

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

STEVE RYDER, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFIT TRUST FUND, *Defendants*

**Adjudication Number: ADJ8401036
Van Nuys District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by applicant Steve Ryder. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of the November 7, 2016 Findings of Fact and Award, wherein the workers' compensation administrative law judge (WCJ) utilized the Combined Values Chart (CVC) to determine that applicant's combined preexisting and subsequent permanent disability is 88%.

Applicant contends that his preexisting and subsequent permanent disabilities should be added together rather than combined using the CVC.

We received an answer from Subsequent Injuries Benefit Trust Fund (SIBTF). The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we affirm the November 7, 2016 Findings of Fact and Award, except that we amend Finding number 10 to find that the combined preexisting and subsequent disabilities result in 100% permanent total disability, entitling applicant to indemnity payments of \$1,010.50 per week for life commencing

¹ Commissioner Lowe, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

on May 12, 2012, subject to section 4659(c) SAWW COLA adjustments and less section 4753 credits.

FACTS

As the WCJ stated:

Applicant, Steve Ryder [] was employed by the City of Los Angeles as a firefighter. He sustained an admitted continuous trauma injury during his entire period of employment, which was stipulated herein to be from 7/12/73 to 7/24/12, in the form of prostate cancer, sexual dysfunction and urinary incontinence. The undersigned noted that although the parties stipulated to the continuous trauma period, all of the medical reporting herein chronicles that applicant retired on 10/31/07 (Joint Exhibits J-3, page 1; J-5, page 1; J-6, page 2; J-9, page 1; and J-10, page 2). It appeared from the medical reporting that the “end date” for the continuous trauma claim herein, and in the prior continuous trauma claim (see below) were based on a purported L.C. §5412 date of injury when applicant first sustained compensable disability and the knowledge that his injury was work related.

Applicant’s underlying claim herein was resolved based upon the reporting of Sean Leoni, M.D. (Joint Exhibit J-3), with Stipulations with Request for Award being approved on 7/31/13 by WCJ Michael Greenberg, with relevant findings that applicant was entitled to a permanent disability (PD) award of 24% after consideration of L.C. §4664(c)(1)(G) which limited total accumulated permanent disability awards to specified regions of the body to 100% total (Joint Exhibit J-2).

The L.C. §4664(c) limitation was necessitated because applicant previously filed a continuous trauma injury against the same employer for injury during the period from 7/22/73 to 8/6/09 (ADJ7801874). That claim was resolved by way of Findings and Award by WCJ Thomas Kitchens (now retired) on 9/21/11 with relevant findings therein that applicant sustained industrial injury to his cardiovascular system (hypertensive cardiovascular disease and cardiac arrhythmia), digestive system (hernia), hearing, and skin (cancer), which resulted in permanent disability of 79%, with 76% of that award being attributed to the region delineated in L.C. §4664(c)(1)(G), (Joint Exhibit J-4).

Applicant filed a timely application herein claiming entitlement to benefits pursuant to L.C. §4751 (Subsequent Injuries Benefit Trust Fund). The Subsequent Injuries Benefit Trust Fund denied that applicant qualified for such additional benefits.

Following the original trial herein on 10/14/14, the undersigned issued his Opinion on Decision and Findings of Fact and Order on 10/24/14 finding in relevant part that applicant failed to establish that his subsequent injury when considered alone without regard for adjustment was equal to 35 percent or more of total pursuant to L.C. §4751. Applicant filed a timely petition for reconsideration contending that the undersigned committed err by combining the two component impairments of his subsequent injury rather than adding them together. On appeal the WCAB panel agreed with applicant's position and substituted its own findings of fact which included findings that applicant's subsequent injury when considered alone without regard for adjustment for age or occupation was equal to 35% and that applicant was entitled to additional benefits pursuant to L.C. §4751. Calculation of those additional benefits was deferred, with the case referred back to the trial level for further proceedings.

