

**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**RENEE BRACY, *Applicant***

**vs.**

**COUNTY OF LOS ANGELES DEPARTMENT OF PUBLIC HEALTH,  
PERMISSIBLY SELF-INSURED ADMINISTERED BY SEDGWICK, *Defendants***

**Adjudication Number: ADJ13149806  
Anaheim 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, and for the reasons discussed below, we will deny reconsideration.

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), we held that adding, rather than combining, two different impairments better reflected a worker's impairment when substantial medical evidence supported the notion that the two impairments had a synergistic effect where, in effect, the resultant impairment was more than the sum of the two impairments.

Here, the WCJ determined that applicant's orthopedic disability should be added rather than combined with her cognitive dysfunction and sleep/arousal disability. (Formal Rating Instructions, dated October 21, 2022, p. 2; Report and Recommendation on Petition for Reconsideration, dated December 20, 2022, at p. 3.) The WCJ based her decision on the recommendations of Stuart Silverman, M.D., the Agreed Medical Examiner (AME) in rheumatology. (Opinion on Decision, dated November 21, 2022, at pp. 4-5.) Defendant contends Dr. Silverman offered only a conclusory statement in deposition that he "would add [orthopedic disability] to the rheumatological impairments," but otherwise failed to explain his reasoning in reaching this conclusion. (Petition for Reconsideration, dated December 9, 2022, at 3:22.)

However, we note that in his March 24, 2022 report, AME Dr. Silverman opined that, “[i]f we rate fatigue and cognitive impairment or functional losses, they need to be separately rated and are additive and cannot be used in the combined value scale since they are different physiologies.” (Ex. 4, report of AME Stuart Silverman, M.D., dated March 24, 2022, at p. 6.) Additionally, Dr. Silverman testified in deposition that cognitive and sleep/arousal impairment should be added because they were based on separate physiological systems, and that there was synergistic effect between applicant’s fatigue and sleep problems, and her cognitive function. (Ex. 5, transcript of the deposition of AME Stuart Silverman, M.D., at 21:4; 22:8.)

Additionally, the AME’s opinion with respect to the most accurate method for rating applicant’s impairment should ordinarily be followed if he provides a reasonably articulated medical basis, absent good reason to find that opinion unpersuasive. (*De La Cerda v. Martin Selko & Co.* (2017) 83 Cal.Comp.Cases 567, 571 [2017 Cal. Wrk. Comp. P.D. LEXIS 533] (writ denied), citing *Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775 [51 Cal.Comp.Cases 114, 117].)

Accordingly, we concur with the WCJ’s decision to add the percentages of applicant’s cognitive dysfunction and sleep and arousal disabilities with the combined percentages of orthopedic disability. (Report, at pp. 3-4; *Athens Administrators (Kite)*, *supra*, 78 Cal.Comp.Cases 213.)

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 WILLIAMS DODD, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**February 7, 2023**

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

**RENEE BRACY  
DIXON & DALEY  
LOWER KESNER**

**SAR/abs**

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

## **REPORT & RECOMMENDATION ON PETITION FOR RECONSIDERATION**

### **I.** **INTRODUCTION**

The applicant, Renee Bracy, 52 years old, while employed on 7/20/2018, as an Assistant Health Program Coordinator, Occupational Group No. 111, at Los Angeles, California, by the County of Los Angeles, was stipulated to have sustained injury arising out of and in the course of her employment to her cervical spine, lumbar spine, hands, wrists, left ankle, and fibromyalgia. At the time of the injury, the defendant was permissibly self-insured and administered by Sedgwick Claims Management, Inc.

Even though the parties utilized, and rely on two Agreed Medical Evaluators, with agreement as to which parts of the body were injured, the parties did not settle the case as they disputed how the AME reports should be rated.

On 12/9/2022, defense counsel filed a timely verified Petition for Reconsideration of the 11/21/2022, Findings Award and Order of 82% permanent disability. Petitioner argues that the court erred in following the opinion of the Agreed Medical Examiner, Dr. Stuart Silverman, in adding the rheumatological factors of disability rather than having them combined.

### **II.** **FACTS**

The applicant's injury occurred when she twisted her left ankle and tried to break her fall by stretching out her hands when she fell. (See page 3 of 9/8/2020 AME report of Dr Steven W. Meier, Joint Exhibit 1). Applicant fell on her buttocks from a standing position (See 5/16/2022 deposition of Dr. Stuart Silverman lines 19-21 on page 12. Joint Exhibit 5).

