

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

ALBERT MATA, *Applicant*

vs.

**STATE OF CALIFORNIA - DEPARTMENT OF CORRECTIONS &
REHABILITATION, legally uninsured, administered by
STATE COMPENSATION INSURANCE FUND, *Defendants***

Adjudication Number: ADJ9025732

Salinas District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the First Amended Findings of Fact, Award and Order (F&A) issued by the workers' compensation administrative law judge (WCJ) on February 16, 2023, wherein the WCJ found in pertinent part that as a result of his cumulative psychiatric injury, applicant is permanently totally (100%) disabled.

Defendant contends that the reports from applicant's Vocational Rehabilitation Counselor Scott Simon are not substantial evidence that applicant is 100% permanently totally disabled; and that the reports from Dr. Tahami, Dr. Quiroga, and Dr. Diebel are not substantial evidence that applicant is 100% permanently disabled.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to his psyche and circulatory system and in the form of hypertensive heart disease while employed by defendant as a correctional officer during the period from January 1, 1990, through July 24, 2012. Over the course of several years, applicant was evaluated by Psychiatric qualified medical examiner (QME) Hosein Tahami, D.O., Psychiatric QME Perry Segal, M.D., and Internal medicine agreed medical examiner (AME) Raye L. Bellinger, M.D. (See Joint Exhs. J1 – J20.) Applicant was also interviewed by “Vocational Rehabilitation Counselor” Scott Simon (See App. Exhs. A1 – A4) and “Vocational Rehabilitation Expert” Thomas L. Sartoris (See Def. Exhs. D1 – D3).

The parties proceeded to trial on January 19, 2023. The issues submitted for decision included permanent disability/apportionment, and whether based on the vocational reports from Scott Simon, applicant was 100% permanently totally disabled.

DISCUSSION

We first note that most of defendant’s arguments are premised on its assertion that the reports from “Dr. Tahami, Dr. Quiroga, and Dr. Diebel” are inconsistent with the “permanent work restriction” factors of disability described in the American Medical Association Guides to the Evaluation of Permanent Impairment, (AMA Guides). (See e.g., Petition, pp. 7 – 11.) However, the 2005 permanent disability rating schedule (PDRS) states that:

Psychiatric impairment shall be evaluated by the physician using the Global Assessment of Function (GAF) scale The resultant GAF score shall then be converted to a whole person impairment rating (PDRS pp. 1-12 to 1-16.)

Thus, we agree with the WCJ that:

To begin, the 2005 Schedule does not use the AMA guides for evaluating psychiatric impairments. This is because the guides do not provide a WPI for any non-neurologically based psychiatric impairment. ... ¶ ... The psychiatric PQME and subsequent AME also utilized the AMA Guides to

help describe applicant's cognitive and functional impairments. Defendant's contention that a vocational expert cannot support their opinion on an applicant's amenability to rehabilitation based in part on the consensus of the medical-legal evaluators' descriptions of psychiatric functioning is misplaced.

(Report, pp. 2 – 3.)

Further, it is well established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence and the Appeals Board may rely on the medical opinion of a single physician unless it is “based on surmise, speculation, conjecture, or guess.” (*Place v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; *Market Basket v. Workers' Comp. Appeals Bd.* (1978) 86 Cal.App.3d 137 [46 Cal.Comp.Cases 913.]) By analogy, when the record contains conflicting vocational consultant reports, the Appeals Board will rely on the opinions of the vocational expert that constitute substantial evidence. In the Report (Report, pp. 3 – 7) and the Opinion on Decision (F&A, pp. 9 – 12), the WCJ accurately summarizes and discusses the reports from the parties' vocational experts. (App. Exhs. A1 – A4; Def. Exhs. D1 – D3.) Having reviewed the trial record, including the vocational reports, we agree with the WCJ that Scott Simon's opinions are not “based on surmise, speculation, conjecture, or guess” (*Place v. Workmen's Comp. App. Bd., supra*) and they do constitute substantial evidence. As the WCJ stated, “In short, there were conflicting vocational reports and the WCJ found the vocational reporting of Mr. Simon demonstrated applicant was precluded from taking advantage of vocational rehabilitation and participating in the labor force.” (Report, p. 7.) Again, based on our review of the record, we see no factual or legal basis for disturbing the WCJ's decision.

Accordingly, for the reasons explained by the WCJ in the Report, as well as those discussed above, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the First Amended Findings of Fact, Award and Order issued by the WCJ on February 16, 2023, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 7, 2023

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

**ALBERT MATA
SPRENKLE, GEORGARIOU & DILLES, LLP
STATE COMPENSATION INSURANCE FUND, LEGAL**

TLH/mc

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Defendant, by and through their attorney of record, filed a timely, verified Petition for Reconsideration on March 13, 2023, challenging the First Amended Findings & Award issued on February 16, 2023. Petitioner disputes Findings of Fact #9 which found applicant 100% permanently totally disabled. Applicant filed a timely, verified Answer to defendant's petition on March 14, 2023. It should be noted that a Second Amended Findings & Award issued on February 16, 2023, to correct a clerical error and does not affect petitioner's claim.

