

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

WENDY WHITEHEAD, *Applicant*

vs.

**SANTA BARBARA UNIFIED SCHOOL DISTRICT, permissibly self-insured,
administered by SELF-INSURED SCHOOLS OF CALIFORNIA (SISC), *Defendants***

**Adjudication Number: ADJ12012554
Santa Barbara District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

In the Findings and Award of July 15, 2020, the Workers' Compensation Judge (WCJ) found that the stipulated industrial injury to applicant's left knee, which happened on September 24, 2015, caused permanent disability of 50%, after 25% apportionment to non-industrial causes. In addition, the WCJ found that applicant is entitled to further medical treatment.

Both applicant and defendant filed timely petitions for reconsideration of the WCJ's decision. Applicant contends that the WCJ erred in relying upon the apportionment opinion of Dr. Fields, the Panel Qualified Medical Evaluator (PQME) in orthopedic surgery, because it is not substantial evidence. Applicant further contends that the WCJ erred in not rating permanent disability based on the need for applicant to wear a knee brace, as found by Dr. Fields. Defendant contends that the WCJ's Opinion on Decision does not comply with Labor Code section 5313, and that the evidence does not justify the WCJ's finding that the industrial injury resulted in permanent disability of 50%.

The WCJ submitted a Report and Recommendation addressing both petitions for reconsideration.

We begin by noting that under Labor Code section 5909, a petition for reconsideration is deemed denied unless the Appeals Board acts on the petition within 60 days of filing. (Lab. Code, § 5909.) Section 5315 provides the Appeals Board with 60 days within which to confirm, adopt, modify or set aside the findings, order, decision or award of a workers' compensation administrative law judge. (Lab. Code, § 5315.)

On June 5, 2020, the State of California's Governor, Gavin Newsom, issued Executive Order N-68-20, wherein he ordered that the deadlines in sections 5909 and 5315 shall be extended for a period of 60 days.¹ Pursuant to Executive Order N-68-20, the time within which the Appeals Board must act was extended by 60 days.

In this case, we granted the petitions for reconsideration on October 14, 2020, within the time extension noted above, in order to further study the factual and legal issues. Therefore, the instant Opinion and Decision After Reconsideration is timely.

Turning to the merits, we note that in assessing permanent disability, it is incumbent upon the reporting physicians to exercise their professional judgment to formulate a rating that most accurately reflects the injured employee's disability. (See *City of Sacramento v. Workers' Comp. Appeals Bd. (Cannon)* (2013) 222 Cal.App.4th 1360 (79 Cal.Comp.Cases 1) [AMA Guides call for the physician's exercise of clinical judgment to assess the impairment most accurately].) At the same time, it is incumbent on the WCAB to carefully review the medical opinions of the reporting physicians to determine whether their Whole Person Impairment (WPI) ratings comport with the AMA Guides, including as interpreted by case law. (See *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 622 [Appeals Board en banc].)

In this case, Dr. Fields, the PQME in orthopedic surgery, has recommended that applicant undergo total knee replacement surgery. (Applicant's exhibit 2, Fields report dated July 11, 2018, p. 13.) Dr. Craviotto, applicant's primary treating physician, likewise has made the same recommendation since 2018. In his report dated October 29, 2018, Dr. Craviotto recommended that applicant have "total knee replacement surgery now." (Applicant's exhibit 3, p. 4.)

We also note that after the petitions for reconsideration were filed in this matter, applicant's attorney filed a petition to reopen dated September 21, 2020. In that petition, it is alleged that applicant's condition has worsened, and reference is made to Dr. Craviotto's recommendation that applicant undergo total knee replacement surgery. Further, applicant's attorney has filed in EAMS an Independent Medical Review (IMR) determination dated December 24, 2020. Part of the IMR determination reflects that left knee total replacement surgery has been found to be medically necessary and appropriate. Although applicant's attorney also has filed an appeal challenging

¹ Governor Newsom's Executive Order N-68-20 may be accessed here: <https://www.gov.ca.gov/wp-content/uploads/2020/06/6.5.20-EO-N-68-20.pdf>. (See Evid. Code, § 452(c).)

IMR's denial of post-surgical home assistance, other documents filed in EAMS suggest that total knee replacement surgery has been approved and applicant wants to have it.

Based on the medical record and the filings in EAMS as described above, we conclude that an accurate rating of permanent disability will not be possible until after applicant has undergone total knee replacement surgery. As the sole issues raised upon reconsideration are permanent disability and apportionment, we will rescind the WCJ's decision and return this matter to the trial level for further proceedings and new decision by the WCJ, pending performance of the surgery and applicant's recovery. Since the reporting physicians and the WCJ will need to revisit anew the issues of permanent disability and apportionment, we express no final opinion on them. When the WCJ issues a new decision, any aggrieved party may seek reconsideration as provided in Labor Code sections 5900 *et seq.*

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award of July 15, 2020 is **RESCINDED**, and this matter is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 9, 2021

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

**WENDY WHITEHEAD
HANNA BROPHY MACLEAN MCALEER & JENSEN
HOURIGAN HOLZMAN SPRAGUE**

JTL/bea

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