of that day [12/30/2016] and the pressure she was under?

....

Answer: To the best of my recollection, she described more of a chronic, cumulative stress, rather than an acute stress on that day.

Question: Did she report to you, as part of her history, that her caseload had significantly increased in the last 2 months prior to her stroke?

Answer: I would have to refresh my memory by looking at the report again.

She did describe having what she called a “ton of work.” And so she did describe having a workload that was challenging for her to keep up with, and I do have some independent recollection of her describing that.

Question: Do you recall her describing to you a significant uptake in the workload in November and December of 2016?

Answer: To the best of my recollection, she did describe a gradually increasing workload in the weeks or months leading up to her stroke, but I don’t recall her describing the events of that specific day.

Question: Okay. So you recall her describing to you that there was a change in the SCIF computer system that was going to cause caseloads to be erased by the end of the year?

Answer: I don’t have that degree of recollection.

I do recall that she described entering data and keeping up with the workload as causing her stress.

Question: Okay

Answer: And as I look at that report, there was some kind of new electronic data system that she was learning to use as well.

Question: But you do not go into detail with her than about specifically the stress she was under on 12/30/2016, specific to that day?

Answer: Correct

.....

Question: Doctor, on page 17 of your report as you are discussing causation, you describe that her job does not involve heavy lifting or straining which would likely increase arterial blood pressure.

However, are you aware that stress, increased stress level may increase arterial blood pressure?

Answer: Yes.

Question: So hypothetically, if she did have increased stress levels in the 6 months leading up to this event, with an uptake specifically on 12/30/2016, is it possible that that could have caused her blood pressure to increase, therefore causing a stroke?

.....

Answer: Yes”

The above discussion of causation by Dr. Anderson indicates that it was, in fact, plausible for applicant’s increased level of work stress to have contributed to her CVA (i.e., her cerebrovascular accident). This analysis is inconsistent with his conclusion that the CVA was non-industrial. (Dr. Anderson’s report dated 11/9/2017 Exhibit 8) In his report at the bottom of page 47 Dr. Andersen explains why he believes the CVA is non-industrial:

“Comments regarding causation, as noticed in my first report this individual has multiple risk factors for cerebrovascular accident including age greater than 60, hypertension, diabetes, hyperlipidemia and family history of CVA. Although Ms. Mills attaches significance to not being persistently on insulin for 30 years, her record show clear evidence of diabetes mellitus causing end organ damage to her eyes, skin and therefore probably also her vascular supply to the brain. Also, I am not persuaded that her work environment would contribute to development of stroke. It is noted in my first report there is no history of what I would consider to be excessive stress emotionally. She got along well with co-workers.

There is no history of any type of environment that would give rise to a fight or flight response or posttraumatic stress disorder picture. There is no history of heavy lifting that would have caused Valsalva maneuver and increased blood pressure.”

In a later report signed on 7/14/2022 (Exhibit 13) at page 4, Dr. Anderson expands on his analysis of causation that the CVA is non-industrial. This explanation does not reconcile with his statements made during his deposition that it was possible for applicant’s increased stress level at work to have contributed to her CVA. Dr. Anderson explained as follows:

“Getting back to the issue of causation, I am therefore left with the fact that this individual unfortunately suffered a stroke. The risk factors for developing a stroke were significant on a non-industrial basis including hypertension, diabetes and hyperlipidemia. I am not in receipt of any additional information that leaves me to

conclude that the stroke occurred due to work-related factors. I did note in my December 15, 2021 report that the individual complained to QME Dawnmarie Risley, D.O. that she found it is stressful to deal with training, meetings, work interruptions, and other aspects of her job environment. Unfortunately, these kinds of frustrations are ubiquitous in nearly every office job. I am not left with any description of a major work-related event that would be likely to adversely affect the cardiovascular system or blood flow to the brain. Therefore, I return to my previous opinion that her stroke and other diagnostic conditions were non-industrial in causation ...”

My primary concern with Dr. Anderson’s conclusion of non-industrial causation of applicant’s stroke is that he appears to believe that in order for her stroke to be industrial there must have been “proof” of a single “major work-related event that would be likely to adversely affect the cardiovascular system or blood flow to the brain.” He doesn’t take into account the cumulative effect of continuance high stress work activities over the course of the months (or even years) leading up to the CVA. Though he does admit that applicant suffers from years of “hypertension” a strong risk factor for the CVA, he provides no explanation as to why applicant’s “hypertension” was not created by stress at work.