The parties had no dispute as to earnings or temporary disability. At trial, Ms. Bracy testified that she was not working due to depression. She did not wish her psyche to be placed in issue for this trial and no claim of industrial psychiatric illness is being made.

At trial, defendant objected to the opinion of the orthopedic Agreed Medical Examiner, Dr. Steven Meier, as to the applicant's wrist disability for bilateral de Quervain's tenosynovitis and mild ulnar neuropathy across the elbow. Dr. Meier rebutted the AMA guides recommending 4% whole person impairment for each of applicant's hands/wrists. I found that recommendation reasonable. Defendant is not challenging that finding in his Petition for Reconsideration.

Defendant's Petition for Reconsideration is solely as to my recommended rating pursuant to the opinion of Agreed Medical Examiner, Dr. Stuart L. Silverman, who evaluated applicant for her fibromyalgia injury.

### **III. DISCUSSION**

Fibromyalgia is not specifically addressed in the 5th Edition of the AMA guides. Dr. Silverman recommended, by analogy, that the disability for cognitive dysfunction and arousal disorder be based on chapters in the AMA guides.

In his 11/30/2021 Agreed Medical Evaluation report at page 5, Dr. Stuart L. Silverman described the applicant having difficulty remembering experiences, managing money, and concentrating. That report is marked and admitted as Joint Exhibit 3. Using Table 13-6 on page 320 of the AMA Guides whole person impairment for cognitive dysfunction which rates to 21% disability.

Dr. Silverman also recommends 13% whole person impairment for an arousal disorder using Table 13-4 on page 317 of the AMA guides which rates out to 26% disability. He describes the applicant as having severe fatigue. This includes his recommended 3% add on disability for pain which I added to the sleep [dysfunction]. Defendant does not object to Dr. Silverman's usage of the AMA guides for the cognitive dysfunction or arousal disorder.

I did not award an additional 30% disability for activities of daily living recommended by Dr. Silverman as his reasoning for that recommendation was too speculative and did not constitute substantial medical evidence. Although he did not file a Petition for Reconsideration, applicant's counsel, in his answer to the petition, argues that this 30% is not an additional ratable impairment. On page 6 of his 3/24/2022 report, Dr. Silverman opines "If we rate fatigue and cognitive impairment or functional losses, they need to be separately rated and are additive and cannot be used in the combined value scale since they are different physiologies. A better approach may be using Almaraz-Guzman to rate her functional losses using Table 13-8."

Table 13-8 has the heading "Criteria for Rating impairment Due to Emotional or Behavioral Disorders." Applicant has a psychiatric illness, depression, unrelated to this case. Since the nature and extent of that illness is not to be addressed, it is too speculative to determine what

behavioral disability, if any, is caused by the work injury versus the unrelated depression. No Petition for Reconsideration seeks to overturn that part of my decision.

At pages 20 to 22 of Dr. Silverman's 5/16/2022 deposition, he was asked whether there was a synergistic effect between her cognitive and sleep impairment. Dr. Silverman recommended adding the impairment values for the sleep (arousal disorder) and cognitive impairment. Dr. Silverman recommended that the disability for cognitive dysfunction and arousal disorder be added to the orthopedic whole person impairments. Dr. Meier had recommended the disability for the orthopedic injuries be combined and those orthopedic disabilities were combined using the Multiple Disabilities Table.

In his answer to the petition, applicant's counsel referred to Athens Administrators v. Workers Comp. Appeals Bd. (Kite) (2013) 78 CCC 213. In Kite, the WCAB held that the workers compensation judge did not err in combining permanent disability stemming from the injury, as opposed to using the combined values chart, as the application of the impairment using a combined formula is rebuttable. The Multiple Disabilities Table is not mandatory, and physicians may use a different method if their opinion is substantial medical evidence.

I found Dr. Silverman's recommendations for the rating of the cognitive dysfunction and arousal disorder to reflect the applicant's level of disability more accurately. Dr. Silverman recommendations for rating these disabilities was based on the history taken from the applicant, his evaluation, and his review of applicant's medical records. Dr. Silverman opines that the disability for the fibromyalgia does not overlap the disability resulting from the orthopedic injuries. His opinion that the disability due to the fibromyalgia, as opposed to the orthopedic disability, results from "different physiologies" is substantial medical evidence.

#### **IV.** **RECOMMENDATION**

For the reasons set forth above, it is recommended that the Petition for Reconsideration be denied.

DATE: 12/20/2022

**Nancy M. Gordon**  
Workers' Compensation Judge