

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

ANTHONY GOMES, *Applicant*

vs.

CITY AND COUNTY OF SAN FRANCISCO, permissibly self-insured, *Defendants*

**Adjudication Number: ADJ11930142
San Francisco District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, both of which we adopt and incorporate, and for the reasons discussed below, we will deny reconsideration.

In addition to the reasons discussed by the WCJ in the Report and Opinion on Decision, we note that a finding of permanent total disability may also be based upon the opinions of agreed medical examiner (AME) Scott Anderson, M.D., and vocational expert Scott Simon (applicant's Exhibit 2) that establish applicant's inability to participate in vocational rehabilitation and return to gainful employment. (*Ogilvie v. City and County of San Francisco* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624], *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [48 Cal.Comp.Cases 587].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 19, 2021

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

**ANTHONY GOMES
WYMAN & HEGWER
OFFICE OF THE CITY ATTORNEY**

PAG/bea

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

Elizabeth Dehn, Workers' Compensation Judge, hereby submits her report and recommendation on the Petition for Reconsideration filed herein.

Introduction

On September 20, 2021, defendant City and County of San Francisco, permissibly self-insured, filed a Petition for Reconsideration following the issuance of my September 1, 2021 Findings of Award and Opinion on Decision. Defendant argues that I erred in finding that the applicant was permanently, totally disabled. In support of this contention, they argued the Agreed Medical Evaluator's opinions that the applicant's impairment should be added using, rather than combined, is based on an incorrect application of the law, and that the opinions of the AME regarding the applicant's permanent disability are not substantial evidence.

Defendant's petition was timely filed and accompanied by the verification required under Labor Code section 5902.

Applicant attorney filed an Answer to the Petition for Reconsideration arguing that the opinions of the Agreed Medical Evaluator should be followed and that the Petition for Reconsideration should be denied.

Facts

Anthony Combs, while employed during the period of October 26, 2017 through October 26, 2018, as a police officer, Occupational Group Number 490, at San Francisco California, by the City and County of San Francisco, permissibly self-insured for workers' compensation, sustained an accepted injury arising out of and in the course of his employment to the neck, thyroid, voice, vision and right eye.

The parties stipulated that the applicant was paid salary continuation from November 26, 2018 through November 25, 2019. They also stipulated that he reached maximum medical improvement on May 8, 2019.¹

¹ In its Petition for Reconsideration, Defendant contends that they did not intend to stipulate that applicant reached Maximum Medical Improvement on May 8, 2019. Defendants entered into this stipulation at the time of the June 30, 2021 trial and there was no objection to this stipulation following service of the Minutes of Hearing from the trial.

The parties proceeded to trial on June 30, 2021 on the issue of permanent disability. Applicant contended that he was permanently, totally disabled, while defendants argued that the applicant's permanent disability rated to 84%. On September 1, 2021, after considering the documentary evidence, the testimony of the applicant, the applicable law, and the post-trial memorandum of points and authorities filed by both parties, I issued my Findings and Award and Opinion on Decision finding that the applicant's injury caused permanent disability of 100%, payable at the rate of \$1215.27 beginning November 26, 2019 and subject to COLA increases, less a reasonable attorneys' fee of 15% of the permanent total disability awarded, pending an award of attorney's fees after the filing of a supplemental petition requesting such an award.

Defendant's Contentions

In its' petition, defendant contends that the opinions of the Agreed Medical Evaluator Dr. Scott Anderson on the nature and extent of permanent disability and his conclusion that the applicant's permanent disability should be added, rather than combined using the Combined Values Table, are not based on substantial medical evidence or supported by the law.

For the reasons discussed below, I maintain that defendant's contentions are without merit, and do not provide sufficient basis to grant reconsideration in this matter.

Discussion

1. The finding that the applicant's impairment should be added, rather than combined, is based on substantial medical evidence.

Permanent impairment must be based on the AMA Guides to the Evaluation of Permanent Impairment. (Labor Code section 4660.1(b).) However, the scheduled permanent disability rating is rebuttable. (Labor Code section 4660.1(h), *Milpitas Unified School Dist. v. Workers' Comp Appeals Bd. (Guzman)* (2010) 187 Cal. App. 4th 808.) To the extent that an evaluating physician gives impairment ratings that depart from the strict interpretation of the AMA Guides, there must be an explanation as to why the standard method outlined in the Guides does not accurately reflect the applicant's impairment, and why an alternative method better

describes the impairment. (*Milpitas Unified School Dist. v. Workers' Comp Appeals Bd. (Guzman)* (2010) 187 Cal. App. Fourth 808, 829).

Although the preferred method of combining impairments is using the Combined Values Chart, the impairments may be added if it is a more accurate reflection of the overall impairment because of the synergistic effect of the impairments. (*Athens Administrators vs. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal. Comp. Cases 213).

The Combined Value Chart found in the PDRS and the former Multiple Disabilities Table have always been considered to be only a guide. (*State of Calif, v. Workers' Comp. Appeals Bd. (McDonald)* (1982) 47 Cal. Comp. Cases 1204 (writ den.); *County of Los Angeles v. Workers' Comp. Appeals Bd. (LeCornu)* (2009) 74 Cal. Comp. Cases 645 (writ den.).) The PDRS itself states that “Impairments and disabilities are *generally* combined” using the combined value method. (2005 Schedule for Rating Permanent Disabilities, Page 1-10 (emphasis added).) Therefore, the PDRS does not mandate the use of the Combined Values Table in all cases.

In his June 12, 2019 report, Dr. Anderson stated that the impairments for the thyroid disease, scarring and loss of neck tissue, impaired speaking, deglutition/taste, and deconditioning should be added rather than combined as they all derived from his neck surgery. (Joint Exhibit VV, Report of Agreed Medical Evaluator Scott Anderson, Dated June 12, 2019, Page 3.) At his deposition in this matter, Dr. Anderson gave a detailed explanation as to why he believed the impairments should be added rather than combined. He testified when the applicant's thyroid was removed, it led to impaired swallowing and saliva function, which in turn led to impaired nutrition and made his overall recovery more difficult. (Joint Exhibit WW, Transcript of the deposition of Agreed Medical Evaluator Scott Anderson, M.D., dated October 9, 2019, Pages 29, 30 and 33-37.) I found that Dr. Anderson's opinion that the impairments for the thyroid disease, loss of skin in the neck, difficulties with speech and swallowing/deglutition should be added, rather than combined, is substantial medical evidence.

After adjustment for age and occupation, the impairment for the loss of skin in the neck was 32%, the impairment for the thyroid cancer was 26%, the impairment to the applicant's speech was 38% and swallowing/deglutition was 25%. When those impairments outlined by Dr. Anderson were added together, they exceeded 100%, before any consideration for the orthopedic impairment or vision impairment found by the other two Agreed Medical Evaluators. It was on this basis that I found that the applicant was permanently, totally disabled as a result of the cumulative trauma injury.

2. The reports of the Agreed Medical Evaluator Dr. Anderson regarding the impairment for scarring are substantial medical evidence.

Parties typically select an AME because of their expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal. App. 3d 775, 782.) Thus an AME's opinion should be followed, unless there is good reason to find that opinion unpersuasive. (*Id.* at 782.) When an AME cannot address an issue as it is outside his or her medical specialty, an additional AME or QME can be used. (8 Cal. Code Reg section 31.7(b); *Espinosa v. Seccombe Homes, Inc. dba North Star Construction*, 2018 Cal. Wrk. Comp. P.D. Lexis 550.)

Dr. Anderson in his May 8, 2019 AME report stated that there were two issues related to the applicant's thyroid cancer that he could not address as they were outside his area of expertise: weakness of the right upper extremity and shoulder, which he deferred to an orthopedic surgeon, and the effects of Horner's syndrome in the right eye, which he deferred to an ophthalmologist. (Joint Exhibit VV, Report of Agreed Medical Evaluator Scott Anderson, Dated June 12, 2019, Page 16.) He did not defer assessment of the impairment for the right-sided cervical sub-radical dissection and residual scarring, and provided an assessment of impairment as part of his AME evaluation. (Joint Exhibit VV, Report of Agreed Medical Evaluator Scott Anderson, Dated June 12, 2019, Pages 16 and 20.) At his deposition in this matter, Dr. Anderson did not defer the rating of the loss of skin tissue and scarring to another evaluator, but instead discussed in detail the reasoning behind his assessment of impairment. (Joint Exhibit WW, Transcript of the deposition of Agreed Medical Evaluator Scott Anderson, M.D., dated October 9,

2019, Pages 11-18.) It was on this basis that I found Dr. Anderson's opinions regarding the scarring to be substantial medical evidence.