Petitioner asserts the WCALJ erred in relying on applicant's vocational expert Scott Simon, the reports of psychiatric AME Segal, former psych PQME Tahami reporting, as well as the psych treating physician reports in concluding applicant is 100% permanently totally disabled solely on a psychiatric basis.

II

BACKGROUND

Albert Mata, while employed during the period 01/01/1990 through July 24, 2012, as a correctional officer by the California Department of Corrections & Rehabilitation sustained an admitted injury arising out of and in the course of employment to the psyche, circulatory system, hypertensive heart disease.

III **DISCUSSION**

WCJ RELIANCE ON APPLICANT'S VOCATIONAL EXPERT IN FINDING APPLICANT SUCCESSFULLY REBUTTED THE PERMANENT DISABILITY RATING SCHEDULE AND FINDING APPLICANT IS 100% PERMANENTLY TOTALLY DISABLED IS SUPPORTED BY SUBSTANTIAL EVIDENCE

Defendant Petitioner contends that the WCJ erred in following the opinion of applicant vocational expert Scott Simon in concluding applicant was not amenable to rehabilitation solely on a psychiatric basis. The primary contention was Mr. Simon did not rely on any psyche permanent work restrictions (PWRs), but instead relied on the *AMA Guides* permanent impairment rating criteria to eliminate job matches, contrary to *AMA Guides Section 1.2b*. Petitioner further contended that PWRs only provided by evaluating doctors are required in a DFEC rebuttal analysis pursuant to *AMA Guides Section 1.9*. Petitioner cites no applicable case law for their contentions. To begin, the 2005 Schedule does not use the *AMA guides* for evaluating psychiatric impairments. This is because the guides do not provide a WPI for any non-neurologically based psychiatric impairment. So the administrative director did not use Chapter 14 of the *AMA guides*, entitled "Mental and Behavioral Disorders," for assessing WPI for such impairments. *Almaraz v. Environmental Recovery Services/Guzman v. Milpitas Unified School District* (2009) 74 CCC 1084, 1103 (appeals board *en banc*).

Psychiatric impairments instead are evaluated using the Global Assessment of Functioning (GAF) scale. The Global Assessment of Functioning is a numeric scale (0 through 100) used by mental health clinicians and physicians to subjectively rate the social, occupational, and psychological functioning of adults, for example, how well or adaptively one is meeting various problems in living. The scale is presented and described in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM IV, text revision) on page 32. An employee's GAF score is then converted to a WPI rating using a GAF conversion table. The instructions for determining a GAF score and converting it into a WPI rating are set forth in pages 1-12 through 1-16 of the schedule.

In the instant case, the psychiatric medical-legal evaluators correctly rated applicant's psychiatric disability per the DSM IV and utilized the GAF Scale which included consideration of psychological, social, and occupational functioning. The psychiatric PQME and subsequent AME

also utilized the *AMA Guides* to help describe applicant’s cognitive and functional impairments. Defendant’s contention that a vocational expert cannot support their opinion on an applicant’s amenability to rehabilitation based in part on the consensus of the medical-legal evaluators’ descriptions of psychiatric functioning is misplaced. Labor Code section 4662(b) provides for permanent total disability to be determined “in accordance with the fact.” The rule established in *LeBoeuf*, is most often used to rebut a scheduled rating. Injured workers will present evidence from vocational experts in an effort to demonstrate that *due to the effects of their injuries*, their loss of future earning capacity is greater than reflected in the schedule rating. But in order to apply *Ogilvie*, injured workers first must demonstrate that a work-related injury precludes them from taking advantage of vocational rehabilitation and participating in the labor force. (*Contra Costa County v. WCAB (Dahl)* (2015) 80 CCC 1119, 1128).

The court in *Contra Costa County v. WCAB (Dahl)*, further clarified applicant’s burden of proof to rebut the scheduled rating, by determining whether a work-related injury precludes the applicant from taking advantage of vocational rehabilitation and participating in the labor force in contrast to asserting a superior empirical methodology in calculating an applicant’s diminished future earning capacity. Injured workers must show that the work-related injury, rather than nonindustrial factors, precludes them from taking advantage of vocational rehabilitation and participating in the labor force. (*See Contra Costa County v. WCAB (Dahl)* (2015) 80 CCC 1119, 1131).

In the instant case, there are two conflicting vocational expert opinions, the parties’ each asserting their vocational expert opinion is substantial evidence while the opposing parties’ vocation opinion is not substantial evidence. The WCJ relied on Mr. Simon’s logic and expertise in applying the evaluative criteria to the facts of this case and concluded applicant had successfully rebutted the rating schedule.

