

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

CHARLENE LYTLE, *Applicant*

vs.

**AUTOMOBILE CLUB OF SOUTHERN CALIFORNIA;
HARTFORD ACCIDENT & INDEMNITY, ADMINISTERED BY CCMSI, *Defendants***

**Adjudication Number: ADJ8734121
Anaheim District Office**

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

Applicant seeks reconsideration of the workers' compensation administrative law judge's (WCJ) April 25, 2022 Findings, Award & Order (F&A). Applicant contends the apportionment identified by the orthopedic Qualified Medical Evaluator (QME) is not supported by substantial evidence, applicant's permanent and stationary date was November 3, 2016, the medical record supports a finding of psychiatric injury, and that applicant is permanently and totally disabled. (Petition for Reconsideration (Petition), at 13:4.) Applicant further contends the record must be developed to adequately address claimed body parts in the fields of internal medicine and urology. (*Id.* at 20:21.)

We received an answer from defendant. The WCJ issued a Report and Recommendation (Report) on applicant's petition recommending we grant reconsideration to amend the permanent and stationary date and order development of the record to address claimed body parts in the fields of internal medicine and urology. The WCJ further recommended we defer the findings of fact regarding permanent disability, apportionment, and attorney's fees pending development of the record. (Report, at p. 7.)

We have also received "Defendant's Petition for Reconsideration of the Report and Recommendation on Petition for Reconsideration." The petition purports to seek reconsideration

of the WCJ's *report*, rather than the F&A. The WCJ has filed a Report and Recommendation, recommending we deny the petition. WCAB Rule 10964(a) provides that, "[w]hen a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board." (Cal. Code Regs., tit. 8, § 10964(a).) Here, we have neither requested supplemental pleadings, nor has defendant sought permission to file supplemental pleadings. Accordingly, we do not accept the June 22, 2022 supplemental pleading for filing, and it will not be considered.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the report of the WCJ with respect thereto. Based on our review of the record, we will grant the Petition for Reconsideration, find injury to the psyche, and amend the permanent and stationary date and periods of temporary disability. We will further defer issues of the nature and extent of the injury, including injury in the fields of internal medicine and urology, as well as permanent disability and attorney fees as recommended by the WCJ, pending development of the record.

FACTS

Applicant claimed injury to the cervical spine, lumbar spine, bilateral upper extremities, bilateral hips, bilateral knees, bilateral legs, psyche, sleep, headaches, incontinence and gastrointestinal system while employed as a claims adjuster by defendant Automobile Club of Southern California, insured by Hartford Accident & Indemnity (defendant) from January 7, 2012 to January 7, 2013. Defendant admits injury to the cervical spine and lumbar spine, but disputes injury to all other claimed body parts/systems.

The parties selected Todd W. Peters, M.D. to act as the QME in orthopedics. Dr. Peters authored an initial report of September 26, 2013 identifying injury to the cervical and lumbar spine. (Ex. 29, report of orthopedic QME Todd W. Peters, M.D., dated September 26, 2013.) Dr. Peters deemed applicant permanent and stationary, and described whole person impairment. With respect to apportionment, the QME noted applicant's medical records dating to 1994 suggested scoliosis and osteoarthritis, and a history of neck discomfort. (*Id.* at p. 9.) On this basis, Dr. Peters concluded applicant had sustained significant degenerative changes prior to 1994. The QME concluded 30% of applicant's disability arose out of her employment with defendant, and 70% arose out of

preexisting degenerative processes. Dr. Peters reevaluated applicant on February 6, 2014, and noted complaints related to psyche, sleep, headaches, neurologic, incontinence, dental, cognitive impairment, gastrointestinal, and internal systems, all deferred to the appropriate specialists in other fields. (Ex. 28, report of orthopedic QME Todd W. Peters, M.D., dated February 6, 2014, p. 3.) The QME also opined that applicant became partially disabled as of November 2, 2012, and remained so as of the date of the report. (*Id.* at p. 5.)

The parties selected Manuel Saint Martin, M.D. to act as the psychiatric QME. Dr. Saint Martin issued a report on May 8, 2014 following an evaluation of applicant, diagnosing a “phase of life problem” at Axis I, and noting a Global Assessment of Function (GAF) score of 70. (Ex. 25, report of psychiatric QME Manuel Saint Martin, M.D., dated May 8, 2014, p. 9.)