Defendant contends that the rating of the scarring provided by the orthopedic AME, Dr. Henry Edington, should have been followed as his assessment of impairment was more than a year after Dr. Anderson and showed that applicant continued to improve from his surgery. However, Dr. Edington's impairment for the scarring also supports my finding that the applicant was permanently, totally disabled. Dr. Edington assigned a 5% WPI for the scarring and disfigurement from the surgery. (Joint Exhibit ZZ, Report of Agreed Medical Evaluator, Henry Edington, dated September 15, 2020, Page 9.) Adjusted for age and occupation, the impairment for the scarring would rate to 15%. When added to the ratings for the impairment assigned by the AME Dr. Anderson for the thyroid cancer, deglutition/taste, and phonation, it would still exceed 100%, even before the impairment was combined with the cervical spine impairment assigned by Dr. Henry Edington and the visual impairment assigned by Dr. Philip Edington.

Recommendation

For the foregoing reasons, I recommend that the September 20, 2021 Petition for Reconsideration be denied.

DATE: October 4, 2021

Elizabeth Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

This matter proceeded to trial on June 30, 2021. The primary issue in this matter was permanent disability, with applicant claiming that he was permanently, totally disabled, and defendant asserting applicant's permanent disability is 84%, as well as attorneys' fees. Both parties filed post-trial Memorandum of Points and Authorities.

Stipulated facts

Anthony Gomes, born February 3, 1961, while employed during the period of October 26, 2017 through October 26, 2018 as a police officer, Occupational Group Number 490, at San Francisco, California, by the City and County of San Francisco, permissibly self-insured for workers' compensation, sustained injury arising out of and in the course of his employment to the neck, thyroid, voice, vision and right eye.

At the time of his injury, the applicant's earnings were \$2498.00 per week. The applicant was paid salary continuation from November 26, 2018 through November 25, 2019 at the rate of \$2498.00 per week. The applicant reached maximum medical improvement on May 8, 2019.

There is a need for further medical care to the neck, thyroid, voice, right eye and vision to cure or relieve from the effects of the industrial injury.

Documentary evidence

Scott Anderson, MD, evaluated the applicant as an Agreed Medical Evaluator on May 8, 2019 for internal medicine related issues. The applicant was diagnosed with stage IV papillary thyroid carcinoma and underwent a thyroidectomy, right modified radical neck dissection with central neck dissection and primary esophageal repair on November 26, 2018. At the time of the AME evaluation, he was complaining of pain in the right side of his neck, blurred vision, hoarseness of voice, and difficulty with tasting, swallowing and speaking. Dr. Anderson opined the thyroid cancer was industrially related, and the applicant was at maximum medical improvement as of the date of the evaluation. He did not believe that the applicant could continue to work as a police officer due to his difficulty in issuing verbal commands, decreased energy, impaired nutrition, loss

of tissue on the right side of the neck, and the need for frequent medical appointments. He also did not believe that it was likely the applicant could be retrained and believed that the applicant was unemployable for the foreseeable future, and that the long-term prognosis for the cancer was guarded. (Joint Exhibit TT, Report of Agreed Medical Evaluator Scott Anderson, M.D., dated May 8, 2019, Pages 4, 6, 18 and 19.)

Using Table 10-2 of the AMA Guides for the rating of thyroid disease, Dr. Anderson placed the applicant in Class II with a 25% Whole Person Impairment (WPI) for the thyroid disease. Using Table 8-2, he assigned a 16% WPI for the loss of subcutaneous tissue and deformity for the scarring from the surgical resection. Using Table 11-9 of the AMA Guides, impaired phonation, he placed the applicant in a Class II with 18% WPI. For the applicant's impaired taste and difficulty chewing and swallowing he rated the applicant under Table 11-7 and assigned 12% WPI. Finally, he found that the applicant had generalized deconditioning and using Table 5-12, analogizing to a chronic pulmonary condition, and assigned a 12% WPI, but believed that there was some redundancy with the separate thyroid cancer impairment so assigned a 6% WPI. He did not find any apportionment. (Joint Exhibit TT, Report of Agreed Medical Evaluator Scott Anderson, M.D., dated May 8, 2019, Pages 19 and 20.)