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**APPLICANT VOCATIONAL EXPERT SCOTT SIMON SUPPLEMENTAL
REPORT OF DATED JUNE 7, 2016 – APPLICANT EXHIBIT, A-4**

In pertinent part, in his report of June 7, 2016, Vocational expert Scott Simon summarized applicant's background, vocational history, medical factors, ADL's, vocational testing results, functional impairments described by PQME Tahami, transferable skills assessment, analysis of Mr. Mata's amenability ultimately concluding applicant would not be able to re-enter the workforce without some type of work hardening rehabilitation program designed to restore functional and work capacities to an injured worker through participation in a graded work simulation coupled with job placement assistance. Mr. Simon concluded applicant did not maintain any access to the labor market, including any home-based employment. His opinion was based solely on the effects of the industrial injury (p. 25).

**APPLICANT VOCATIONAL EXPERT SCOTT SIMON SUPPLEMENTAL
REPORT OF DATED MAY 23, 2018 – APPLICANT EXHIBIT, A-3**

Following review of interim medical-legal reporting, applicant's overall global assessment of functioning had now declined to 48, with a corresponding decrease in functioning noted as follows: marked impairment in ADL's, marked impairment in social functioning, moderate impairment in concentration, persistence and pace, and moderate impairment in deterioration or decompression in complex or work-like settings.

The treating psychiatrist, Dr. Diebel, opined in a 3/6/17, report that applicant now officially scored high enough on the PTSD checklist to be formally diagnosed with PTSD, when Mr. Mata was previously under the threshold for a formal diagnosis of PTSD. (p. 9).

Mr. Simon concluded that the worsening of the psychiatric condition only served to confirm applicant's lack of ability to compete in an open labor market and the lack of amenability to rehabilitation.

**APPLICANT VOCATIONAL EXPERT SCOTT SIMON RE-EVALUATION
REPORT DATED MARCH 11, 2022, APPLICANT EXHIBIT A-2**

Mr. Simon reviewed interim treatment reports and the new psych AME reporting of Dr. Perry Segal as well as PQME Bellinger Residual Functional Capacity report, stating, “Indeed, the symptoms discussed as long ago as 2015 are nearly identical to those reported by Mr. Mata six and a half years later. Dr. Segal in a very recent residual functional capacity questionnaire has articulated the very similar psychiatric residuals as those described throughout the record.” (p. 5) Whereas PQME Tahami offered a GAF of 55, Segal recommended a GAF of 54. Of import, Dr. Segal offered a moderate to severe impairment rating in the most critical vocational factor, i.e., (marked impairment) in Mr. Mata’s potential adaptation versus deterioration or decompensation in complex or work-like settings which represented significant impediment to useful functioning. Coupled with the other three moderate impairments, Mr. Simon then reviewed the Mental Residual Functional Capacity assessment completed by Dr. Segal. Specifically, at p. 2 of that form, there was a marked limitation on Mr. Mata’s ability to complete a normal work day and workweek without interruptions from psychologically based symptoms and to perform at a consistent pace without an unreasonable number and length of rest periods (p. 5).

Similarly, there was marked impairment in his ability to accept instructions and respond appropriately to criticisms from supervisors. *Moreover, Mr. Mata, in a potential work setting, should avoid the following: Directing, controlling, or planning activities of others; performing a variety of duties; expressing personal feelings, performing effectively under stress; influencing people in their opinions, attitudes and judgments; dealing with people; and making judgments and decisions.*” (p. 5) (emphasis added).

**APPLICANT VOCATIONAL EXPERT SCOTT SIMON SUPPLEMENTAL
REPORT OF DATED NOVEMBER 1, 2022 – APPLICANT EXHIBIT, A-1**

Mr. Simon reviewed the defense vocational expert supplemental report of Mr. Sartoris, which concluded with all the assigned work restrictions the applicant was amenable to rehabilitation, though acknowledged applicant was now 73 years old and had not shown coordinated efforts or motivation to return to work since he had last seen him in 2018. (p. 6) Mr. Simon reiterated his conclusions in his prior reporting of 3/11/22, noting the significant functional limitations from the start of the reporting in 2015 to the present (pp. 6-8) and noted Mr. Sartoris overlooked many of the more severe work restrictions offered by Dr. Segal (p. 9). After recounting the permanent work restrictions on a psychological basis only, Mr. Simon affirmed, “my opinions are nearly identical to the ones I offered in March of this year... I do not see any reason to modify those opinions.” (p. 10).

IV

RECOMMENDATION

In short, there were conflicting vocational reports and the WCJ found the vocational reporting of Mr. Simon demonstrated applicant was precluded from taking advantage of vocational rehabilitation and participating in the labor force. It is recommended that the WCAB deny defendant’s Petition for Reconsideration.

DATE: March 20, 2023[.]

Kathleen A. Chassion
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE