

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

**RUZANNA MAGHAKYAN, *Applicant***

**vs.**

**MULTILINGUAL SOCIAL SERVICES and EMPLOYERS COMPENSATION  
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ9640229  
Van Nuys District Office**

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

Applicant seeks reconsideration of the Amended Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on April 26, 2022, wherein the WCJ found in pertinent part that applicant did not experience a "violent act" or a "catastrophic injury" so she is not entitled to additional permanent disability indemnity for her psychiatric injury; and that the October 8, 2013 injury caused 50% permanent disability.

Applicant contends that her psychiatric and sleep disorder conditions were the result of a violent injury so she is entitled to an award of permanent disability benefits for the psychiatric injury and the sleep disorder, that the injury caused 64% permanent disability, and that she is entitled to reimbursement for self-procured medical treatment.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be granted "for revision of permanent disability and attorney fees as needed." (Report, p. 7.) We received an Answer from defendant.

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.

## BACKGROUND

Applicant claimed injury to her psyche, neck, thoracic spine, low back, right thigh, and in the form of sleep disorder, while employed by defendant as a social worker on October 8, 2013.

Applicant received treatment from John Cooper M.D., on October 28, 2013. The diagnoses were, “cervical/thoracic/lumbar strain/sprain, R leg abrasion, Anxiety.” (Joint Exh. X6, John Cooper M.D., October 28, 2013, p. 1; see also p. 2 Clinical Impression and p. 4 Diagnosis.) Dr. Cooper also stated that applicant had, “... too much anxiety and pain to go to work.” (Joint Exh. 6, p. 2.)

On January 21, 2016, applicant was evaluated by psychiatrist Marc L. Nehorayan, M.D. Dr. Nehorayan diagnosed applicant as having “chronic post-traumatic stress disorder.” (App. Exh. 9, Marc L. Nehorayan, M.D., January 21, 2016, p. 10.) Regarding the cause of applicant’s psychiatric condition, Dr. Nehorayan stated:

There is reasonable medical probability to identify that greater than 50% of the predominant cause of the patient’s psychiatric injury is that associated with the patient’s traumatic experience the patient endured while working as a social worker and the injury of October 8, 2013 when a chair with a nail injured the client.

(App. Exh. 9, p. 14.)

Applicant was evaluated by Pedram Navab, D.O., regarding her sleep disorder. After conducting an “all-night comprehensive sleep study” Dr. Navab concluded:

I have demonstrated a clear temporal relationship between exposure to the industrial trauma, resultant emotional stressors, side effects of medications taken on an industrial basis, and the diagnosis that I have presented regarding this injured worker. ¶ Based on the available data, the history provided to me by the patient, my objective findings, the scientific literature, and my expertise in the field; it is my opinion with reasonable medical probability that this patient’s presenting complaints and clinical symptoms in my area of expertise were caused or aggravated on an industrial basis.

(App. Exh. 10, Pedram Navab, D.O., March 1, 2016, p. 3.)

Dr. Nehorayan was provided additional medical records to review and in his subsequent report, Dr. Nehorayan stated:

In my medical opinion the patient has developed an independent psychiatric injury that does not directly flow from the patient’s orthopedic compromise but

is a derivative of the event itself. (App. Exh, 14, Marc L. Nehorayan, M.D., March 7, 2019, p. 19.)

The parties initially proceeded to trial on January 23, 2019. The issues submitted for decision included parts of body injured, permanent disability, and apportionment. The issue of liability for self-procured medical treatment was deferred. (Minutes of Hearing and Summary of Evidence (MOH/SOE), January 23, 2019, pp. 2 – 3.) On February 5, 2019, the WCJ ordered the parties to further develop the medical record. The matter was again submitted for decision on October 27, 2020. (MOH/SOE, October 27, 2020.) The January 20, 2021 Findings and Award was rescinded and the matter was continued several times. On February 17, 2022, the parties stipulated to having the matter submitted for decision as of that date.

## DISCUSSION

Labor Code section 4660.1 states in part, that:

This section applies to injuries occurring on or after January 1, 2013. ¶ ...  
(c) (1) Except as provided in paragraph (2), the impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury. ... ¶ (2) An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following: (A) Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3. (B) A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.  
(Lab. Code, § 4660.1.)<sup>1</sup>

The nature of the injury sustained is a question of fact for the WCJ. (*Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].) Whether an injury is “catastrophic” under section 4660.1(c)(2)(B) is therefore a factual/legal issue for the WCJ to determine. However, it must be noted that section 4660.1(c) does not apply to a psychiatric injury, or injury in the form of sleep dysfunction, if the injuries are directly caused by events of employment. Section 4660.1(c)(1) only bars an increase in the employee's permanent impairment rating for a psychiatric injury/sleep dysfunction that is a compensable consequence of

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

a physical injury occurring on or after January 1, 2013. (*Kris Wilson v. State of California – Cal Fire* (2019) 84 Cal.Comp.Cases 393, 403 (Appeals Board en banc); see also *City of Los Angeles v. Workers’ Compensation Appeals Board (Montenegro)* (2016 W/D) 81 Cal.Comp.Cases 611.) Therefore, the issue of whether applicant’s psychiatric condition and sleep disorder are a direct result of the October 8, 2013 incident, or whether they are the consequence of the orthopedic injuries, must be determined. Once that issue is resolved, the issue of whether the provisions of section 4660.1 are applicable in this matter can be addressed.

Although it appears that Dr. Nehorayan concluded applicant’s psychiatric condition was caused by the October 8, 2013 incident, he did not explain the reasoning or analysis that was the basis for his opinion. Also, review of Dr. Navab’s report indicates that he did not address the issue of whether applicant’s sleep disorder was a direct result of the October 8, 2013 incident, or whether it was a consequence of the orthopedic injuries. Thus, the doctors’ reports are not substantial evidence regarding the issues discussed herein.

It is well established that any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. 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].) 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 that was submitted for decision. (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].) Clearly, the issue of permanent disability caused by the October 8, 2013 injury is a threshold issue in this matter, and in order to determine that issue the record must be further developed.

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).) Under these circumstances, upon return of this matter we recommend that the parties request Dr. Nehorayan and Dr. Navab prepare and submit supplemental reports that clarify and explain their respective opinions as to the cause of applicant’s psychiatric condition and her sleep disorder, as discussed above.

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 applicant's Petition for Reconsideration of the Amended Findings and Award issued by the WCJ on April 26, 2022, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 26, 2022 Amended Findings and Award is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct 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/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



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

**JUNE 17, 2022**

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

**RUZANNA MAGHAKYAN  
LAW OFFICE OF DENNIS J. HERSHEWE  
TOBIN LUCKS, LLP**

**TLH/pc**

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