Dr. Anderson noted that the thyroid surgery had resulted in Horner's syndrome which effected the right eye. He recommended the applicant be seen by an ophthalmologist to address any effect on vision. He also recommended the applicant be seen by an orthopedist to evaluate any weakness of the right upper extremity and shoulder as a result of the surgery. (Joint Exhibit TT, Report of Agreed Medical Evaluator Scott Anderson, M.D., dated May 8, 2019, Page 16.)

Dr. Anderson prepared a supplemental report dated June 12, 2019. He believed that there was a synergistic factor to the complications from the neck surgery, and that the *Kite* decision applied in this case. He recommended that the industrial diagnoses be added. He also noted that the applicant was dependent on his spouse for some activities of daily living, so ultimately rating him between 90%

and 100% was justifiable. (Joint Exhibit VV, Report of Agreed Medical Evaluator Scott Anderson, Dated June 12, 2019, Page 3.)

Dr. Anderson was deposed on October 9, 2019. When questioned about the impairment for thyroid cancer, he testified that the applicant the applicant was able to receive hormone replacement therapy and therefore the last criteria of Class II in Table 10-2 was not met. He therefore placed the applicant in the top range of a Class I impairment, lowering the WPI to 15%. Dr. Anderson also testified that the applicant did not have an overt pulmonary problem and lowered his rating for general body conditioning deconditioning and fatigue, which he previously analogized to a pulmonary impairment from a Class II of Table 5-12 to a Class I which is 0% WPI. (Joint Exhibit WW, Transcript of the deposition of Agreed Medical Evaluator Scott Anderson, M.D. dated October 9, 2019, Pages 10, 11 and 26.)

Dr. Anderson was questioned about his *Kite* analysis. He testified that when the applicant's neck was anatomically disrupted to remove the thyroid gland, swallowing and saliva production were more difficult which in turn impaired nutrition, making the overall anatomical recovery more difficult. He also testified that the impaired nutrition made it harder to fight off recurring cancer. As a result, the conditions resulted in worse health than what was reflected by combining the individual diagnosis. He deferred whether the orthopedic impairment or disability for the Horner's syndrome should be added or combined to the orthopedist and ophthalmologist evaluators. Dr. Anderson also testified that from a medical point of view he did not believe that the applicant was capable of sustaining employment and found that the applicant was not amenable to rehabilitation. Due to the applicant's problems speaking above a whisper and problems with fatigue he did not believe that the applicant would be able to go through a day's work even if it did not require interacting with the public and the work was mostly written. (Joint Exhibit WW, Transcript of the deposition of Agreed Medical Evaluator Scott Anderson, M.D., dated October 9, 2019, Pages 20, 21, 29, 30 and 33-37.)

Applicant was seen by Henry Edington MD as an orthopedic AME on June 5, 2019. He did not believe that the applicant was at maximum medical

improvement and found that applicant needed to be reevaluated one year post surgery. (Joint Exhibit YY, Report of Agreed Medical Evaluator Henry Edington, M.D., dated June 5, 2019, page 10.)

Dr. Henry Edington reevaluated the applicant on September 15, 2020. He noted the applicant had a radical dissection of the right side of the neck with residual scarring, with neck stiffness and pain in the right side as well as decreased motion. From an orthopedic perspective, the applicant was at maximum medical improvement. The loss of the cervical musculature due to the radical neck dissection was not contemplated under the AMA Guides, so by analogy he placed the applicant in a DRE category II with 5% WPI. He also believed there was an additional 5% WPI using Table 8-2 of the AMA Guides. There was no apportionment. (Joint Exhibit ZZ, Report of Henry Edington, dated September 15, 2020, Page 9.)

Philip Edington, M.D. evaluated the applicant as the ophthalmology AME on April 17, 2020. He noted the applicant had visual complaints of difficulty adjusting to light and light sensitivity as well as blurred vision. He also has a recent history of drooping eyelid on the right. He diagnosed the applicant with Horner's syndrome as a result of the thyroid cancer surgery which damaged the nervous system and led to eyelid drooping, lack of perspiration, blurriness of vision and inability to adjust to different light conditions. Using Section 12.4B of the AMA Guides, he assigned a 4% WPI for the visual impairment and difficulties with light sensitivity. There was no apportionment. Dr. Edington also provided recommended work restrictions for the right eye, including the need to wear corrective and protective eyewear, no climbing or working overhead, no use of firearms, and limitations on the use of power tools. (Joint Exhibit XX, Report of Agreed Medical Evaluator Philip Edington, M.D., dated May 5, 2020, Pages 4, and 10- 12.)