The parties also selected Thomas Hascall, M.D. to act as QME in internal medicine. In a report dated May 28, 2014, Dr. Hascall noted that applicant’s complaints of sleep disturbance may have arisen out of possible sleep apnea or body habitus issues, and recommended a sleep study be performed. (Ex. 41, report of internal medicine QME Thomas Hascall, M.D., dated May 28, 2014, pp. 7-8.) Dr. Hascall further opined that applicant’s complaints of urinary symptoms should be evaluated by a urologist, and that applicant should also be referred to a gastroenterologist. (*Ibid.*) Dr. Hascall issued a supplemental report on September 30, 2014, wherein he reviewed additional records, and reiterated his recommendation that applicant be seen by the appropriate specialists to address her internal medicine and urology complaints. (Ex. 40, report of internal medicine QME Thomas Hascall, M.D., dated September 30, 2014.)

On October 11, 2014, orthopedic QME Dr. Peters reviewed additional records, including the reporting of neurology QME Dr. Kreidie, and agreed with Dr. Kreidie’s assessment that applicant was permanent and stationary. (Supplemental report of orthopedic QME Todd W. Peters, M.D., dated October 11, 2014.)

On April 21, 2015, internal medicine QME Dr. Hascall authored a report noting a possible reduction in applicant’s internal symptoms, but that if the symptoms continued, additional workups in gastroenterology would be indicated. (Ex. 39, report of internal medicine QME Thomas Hascall, M.D., dated April 21, 2015, p. 3.)

On May 4, 2015, orthopedic QME Dr. Peters reevaluated applicant, and observed increasing severity and symptomatology. (Ex. 35, report of orthopedic QME Todd Peters, M.D., dated May 4, 2015, p. 7.) Dr. Peters concluded that applicant was no longer permanent and

stationary. Additionally, Dr. Peters reviewed applicant's complaints to other body parts, and found no separate issues with respect to the shoulders, wrists, or any "significant anatomic issues" with the knees or bilateral hips. (*Id.* at p. 9.)

On March 23, 2016, the parties took the deposition of psychiatric QME Dr. Saint Martin, who confirmed applicant's diagnosis of a "phase of life problem," as well as an underlying dysthymic disorder, and agreed to reevaluate applicant. (Ex. 23, transcript of the deposition of Manuel Saint Martin, M.D., dated March 23, 2016, at 25:13.)

On November 3, 2016, orthopedic QME Dr. Peters authored a report noting applicant had received a series of trigger point injections and physical therapy, and once again was deemed permanent and stationary. (Ex. 33, report of orthopedic QME Todd Peters, M.D., dated November 3, 2016, at p. 5.)

On July 12, 2019, psychiatric QME Dr. Saint Martin reiterated his assessment that applicant's GAF score was 70, but also noted that applicant's dysthymic disorder "is a psychiatric condition that is related to her musculoskeletal complaints and injuries." (Ex. 22, report of Manuel Saint Martin, dated July 12, 2019, p. 4.) In a supplemental report of August 12, 2019, following a record review including applicant's orthopedic history, Dr. Saint Martin confirmed that applicant's dysthymic disorder was related to her work-related cervical and lumbar spine injuries. (Ex. 19, report of Manuel Saint Martin, dated August 12, 2019, at p. 2.)

On October 30, 2019, orthopedic QME Dr. Peters issued a supplemental report clarifying the identified periods of temporary disability, and a final permanent and stationary date of November 3, 2016. (Ex. 30, report of orthopedic QME Todd Peters, M.D., dated October 30, 2019, at pp. 1-2.)

On June 1, 2020, applicant underwent a two-level cervical spinal fusion through her private health insurance. (Ex. 44, report of orthopedic QME Todd Peters, M.D., dated March 26, 2021.)

The parties proceeded to trial on October 27, 2020, and framed issues including the nature and extent of the injury, temporary disability, the permanent and stationary date, permanent disability, apportionment, and whether the apportionment of the various QMEs was based on substantial evidence. (October 27, 2020 Minutes of Hearing and Summary of Evidence.) After testimony commenced, applicant disclosed that she had obtained a two-level cervical spine fusion earlier in 2020, and the matter was ordered taken off calendar to obtain reporting responsive to this development. (*Id.* at 11:5.)

On September 24, 2021, orthopedic QME Dr. Peters issued a supplemental report identifying whole person impairment and reiterating his prior opinions regarding apportionment. (Ex. 45, report of orthopedic QME Todd Peters, M.D., dated September 24, 2021.)

