

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

**DEBBIE CHADBURN, *Applicant***

**vs.**

**APPLIED MATERIALS, INC.; XL SPECIALTY INSURANCE COMPANY;  
administered by CORVEL and ARROWOOD INDEMNITY COMPANY, *Defendants***

**Adjudication Numbers: ADJ1351389 (SJO 0253295), ADJ7168611, ADJ7183596  
San Jose District Office**

**OPINION AND DECISION  
AFTER REMITTITUR**

On August 3, 2021, the Sixth District Court of Appeal certified that its opinion of May 7, 2021 had become final, and the Court remitted this case to the Appeals Board. This is our Decision After Remittitur.<sup>1</sup>

In our Opinion and Decision After Reconsideration of June 17, 2019, we affirmed the unapportioned award of permanent and total disability issued by the workers' compensation judge (WCJ) in his Second Amended Findings and Award of September 22, 2017. In its decision of May 7, 2021, however, the Court of Appeal annulled our Opinion and Decision After Reconsideration of June 17, 2019 and remanded the matter to the WCAB for further proceedings consistent with the Court's opinion. In sum, the Court concluded that the award of 100 percent permanent disability must be annulled because: (a) the psychiatric reports that the WCAB relied on did not constitute substantial evidence since Dr. Sidle relied on an incorrect legal theory, the alternative path theory, that was rejected in *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607 [83 Cal.Comp.Cases 1680]; and (b) applicant's evidence was otherwise insufficient to rebut the scheduled rating for her psychiatric disability.

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<sup>1</sup> Commissioner Deidra E. Lowe signed the Board's June 17, 2019 Opinion and Decision After Reconsideration that was the subject of the Court of Appeal's decision in this matter. As Ms. Lowe no longer serves on the Board, a new panel member has been substituted in her place.

The Court of Appeal also provided guidance on the issue of apportionment, noting that defendants have the burden of proving apportionment, that the issue is whether this case is one of “limited circumstances” that justifies a single award of permanent disability as discussed in *Benson v. Workers’ Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113], and that “[w]orkers’ compensation law also recognizes that the need for medical care may result from the combined effects of more than one injury. In such cases, a joint and several award of medical treatment in favor of the employee is permitted, subject to later apportionment between the responsible employers or carriers.” (*Applied Materials v. Workers’ Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042, 1099 [86 Cal.Comp.Cases 331], citations omitted.)

As the Court of Appeal annulled our Opinion and Decision After Reconsideration of June 17, 2019, we will grant reconsideration and rescind the underlying Second Amended Findings and Award issued by the WCJ on September 22, 2017. In addition, we will return this matter to the WCJ for further proceedings and for a new Findings and Award consistent with the Court of Appeal’s opinion. We note that the Court otherwise affirmed the WCJ’s September 22, 2017 decision, as subsequently amended in our decision of June 17, 2019. Therefore, when the WCJ issues a new Findings and Award resolving the outstanding issues specified by the Court of Appeal, he may re-issue the other findings that were affirmed by the Court.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Remittitur of the Workers’ Compensation Appeals Board, that reconsideration of the Second Amended Findings and Award issued by the WCJ on September 22, 2017 is **GRANTED**, and that said decision is **RESCINDED**.

**IT IS FURTHER ORDERED**, as the Decision After Remittitur of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and new Findings and Award by the WCJ, consistent with the Court of Appeal's opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



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

**July 6, 2022**

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

**DEBBIE CHADBURN  
BUTTS & JOHNSON  
TESTAN LAW  
MICHAEL SULLIVAN & ASSOCIATES  
OFFICE OF THE DIRECTOR, LEGAL UNIT**

**JTL/ara**

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