Scott Simon, applicant's vocational expert, evaluated the applicant on September 10, 2019. Although he did believe the applicant had transferable skills, with the applicant's difficulty speaking, problems with the right eye/vision and generalized fatigue, he did not believe that the applicant would be able to perform even light such as an office clerk, dispatcher, or security guard. Mr. Simon did not

believe the applicant was amenable to rehabilitation or sustaining employment in the open labor market due to his problems issuing commands, decreased energy and need for frequent medical appointments. He believed the applicant sustained 100% loss of labor market access, 100% loss of future earning capacity and was not amenable to rehabilitation. (Applicant's Exhibit 1, Report of Scott Simon dated July 2, 2020, Pages 21-23, 31.)

Applicant was evaluated by Ira Cohen, defendant's vocational expert, on January 16, 2020. Mr. Cohen disagreed with Dr. Scott Anderson's restrictions that included the need for frequent medical appointments and deferred that issue to the trier of fact. He stated that despite the need for medical appointments the applicant would be able to attend vocational classes, at least on a part time basis. He did not believe that the generalized fatigue noted by Dr. Anderson would prevent the applicant from attending coursework or working on a part-time basis, and the applicant's napping twice a week due to the fatigue was consistent with someone of the applicant's age. He stated that the applicant could return to work in non-strenuous/hazardous employment in selected sedentary, semi-sedentary and light work. He believed that the applicant could be retrained in areas such as accounting, QuickBooks, or business law. He concluded that the applicant was employable, and amenable to rehabilitation. (Defense Exhibit A, Report of Ira Cohen, dated April 2, 2020, pages 24, 30, 35-3, 44 and 49.)

Applicant signed a letter on July 5, 2019 from the City and County of San Francisco's police department declining to go through the Police Department's reasonable accommodation process. (Defendant's Exhibit C, Disability Transfer Designation Letter from the City and County of San Francisco dated July 5, 2019.)

Applicant's testimony

Applicant testified that his treatment for thyroid cancer included surgery which removed his thyroid in the tumor. As a result of the surgery, his right eye is sensitive to changes in light. He only perspires on the left half of his face. He can't raise his voice or sustain a speaking voice. He lost a large portion of the right side of his neck and has a scar. He has a lack of energy and tires easily. He has to be careful when swallowing because his esophagus is restricted. Swallowing is also

difficult because he has less saliva. His hobby is fishing but he is not able to fish as long as he used to, and has to rest for a day after fishing. He does not believe that he would be able to work two days in a row. (Minutes of Hearing from the July 20, 2021 trial, Pages 5 and 8.)

Under defendant's questioning, the applicant testified that he has no problems with most activities of daily living except for an inability to maintain good quality sleep and impaired taste. He is not interested in working any longer. He has not looked for retraining or job placement and does not intend to return to work. He took a service retirement, not a disability retirement. (Minutes of Hearing from the July 20, 2021 trial, Pages 4, 7 and 8.)

Post-Trial Memorandum of Points and Authorities

Applicant filed a post-trial brief arguing that the medical evidence of Dr. Anderson and the vocational evidence of Scott Simon establish that he is permanently, totally disabled. He argued that the *Kite* analysis provided by the AME, Dr. Anderson, was substantial medical evidence. He also argued that Dr. Anderson stated medically the applicant was permanently, totally disabled.

Defendant filed a post-trial brief arguing that the applicant's permanent disability is accurately reflected using the Combined Values Chart, and that Dr. Anderson's opinions regarding the extent of the applicant's disability were not substantial evidence. Defendant also argued that the report of defendant's vocational expert, Ira Cohen, found that the applicant can return to work. Defendant argued that the reports of the three AMEs support a finding of 84% permanent disability.

Analysis

Parties typically select an AME because of their expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal. App. 3d 775, 782.) Thus an AME's opinion should be followed, unless there is good reason to find that opinion unpersuasive. (*Id.* at 782.) In order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability and it must set forth the reasoning in support of its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 621.)

Permanent impairment evaluations must be based on the AMA Guides to the Evaluation of Permanent Impairment. (Labor Code section 4660.1(b).) However, the scheduled permanent disability rating is rebuttable. (Labor Code section 4660.1(h), *Milpitas Unified School Dist. v. Workers' Comp Appeals Bd. (Guzman)* (2010) 187 Cal. App. 4th 808.) To the extent that an evaluating physician gives impairment ratings that depart from the strict interpretation of the AMA Guides, there must be an explanation as to why the standard method outlined in the Guides does not accurately reflect the applicant's impairment, and why an alternative method better describes the impairment. (*Milpitas Unified School Dist. v. Workers' Comp Appeals Bd. (Guzman)* (2010) 187 Cal. App. Fourth 808, 829). Although the preferred method of combining impairments is using the Combined Values Chart, the impairments may be added if it is a more accurate reflection of the overall impairment because of the synergistic effect of the impairments. (*Athens Administrators vs. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal. Comp. Cases 213).

After carefully considering the evidence, I find that the impairments outlined by the AME Dr. Anderson should be added, rather than combined using the Combined Values Table. In his June 12, 2019 report, Dr. Anderson stated that the impairments for the thyroid disease, scarring and loss of neck tissue, impaired speaking, deglutition/taste, and deconditioning should be added rather than combined as they all derived from his neck surgery. (Joint Exhibit VV, Report of Agreed Medical Evaluator Scott Anderson, Dated June 12, 2019, Page 3.) At his deposition in this matter, Dr. Anderson gave a detailed explanation as to why he believed the impairments should be added rather than combined. He testified when the applicant's thyroid was removed, it led to impaired swallowing and saliva function, which in turn led to impaired nutrition and made his overall recovery more difficult. (Joint Exhibit WW, Transcript of the deposition of Agreed Medical Evaluator Scott Anderson, M.D., dated October 9, 2019, Pages 29, 30 and 33-37.) I find that Dr. Anderson's opinion that the impairments for the thyroid disease, loss of skin in the neck, difficulties with speech and swallowing/deglutition should be added, rather than combined, is substantial medical evidence.

Those impairments rate as follows:

skin	08.02.00.00-12%-[1.4] 17-490 J-26-32%
thyroid cancer:	10.00.00.00-15%-[1.4] 21-490 F-21-26%
deglutition:	11.03.00.00-12%-[1.4] 17-490 H-21-25%
voice/speech:	11.03.04.00-18%-[1.4] 25-490 I-33-38%

When added, the impairments exceed 100%, even before combining the impairments for vision found by the ophthalmological AME, Dr. Philip Edington, and the orthopedic impairment for the neck found by the AME, Dr. Henry Edington. This is also consistent with Dr. Anderson's testimony at his deposition that within reasonable medical probability the applicant would not be able to return to work. (Joint Exhibit WW, Transcript of the deposition of Agreed Medical Evaluator Scott Anderson, M.D., dated October 9, 2019, Pages 36-38.)

Both applicant and defendant obtained vocational experts in this matter. Defendant's vocational expert, Ira Cohen, found the applicant to be amenable to vocational rehabilitation. After consists careful evaluation of the report, I do not find Mr. Cohen's opinions to be substantial evidence. The ophthalmological AME, Dr. Philip Edington, provided work restrictions for the applicant's right eye and vision. (Joint Exhibit XX, Report of Agreed Medical Evaluator Philip Edington, M.D., dated May 5, 2020, Page 12.) However, Mr. Cohen did not consider those work restrictions in his evaluation, instead he only addressed the reports of Dr. Henry Edington and Dr. Scott Anderson.

Applicant's vocational expert, Scott Simon, found that the applicant was not amenable to rehabilitation and permanently, totally disabled. This is consistent with the medical opinions of the agreed medical evaluator, Dr. Anderson.

Based on the unrebutted opinions of the Agreed Medical Examiners Dr. Anderson, Dr. Henry Edington and Dr. Philip Edington, I find that the applicant is permanently, totally disabled.

Applicant's attorney has performed valuable services on behalf of the applicant, and is entitled to a fee of 15% of the permanent disability indemnity awarded herein.

DATE: September 1, 2021

Elizabeth Dehn
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE