

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

EDUARDO CASELIN HUERTA, *Applicant*

vs.

**MONTIE WAYNE SHEET METAL; CALIFORNIA INSURANCE COMPANY,
Administered By APPLIED RISK SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11451772
Santa Barbara District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of January 11, 2023, wherein it was found that, while employed on August 1, 2018, applicant sustained industrial injury to the lumbar spine, sexual dysfunction and urological impairment causing the maximum 104 weeks of temporary disability from August 13, 2018 through August 9, 2020, permanent disability of 90%, and the need for further medical treatment. It was found that applicant sustained lumbar spine permanent disability of 36% urological/bladder permanent disability of 41% and sexual dysfunction permanent disability of 13%. In finding overall permanent disability of 90%, the WCJ added these percentages of permanent disability rather than combining them utilizing the Combined Values Chart (CVC) of the 2005 Schedule for Rating Permanent Disabilities. (2005 Schedule at pp. 8-1 to 8-3.)

Defendant contends that (1) the WCJ erred in finding temporary disability through August 9, 2020, arguing that applicant's orthopedic condition was permanent and stationary on November 12, 2019 and that urologist qualified medical evaluator Fred S. Kuyt, M.D. did not opine that applicant was temporarily disabled on a urological basis, (2) applicant's sexual dysfunction "impairments"¹ cannot be the basis for permanent disability pursuant to Labor Code section

¹ In the Petition, the defendant appears to ask that both the sexual dysfunction and the bladder/incontinence permanent disabilities be found non-compensable pursuant to Labor Code section 4660.1(c). However, it is not immediately obvious to us how bladder impairment/incontinence falls under the Labor Code section 4660.1(c) exception, and defendant does provide any explanation in its Petition. Defendant may wish to clarify this contention in the further proceedings.

4660.1(c), and that (3) the WCJ erred in adding the applicant's disparate permanent disability ratings rather than combining through the CVC. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

As noted above, in finding permanent disability of 90%, the WCJ added applicant's orthopedic permanent disability (36%) to applicant's two urological permanent disabilities (which were themselves added together) (41% and 13%). However, in the Report, the WCJ writes:

The Workers' Compensation Judge found Dr. Kuyt's analysis as to the adding of the urological conditions to be well reasoned and appropriate but rejected Dr. Kuyt's analysis as to the adding of the urological condition to the altered gait found by Dr. Rah, an orthopedist as an extension of Kite that was not warranted or supported.

(Report at p. 3)

As explained below, we affirm the finding of temporary disability through August 9, 2020. However, we will grant reconsideration and amend the Findings and Award to defer the issue of permanent disabilities in order for the WCJ to clarify whether he meant to combine or add the orthopedic and urological permanent disabilities and to more completely analyze the issues raised by defendant and applicant regarding adding or combining permanent disabilities and the applicability of Labor Code section 4660.1(c).

We will affirm the finding of temporary disability. Temporary disability ceases when either the injured worker returns to work or when his condition becomes permanent and stationary. (*Bethlehem Steel Co. v. Industrial Acc. Com. (Lemons)* (1942) 54 Cal.App.2d 585 [76 Cal.Comp.Cases 250].) Dr. Kuyt wrote in his October 26, 2021 report, "Mr. Caselin Huerta's voiding dysfunction with its attendant ongoing urinary urgency, hourly frequency, nocturia x 5-6 and daily frequent bouts of urge incontinence, in and of itself, disables him from being capable of returning to his previous employment." (October 26, 2021 report at p. 14.) Additionally, Dr. Kuyt found that he was not permanent and stationary on a urological basis until October 26, 2021. (October 26, 2021 report at p. 16.) Since he was unable to return to his normal work, he was necessarily temporarily disabled. Thus, the WCJ properly found temporary disability indemnity payable for the maximum 104-weeks (Lab. Code, § 4656, subd. (c)(2)).

However, we will grant reconsideration and defer the issue of permanent disability so that the WCJ can reanalyze the issues raised in defendant's Petition, directly addressing the authority cited by defendant and applicant, and clearing up the confusion regarding whether he meant to add

or combine the permanent disability ratings. With regard to the applicability of Labor Code section 4660.1(c), while the WCJ purported to rest his decision on the case of *Hikida v. Workers' Comp. Appeals Bd.* (2017) 12 Cal.App.5th 1249 [82 Cal.Comp.Cases 679], *Hikida* deals with the applicability of Labor Code section 4663 apportionment rather than the 4660.1(c) exception to permanent impairment. In the further proceedings, the WCJ should reanalyze this issue, considering the applicability of *City of Los Angeles v. Workers' Comp. Appeals Bd. (Montenegro)* 81 Cal.Comp.Cases 611 (writ den.). We take no position on the ultimate resolution of these issues.

For the foregoing reasons,

IT IS ORDERED that that Defendant's Petition for Reconsideration of the Findings and Award of January 11, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of January 11, 2023 is **AMENDED** as follows:

FINDINGS OF FACT

1. Eduardo Caselin Huerta, age 41 on the date of injury, while employed on August 1, 2018, in California by Montie Wayne Sheet Metal, sustained injury arising out of and within the course of employment to his lumbar spine, and in the forms of sexual dysfunction and urological impairment arising out of and occurring within the course of employment.
2. At the time of the injury, the employer was insured by California Insurance Company, administered by Applied Risk Services, Inc.
3. At the time of the injury, applicant's earnings were \$1,204.00 per week warranting indemnity rates of \$802.67 for temporary disability and \$290.00 for permanent disability.
4. If applicant were called to testify, he would testify he told the PQMEs the truth and reported the injury and his complaints accurately.
5. It is found applicant is entitled to 104 weeks of temporary disability indemnity commencing August 13, 2018, through August 9, 2020, less attorney fees as provided herein below.
6. The issue of permanent disability is deferred, with jurisdiction reserved.

7. It is found there is no basis for apportionment.
8. It is found there is a need for further medical treatment to cure or relieve the effects of the industrial injury.
9. It is found applicant is entitled to be reimbursed for all out-of-pocket expenses, subject to proof in an amount to be adjusted by the parties.
10. It is found a reasonable attorney fee is 15% of the additional temporary disability awarded not previously paid. The issue of any attorneys' fees based on permanent disability is deferred, with jurisdiction reserved.

AWARD

Award is made in favor of Applicant **Eduardo Caselin Huerta** and against **California Insurance Company** as follows:

- A. Additional parts of body/systems as provided in Findings number 1;
- B. Temporary disability as provided in Findings number 5;
- C. Further medical care as provided in Findings number 8;
- D. Reimbursement of out-of-pocket medical expenses as provided in Findings number 9;

E. Attorney fees as provided in Findings number 10.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 3, 2023

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

**EDUARDO CASELIN HUERTA
WOLFF-WALKER LAW FIRM
MICHAEL SULLIVAN & ASSOCIATES**

DW/oo

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