After reading all of the medical evidence provided by Dr. Anderson, it appears as if he has weighed applicant’s risk factors for developing a stroke (including hypertension, diabetes and hyperlipidemia) as most heavily focused on a non-industrial basis rather than on an industrial basis. But this is not the correct legal theory to apply.

As stated above, in the case of *South Coast Framing v. WCAB (Clark)*, (2015) 80 Cal Comp Cases 489, the California Supreme Court stated, “All that is required [to prove industrial injury] is that the **employment be one of the contributing causes** without which the injury would not have occurred.” Emphasis added. As discussed in more depth below, applicant’s employment with defendant involved extreme stress on a daily basis over a cumulative period of time which clearly contributed to her CVA injury. Therefore, applicant has met her burden of proving that her stroke arose out of employment and occurred in the course of employment.

D. Does Applicant suffer from a psych injury as a compensable consequence of her industrial CVA?

At pages 21-23 of her June 20, 2021 report, the Psychiatric PQME Dr. Risley gives a thorough explanation as to why applicant suffers from an industrial psych compensable consequence “Adjustment Disorder” to her industrial stroke.

“In order to establish that the actual events of employment were predominant as to all other causes, psychiatric injury must be caused 51% or higher within reasonable medical probability by actual events of employment.

The applicant was functioning well with no significant psychological symptoms until about 2014 when she began to complain of stress headaches. Mrs. Mills reported to her physicians the stress she was wider. She began to “stress eat” as a coping strategy to deal with her stress. This led to weight gain and worsening of her diabetes. Changes of

supervision, thoughts of losing her job, computer programs changing, her supervisor's dismissal of her work, allowing her reports to sit on his desk, having been penalized for claims not settled timely beyond her control while awaiting supervisor signature, all added to her stress level.

These stressors continued to build and were surmounting with the addition of the claimant and past history of claimants threatening her. She was markedly distressed by the claimant who threatened to kill himself in front of her in the parking lot so much so that she changed her pattern of leaving the building and had her husband accompany her to and from work.

Tensions between her and her supervisor grew with his repeated dismissal of her concerns about the urgency of her claims. The applicant began to have cerebrovascular symptoms by July 2016 where she found her left hand tingling. This would occur at work where she would beat her hand to relieve the symptom.

Subsequently, she was sent to the emergency room and hospitalized for observation in the event of a stroke. Her stress pinnacled when she was assigned the duties of three people in December. While under usual circumstances as a supervisor, she would be given the duties of a vacationing employee, she returned to the surprise of two vacationing employees for an extended period (three weeks); thus, having to complete her duties and the duties of her supervisees in addition to the added work of the computer and having to convince her supervisor to complete his signature to close her reports.

The applicant reported a positive home life at the time of her work stressors. She found much of the stress relieved when she returned home but did have some side effects of stress such as a mind that would not shut off: trouble sleeping and fatigue from poor sleep and stress.”

“While the applicant had medical conditions that are known contributors to a cerebral vascular accident, including diabetes and hypertension, the applicant, when warned by her physician, would change her eating and exercise behaviors so as to remedy her medical conditions. She was not particularly stressed about her medical conditions, but took an active approach to ameliorate any progression or the conditions as advised by her physician.

While there were family members who died during her tenure at State Fund, these were not contributing factors. The applicant recalled grieving normally for her family members and moving forward. This is supported by her continued positive and productive work ethic.”

The applicant was complaining of “stress” prior to her stroke. She developed an adjustment disorder as a result of this stress. Her workload mounted to that of three people. Her stress level pinnacled with her shouldering the workload of three people while her supervisor allegedly shirked his responsibilities by not signing her reports, but neglecting those reports on her desk.

Knowing this behavior could lead to lost reports and penalization, Mrs. Mills stress level was in the red zone of high perceived stress during the period leading to her stroke.

While “stress” itself is not an independent risk factor for stroke, self-reported high stress intensity doubles the risk for fatal stroke compared to those not stressed. Thus, stress contributes to stroke.

Mrs. Mills reported a high level of stress on the job where she began to have stroke symptoms peaked on the day when all the work of December was due. Her stroke appeared twenty minutes before she was due to leave. In my opinion, her stress contributed to her having the stroke. As to the percentages of stress versus other risk factors such as diabetes and hypertension and any other risk factors Mrs. Mills may have, is deferred to the internist, Dr. Scott Anderson to determine.

