

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

**CAITLIN ADDISON HOWARD, *Applicant***

**vs.**

**PARENTS CENTER, INC., and TRUCK INSURANCE EXCHANGE, *Defendants***

**Adjudication Number: ADJ8111048  
Salinas District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Orders issued by the workers' compensation administrative law judge (WCJ) on March 6, 2023, wherein the WCJ found in pertinent part that good cause did not exist to reopen applicant's award of permanent total disability; and the WCJ ordered that defendant's Petition to Reduce Applicant's Award was dismissed.

Defendant contends that the trial record contains evidence that applicant is not permanently totally disabled and that its Petition to Reduce Applicant's Award should be granted.

We received a Report and Recommendation on Petition for Reconsideration from the WCJ recommending the Petition for Reconsideration 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, and for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, we will deny reconsideration.<sup>1</sup>

**DISCUSSION**

In the Findings and Orders/Opinion on Decision and the Report, the WCJ discusses in detail the legal and factual basis for her conclusions. Having reviewed the entire record, including the Electronic Adjudication Management System (EAMS) ADJ file, we agree with the WCJ's

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<sup>1</sup> On August 26, 2016, the Appeals Board issued an Order Denying Petitions for Reconsideration; Commissioners Brass and Lowe and Deputy Commissioner Gondak were the panel members at that time. Commissioners Brass and Lowe and Deputy Commissioner Gondak no longer serve on the Appeals Board and other panel members have been assigned in their place.

analysis and concur with her opinion. Also, it is important to note that in his 2016 Amended Findings and Award, WCJ Asturias stated:

The Qualified Medical Evaluator (QME), Dr. Richard Alloy, Ph.D., clearly and simply and unerringly found applicant to be permanently and totally disabled all due to this accident; there is no rebuttal evidence presented by the defendant. ¶ ... Further, Dr. Alloy specifically stated that he included all the psychological impairments under the AMA guides Chapter 13 section since in his opinion all of her impairments were due to the central nervous system physical injury. In other words, he explained his approach to analyzing her impairment. (Amended Findings and Award, June 13, 2016, p. 3.)

In his most recent report, QME Dr. Alloy explained:

I have carefully spent time watching and rewatching the videos and reading through the provided documents. As described above, I note my observations about each where appropriate. I do not see or read anything that causes me to question or challenge my prior conclusions. In fact, I find this information to reinforce [sic] and further substantiate my prior conclusions with real world examples and observations. I would not expect her traumatic brain injury to limit or restrict her ability to do simple household chores or to ride a bicycle on a routine route or to be a passenger in a vehicle. I would expect her traumatic brain injury to result in the personality change, very limited initiative, social isolation, emotionality, and loss of sense of time as described so well by her brother. Overall, this information does not provide any strong basis for me to change my prior opinions. The deposition is strongly consistent with my prior evaluations of the applicant and my understanding of types of consequences of traumatic brain injury. I find no discrepancies or anything that causes me to question or rethink my previous conclusions. Therefore, my opinions are unchanged and in fact are reinforced.

(Def. Exh. 25, Richard Alloy, Ph.D., June 6, 2022, pp. 4 – 5.)

The trial record includes eight reports from Dr. Alloy and the transcripts of his two depositions. (See App. Exh, 1; Def. Exhs, 23 – 25; Board Exhs. W1, W2, and W10 – W13.) Dr. Alloy's opinions are based on his examinations of applicant, the histories he took, his review of the extensive medical record (including surveillance videos), and his medical expertise. Clearly, his expert opinions constitute substantial evidence. Defendant's lay opinions and arguments to the contrary are not evidence. Thus, Dr. Alloy's opinions are an appropriate basis for the WCJ's decision and therefore her decision will not be disturbed. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].)

Accordingly, we deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Orders issued by the WCJ on March 6, 2023, is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**May 23, 2023**

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

**CAITLIN ADDISON HOWARD  
RUCKA, O'BOYLE, LOMBARDO & McKENNA  
STRATMAN & WILLIAMS-ABREGO**

**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 has filed a timely, verified Petition for Reconsideration of the undersigned's 3/6/23 Findings and Orders.

## II

### FACTS

Caitlin Howard, while employed on 10/16/11 as a family therapist, Occupational Group No. 111, at Santa Cruz, California, by Parents Center, Inc., then insured by Truck Insurance Exchange, sustained injury AOE/COE to her head, shoulders, and knees.