On January 27, 2022, trial resumed, with the additional reporting of Dr. Peters moved into evidence. (January 27, 2022 Minutes of Hearing and Summary of Evidence (Minutes), at 2:6.) Applicant testified that there was no improvement in her symptoms following surgery. (*Id.* at 4:1.)

On April 25, 2022, the WCJ issued the F&A, determining in relevant part that applicant had sustained injury to the cervical and lumbar spine, but not to the psyche or any other body part, and that applicant was temporarily totally disabled from January 7, 2013 to and including October 11, 2014. The WCJ awarded disability for cervical and lumbar spine after applying 50% nonindustrial apportionment.

Applicant's Petition avers the apportionment described by Dr. Peters and Dr. Kreidie is not supported in the record, as no records predating applicant's start of employment with defendant in 1993 were reviewed. (Petition, at 10:24.) Applicant asserts the findings of applicant's vocational expert establish 100% permanent and total disability, but also that the record should be developed on the issues of applicant's claimed internal medicine and urology-based complaints. (*Id.* at 13:4; 20:22.) Applicant also contends the permanent and stationary date as described by orthopedic QME Dr. Peters was November 3, 2016, and that the reporting of psychiatric QME Dr. Saint Martin describes an industrially-related condition of dysthymia. (*Id.* at 20:1.)

Defendant's answer contends that applicant failure to disclose her June 1, 2020 spinal surgery until after the commencement of trial was prejudicial to the defendant. Defendant contends applicant is now raising issues not previously raised in the pre-trial conference statement or at trial, and that the record should not be developed. (Answer, at 3:5.)

The WCJ's Report agrees with applicant that the permanent and stationary date should be amended, and that the record should be developed regarding applicant's internal medicine and urological complaints. (Report, at p. 7.) The WCJ recommends deferral of related issues of permanent disability, apportionment, and attorney fees pending development of the record. (*Ibid.*)

DISCUSSION

Applicant contends the record must be developed regarding her complaints of burning and cramping and frequent incontinence. (Petition, at 20:21.) Applicant cites to an April 21, 2015 report of internal medicine QME Thomas Hascall, M.D., who indicated additional specialists may be necessary, including gastroenterology and urology. (Ex. 39, report of Thomas Hascall, M.D., dated April 21, 2015, at p. 3.) The WCJ's report observes:

The applicant testified to making two trips to the bathroom during the night. I interpreted the intent of the parties to not have the Court order the examinations suggested by the Panel QME to their representation that the reporting was complete and the parties were ready for trial. The applicant has been treating outside the workers compensation system with none of those reports offered into evidence. Applicant's counsel has now requested that the urological and gastrointestinal evaluations he recommended. These obviously should have been previously requested instead of representing the parties were ready to proceed to trial. No such request was made at the conference or trial. But now that this request is being made, I agree that that reporting needs to be submitted to Dr. Thomas E. Hascall to complete his QME evaluation. On page 27 of his 9/30/2014 Supplemental Panel QME medical report, Dr. Hascall opines that a report from a urologist and a gastrointestinal workup need to be submitted to him to complete his reporting. (Report, at p. 6.)

The WCJ thus recommends development of the record as it relates to applicant's complaints in internal medicine and urology, and by extension, permanent disability, apportionment and attorney's fees. (Report, at p. 7.)

The Workers' Compensation Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] ["principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims (citations)"]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261]; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc). Here, the WCJ has appropriately exercised her discretion to determine that development of the record is consistent with due process, and will allow for a complete adjudication of the issues raised. Accordingly, we will amend the findings of fact to defer issues

of the nature and extent of the injury, including injury in internal medicine and urology, permanent disability and attorney's fees, as recommended by the WCJ.

Next, applicant contends the reporting of orthopedic QME Dr. Peters supports a final permanent and stationary date of November 3, 2016. (Petition, at 18:3.) We concur with the WCJ's observation that the November 3, 2016 date is warranted in the record. (Report, at p. 5.) We observe that Dr. Peters' report of October 30, 2019 addresses the specific issue, and identifies additional temporary disability from through November 3, 2016. (Ex. 30, report of orthopedic QME Todd Peters, M.D., dated October 30, 2019, pp. 1-2.) No party challenged these determinations in deposition or interrogatory. Accordingly, we will amend the Findings of Fact No. 3 to reflect as recommended by the WCJ.

Applicant also contends the reporting of psychiatric QME Dr. Saint Martin supports a finding of industrial injury in the form of dysthymic disorder. (Petition, at 20:1.) The WCJ notes that Dr. Saint Martin identified nonindustrial "phase of life" problems, and that his September 2, 2017 report found no industrial psychiatric illness or injury. (Report, at p. 6.) However, Dr. Saint Martin diagnosed a dysthymic disorder in his July 12, 2019 report, indicating that "Ms. Lytle's dysthymic disorder is a psychiatric condition that is related to her musculoskeletal complaints and injuries," and noted his final opinion would depend on whether applicant's musculoskeletal complaints were industrial in nature (Ex. 22, report of Manuel Saint Martin, dated July 12, 2019, p. 4.) Following receipt and review of orthopedic reporting, Dr. Saint Martin issued a supplemental report of August 12, 2019, indicating "based on the orthopedic records, Ms. Lytle's dysthymic disorder is related to her work related cervical and lumbar spine injuries." (Ex. 19, report of Manuel Saint Martin, dated August 12, 2019, p. 2.) Accordingly, we will amend Findings of Fact No. 1 to reflect injury to the psyche.

Finally, applicant challenges the apportionment described by orthopedic QME Dr. Peters. In his report of September 19, 2013, Dr. Peters writes, "[t]he medical records that I have in my possession include ones from 1994 where there were already suggestions of scoliosis and osteoarthritis as she did have changes of the cervical spine and a note stating longstanding history of recurrent neck discomfort on 10/19/94 by Dr. Ramirez. This leads to the conclusion that there were significant degenerative changes previously even dating to 1994." (Ex. 29. Report of orthopedic QME Todd Peters, M.D., dated September 19, 2013, at p. 10.) Applicant contends the apportionment analysis employed by QME Dr. Peters is speculative, and does not constitute

substantial medical evidence. Applicant's Petition avers, "Dr. Peters did not review any medical records that pre-dated Applicant's employment with AAA," and that "it is speculative for Dr. Peters to conclude that significant degenerative changes existed in applicant's cervical spine before she began working for AAA." (Petition, at 12:7.)

Although we are deferring issues of permanent disability and apportionment, we note that to be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc).) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [33 Cal.Comp.Cases 647] (a mere legal conclusion does not furnish a basis for a finding); *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 799-801 [33 Cal.Comp.Cases 358] (an opinion that fails to disclose its underlying basis and gives a bare legal conclusion does not constitute substantial evidence).) Thus, while we express no opinion as to the validity of the apportionment on the record before us, we note that valid apportionment must reflect the principles espoused above.

In summary, we will amend the Findings of Fact to reflect the periods of temporary disability, and to order further development of the record as recommended by the WCJ, except that we will amend the injured body parts to reflect psyche. When the WCJ issues a new decision, any party aggrieved thereby may seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings, Award and Order, dated April 25, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings, Award and Order, dated April 25, 2022 is **RESCINDED**, and the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. The applicant, Charlene Lytle, age 47, while employed during the period January 7, 2012 to January 7, 2013, as a claims adjuster, Occupational Group 111, at Costa Mesa, California, by Auto Club of Southern California, whose workers' compensation insurance carrier was Hartford Accident & Indemnity, administered by Cannon Cochran Management Services, Inc., sustained injury arising out of and occurring in the course of her employment to her cervical spine extending to headaches, lumber spine, headaches and psyche, but did not extend to applicant's upper extremities, lower extremities including knees and hips, or sleep, with jurisdiction reserved pending development of the record as to whether the injury extended to urology and gastrointestinal.
2. The applicant's earnings at the time of injury were \$950.15 per week producing a temporary disability rate of \$633.43 per week and a permanent disability indemnity rate of \$230.00 per week.
3. The injury resulted in the applicant being temporary totally disabled for the period January 7, 2013 through November 3, 2016, for which she is entitled to 104 weeks of temporary disability payable at the rate of \$633.43 per week with credits for sums previously paid.
4. The issue of permanent disability and attorney's fees is deferred.
5. The applicant will require further medical treatment to cure or relieve from the effects of this injury.

AWARD

- a. Temporary total disability at the rate of \$633.43 per week beginning January 7, 2013 for a period of 104 weeks less credit for any sums heretofore paid on occasion thereof.
- b. The issue of permanent disability and attorney's fees is deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

CRAIG SNELLINGS, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 19, 2022

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

**CHARLENE LYTLE
MEHR & ASSOCIATES
PERONA LANGER BECK SERBIN & HARRISON
PARKER & IRWIN**

SAR/abs

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