The case returned to the trial calendar before the undersigned on 9/27/16. The primary remaining issue was how to calculate applicant's combined disability/impairment of the prior injury and the subsequent injury herein. The undersigned issued his Post-Reconsideration Opinion on Decision and Findings of Fact & Award (Post-Reconsideration) on 11/7/16, finding in relevant part that in this case applicant's prior disability/impairment should be combined with his subsequent injury disability/impairment utilizing the combined values chart. It is from this specific finding that applicant has filed for reconsideration. (Report, pp. 1-3.)

DISCUSSION

The sole issue here is whether applicant's preexisting and subsequent permanent disabilities should be added or combined using the CVC. The other issues alluded in SIBTF's Answer (whether the adjudication of applicant's underlying claim has res judicata effect in his claim for SIBTF benefits and whether the preexisting disability and the subsequent injury occurred concurrently) has been waived as SIBTF did not file reconsideration of our previous May 4, 2016 Opinion and Decision After Reconsideration.

Applicant's preexisting disability stems from a cumulative trauma injury through the period ending August 6, 2009, to his cardiovascular system (hypertensive cardiovascular disease and cardiac arrhythmia), digestive system (hernia), hearing, and skin (cancer), which resulted in an award of 79% permanent disability issued on September 21, 2011. (Joint Exhibit J-4, Findings and Award dated September 21, 2011.)

Applicant's subsequent injury is a cumulative trauma injury to his prostate (cancer) through the period ending February 24, 2012, with compensable consequence injuries to urinary incontinence and sexual dysfunction. Sean Leoni, M.D., rated applicant's sexual dysfunction at

12% whole person impairment and urinary incontinence at 18% whole person impairment. (Joint Exhibit J-3, Dr. Leoni's report dated July 23, 2012.)

The Disability Evaluation Unit rated applicant's subsequent injury on a consultative basis as follows:

RATING PER AMA GUIDES:

BLADDER DISEASE, CLASS 2: 18 WP
07.03.00.00 - 18 - [2]21 - 490H - 26 - 33 PD (A)

SEXUAL DYSFUNCTION, CLASS 2: 12 WP
13.10.04.00 - 12 - [2] 14 - 490F - 14 - 19 PD (A)

(A) 33 C 19 = 46 FINAL PD

(Joint Exhibit J-1, Consultative Rating of DEU, May 13, 2014.)

The 46% permanent disability rating for the subsequent injury does not take into account Labor Code² section 4664(c)(1)(G), which limits the accumulation of permanent disability awards to specified regions of the body to 100%.

In *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc), we held that prior and subsequent permanent disabilities shall be added to the extent they do no overlap in order to determine the "combined permanent disability" specified in section 4751.

Here, there is no overlap between the preexisting and subsequent disabilities. Adding the 79% preexisting permanent disability to the 46% subsequent permanent disability entitles applicant to a combined permanent disability of 100%. SIBTF is entitled to credits in accordance to section 4753.

Accordingly, we affirm the November 7, 2016 Findings of Fact and Award, except that we amend Finding number 10 to find that the combined preexisting and subsequent disabilities result in 100% permanent total disability, entitling applicant to indemnity payments of \$1,010.50 per week for life commencing on May 12, 2012, subject to section 4659(c) SAWW COLA adjustments and less section 4753 credits.

² All subsequent statutory references are to the Labor Code unless otherwise indicated.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the November 7, 2016 Findings of Fact and Award is **AFFIRMED** except that it is **AMENDED** as follows:

Findings of Fact

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10. The combined preexisting and subsequent disabilities result in 100% permanent total disability, entitling applicant to indemnity payments of \$1,010.50 per week for life commencing on May 12, 2012, subject to Labor Code, section 4659(c) SAWW COLA adjustments and less Labor Code, section 4753 credits.

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WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 28, 2022

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

**STEVE RYDER
LEWIS, MARENSTEIN, WICKE, SHERWIN & LEE, LLP
OFFICE OF THE DIRECTOR LEGAL, LOS ANGELES**

LSM/pc

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