Relevant procedural history is set forth below:

- On 4/13/2016, WCJ Daniel H. Asturias issued Findings and Award of permanent total disability. (EAMS DOC ID: 59864260.)
- On 4/27/16, Applicant's attorney petitioned for reconsideration of the attorney's fees awarded. (EAMS DOC ID: 60045258.)
- On 5/9/16, Defendant petitioned for reconsideration of the F&A. (EAMS DOC ID: 18313798.)
- On 5/11/16, Judge Asturias vacated the Findings and Award and issued a Notice of Intent to admit additional evidence. (EAMS DOC ID: 60158813.)
- On 6/13/16, Judge Asturias issued Amended Findings and Award finding the applicant to be permanently totally disabled. (EAMS DOC ID: 60472770.)
- On 6/27/16, Applicant's attorney petitioned for reconsideration of the attorney's fees awarded. (EAMS DOC ID: 60650291.)
- On 7/8/16, Defendant petitioned for reconsideration of said F&A. (EAMS DOC ID: 18917675.)
- On 7/18/16, Judge Asturias issued a Report & Recommendation in response to Applicant Attorney's Petition. (EAMS DOC ID: 60825511.)
- On 7/25/16, Judge Asturias issued a Report & Recommendation in response to Defendant's Petition. (EAMS DOC ID: 60886344.)
- On 8/26/2016, the WCAB issued its Order Denying Petitions for Reconsideration. The WCAB adopted and incorporated Judge Asturias' Reports. (EAMS DOC ID: 61241225.)

- On 10/5/16, Defendant petitioned to reopen to reduce the applicant's Award. (EAMS DOC ID: 19725075.)

Thereafter, the parties attended many hearings and conducted additional discovery until finally setting Defendant's Petition to Reopen for trial. Trial proceeded with the undersigned on 11/14/22. The parties were given time to submit post-trial briefs, which they did. Findings and Orders issued on 3/6/23. (EAMS DOC ID: 76490932.)

In the undersigned's Findings and Orders, it was found that good cause does not exist to reopen the applicant's award of permanent total disability and that Applicant's attorney is entitled to reasonable fees pursuant to Labor Code Section 5410.1 for defending against the petition. (Findings and Orders, 3/6/23, Findings 6 and 7, p. 1)

### III DISCUSSION

A WCJ's report "cures any technical or alleged defect in satisfying the requirements of Labor Code section 5313." [(*City of San Diego v. W.C.A.B. (Rutherford)* (1989) 54 Cal. Comp. Cases 57 (writ den.); *Smales v. W.C.A.B.* (1980) 45 Cal. Comp. Cases 1026 (writ den.))] To the extent that the undersigned failed to elaborate on her conclusions, they will be discussed below. Defendant did not establish good cause to reopen and reduce Applicant's Award of 100% PD. There was little new evidence proffered by Defendant. Most of the evidence submitted by Defendant was information in existence prior to the 2016 F&A or information that could have been obtained prior thereto. Defendant submitted depositions of the applicant (dated 2/9/18) and her brother (dated 5/19/21); a printout of the applicant's Licensed Clinical Social Worker license, originally issued on 6/30/09 with an expiration date of 5/31/17, and printed from the Consumer Affairs Breeze website on 5/11/17; Facebook posts from 2015 and before; Instagram posts from 2013 and 2014; and, a blog comment from 3/16/13. (Def't's Exs. D-27, D-28, D-29, D-30, D-31, D-32) The evidence submitted by Defendant is insufficient to undermine the prior Findings and Award. Defendant would have this court reject the QME's medical opinions based on a few pictures and comments posted online, all of which could have been obtained prior to the Amended Findings and Award. Furthermore, Defendant did not establish that such evidence could not have been discovered and produced at the original hearing in the exercise of reasonable diligence.

Defendant did not establish that the applicant is now capable of competing in the open labor market. The new evidence obtained after the Award was approximately three minutes of

surveillance videos taken in August and September of 2020. (Deft's Ex. D-33: Surveillance Report, Contego Investigative Services, with video links dated 8/22/20, 8/25/20, and 9/23/20.) Per the testimony of the Director of Operations for Contego, Christopher Fountain, forty hours of surveillance was conducted. (Minutes of Hearing and Summary of Evidence, 11/14/22, p. 9, lines 8.5-9)

Per the court's review of that video, on 8/22/20, the applicant was filmed bicycling on public streets for one minute, 18 seconds. On 8/25/20, she was filmed for 16 seconds riding her bicycle. On 9/23/20, she was filmed for one minute, 19 seconds walking in front of her house, picking up some cardboard boxes before disappearing from the frame, coming back into the frame without the boxes, going quickly in and out of an open door, then walking to a pickup truck and sitting in the passenger seat. The videos only demonstrated what the applicant readily admitted at trial. The applicant testified that her physical condition has improved since she had surgery on her knee. She no longer needs to use a cane and her ability to walk and to ride a bike has improved since her injury. She walks once or twice per week, walking as far as she can. She tries to ride her bike two to three miles every day. (Minutes of Hearing and Summary of Evidence, 11/14/22, p. 5, lines 9.5-13) Applicant testified credibly.

While the applicant's physical condition has indeed improved, her physical injury was not the basis for Judge Asturias' Findings and Award of 100% PD. The sole basis for his finding was Dr. Alloy's opinions regarding the impairment of her cognitive abilities due to the sustained trauma to her head. Per his Opinion on Decision, "The finding of this WCJ is that the applicant has sustained a permanent and total disability based upon the opinion of Dr. Alloy." (Amended Findings and Award, 6/13/16, Opinion on Decision, p. 3)

No new medical evidence exists to support reducing the applicant's award. The parties returned to QME Dr. Richard Alloy, upon whose opinions Judge Asturias previously relied to find Applicant 100% disabled. Defendant requested that Dr. Alloy review surveillance videos (Deft's Ex. D-33: Surveillance Report, Contego Investigative Services, with video links dated 8/22/20, 8/25/20, and 9/23/20) and the deposition of applicant's brother (Deft's Ex. D-28: Rough Transcript of Steve Lang, by depos@storycloud.co, 5/19/21) In his 6/6/22 report, Dr. Alloy stated:

I have carefully spent time watching and rewatching the videos, and reading through the provided documents. As described above, I note my observations about each where appropriate. I do not see or read anything that causes me to question or challenge my prior conclusions. In fact, I find this information to

reenforce [sic] and further substantiate my prior conclusions with real world examples and observations. I would not expect her traumatic brain injury to limit or restrict her ability to do simple household chores or to ride a bicycle on a routine route or to be a passenger in a vehicle. I would expect her traumatic brain injury to result in the personality change, very limited initiative, social isolation, emotionality, and loss of sense of time as described so well by her brother. Overall, this information does not provide any strong basis for me to change my prior opinions. The deposition is strongly consistent with my prior of the applicant and my understanding of types of consequences of traumatic brain injury. I find no discrepancies or anything that causes me to question or rethink my previous conclusions. Therefore, my opinions are unchanged and in fact are reinforced. (Deft's Ex. D-25: Report, Richard Alloy, Ph.D., 6/6/22. Pp. 4-5)

Although the Appeals Board may "rescind, alter, or amend any order, decision, or award, good cause appearing therefor" under section 5803, "[t]he principle of reopening for 'good cause' does not permit an attempt to simply relitigate the original award." [(*Nicky Blair's Restaurant v. WCAB* (1980) 109 Cal.App.3d 941, 957; 45 Cal. Comp. Cases 876, 956)]

New evidence must be presented, which (a) must present some good ground, not previously known to the Appeals Board, which renders the original award inequitable, (b) must be more than merely cumulative or a restatement of the original evidence or contentions, and (c) must be accompanied by a showing that such evidence could not with reasonable diligence have been discovered and produced at the original hearing. (Citations.) Reopening upon the claim of newly discovered evidence is not a matter of right. (Citation omitted)" (Ibid.) [The Board's] power to re-open the case in the exercise of its continuing jurisdiction, 'invoked on the ground of newly discovered evidence, should be exercised with great caution and when fraud, inadvertence, mistake or excusable neglect are clearly shown. Otherwise, the process of introducing evidence before the [Board] would be interminable and the [Board] might be held to abuse its discretion in the exercise of its power.' (Citation omitted.) (*Nicky Blair*, supra, at 957)

Applicant's attorney is entitled to a reasonable fee in defending against Defendant's petition, as set forth in Labor Code section 5410.1.

**IV**  
**RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

**ROISILIN RILEY**  
**Workers' Compensation**  
**Administrative Law Judge**

4/13/23