Based on current information available, I find that within reasonable medical probability, the applicant’s psychiatric injury of Adjustment Disorder, unspecified, resolved was predominantly caused (>50%) by the alleged workplace events with 55% due to the excessive workload given in December prior to her stroke, 35% due to personnel actions (concern about losing her job 5%, computer programs changing 5%, her supervisor’s neglect of signing her work 10%, having been penalized for claims not settled timely beyond her control while awaiting supervisor signature 15%), and 10% due to the suicidal claimant’s threats.

I can state with reasonable medical certainty that the personnel actions were the substantial cause of the psychiatric injury. however, ultimately whether or not these were in good faith, and the psychiatric injury is compensable, is deferred to the trier-of-fact.

While the applicant was exposed to a violent act, hearing a claimant threaten to commit suicide in front of her in the parking lot, it was not a substantial cause of her injury.

Therefore, Labor Code 3208.3(2) does not apply in this case.

It appears that the dates of injury in this case are subsequent to January 1, 2013, and, as such, LC 4660.1 (c) is a consideration. Because stress and adjustment disorder led to the physical injury, the psychiatric injury would be considered a primary injury. Thus, LC 4660.1(c) does not apply.” (Emphasis added.)

E. Admission of PCP’s deposition into Evidence

Defendant argued that deposition of applicant’s PCP, Dr. Kamrath should not be entered into evidence, as defense argues that applicant solicited Dr. Kamrath’s cooperation on her behalf. However, after listening to applicant’s credible testimony at trial, nothing would seem farther from the truth. See MOH page 9:27 - 41 from trial dated 11/14/2022 wherein applicant testified as follows:

“On May 20, 2022, Dr. Kamrath’s deposition was taken. Prior to that, applicant attorney told Ms. Mills that she wanted to take the deposition of her PCP Dr. Kamrath. Ms. Mills did not know whether or not that would be possible, since it was her understanding that he had retired from John Muir. Nevertheless, she made some phone calls to try to track him down and found out that he was working two days a week at John Muir. Somehow Dr. Kamrath found out from one of the several people applicant had called that Ms. Mills was trying to get in touch with him, so he gave her a call and she told him that her attorney wanted to take his deposition and that her attorney would be calling him. He told her that he would have to check with John Muir, his current employer, due to his malpractice insurance tail, and make sure that he could do that. She thanked him, and he said he hoped it went well for her.”

There was nothing presented at trial that would lead me to believe that Dr. Kamrath’s deposition testimony is in any way biased either for or against applicant. Therefore, it is ordered into evidence at this time.

A. Entitlement to TD and Related Attorney’s Fee

Temporary disability is not defined by statute but is considered a temporary impairment that will improve over time, once the injured worker has been given appropriate medical treatment to resolve his or her condition. Total Temporary Disability (TTD) payments are intended to be a temporary wage replacement during applicant’s period of recovery. Once the injured worker has plateaued, and there is no expectation that his or her condition will improve with further medical treatment, the applicant is considered permanent and stationary and no longer entitled to TTD payments. (*See Western Growers Ins. Co, v. WCAB (Austin)* (1993) 16 Cal.App.4th 227, 236 [58 Cal Comp Cases 323].) Applicant’s claim that she is entitled to TTD from 12/30/2016 to 7/5/2017 as a result of her industrial injury is supported by the substantial medical evidence in this case, the exact amounts of which are to be adjusted by the parties with WCAB jurisdiction reserved in the event the parties are not able to resolve the issue amongst themselves, less 15% applicant attorney’s fee of the TTD awarded.

V. Medical Treatment

Consistent with the medical reports admitted into evidence in this case, medical treatment will be needed for this applicant and supports an award of further medical treatment for her industrial injuries. In the case of *Granado v. WCAB*, (1968) 33 CCC 647, the California Supreme Court made it clear that with regard to an analysis of “causation of injury,” the evaluating physician may not apportion liability for medical treatment or for temporary disability. This is still the law today.

VI. All Other Issues Deferred

All other issues (including but not limited to, permanent disability, apportionment, attorney’s fees as a percentage of permanent disability, sanctions and penalties) are deferred at this time, with WCAB jurisdiction reserved in the event that the parties are unable to resolve this issue amongst themselves.

C. RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the petition for reconsideration filed by defendant herein be **DENIED** on the merits.

DATE: December 27, 2022

Colleen S. Casey
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE