

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

SCOTT WIEST, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION,
CENTINELA STATE PRISON, *adjusted by* STATE COMPENSATION INSURANCE
FUND, *Defendants***

**Adjudication Number: ADJ10863577
San Diego District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant State of California, Centinela State Prison, Legally Uninsured seeks reconsideration of the April 20, 2021 Findings and Award, wherein a workers' compensation administrative law judge (WCJ) found that on May 19, 2015, applicant Scott Wiest, while employed as a plumber by Centinela State Prison, sustained an industrial injury to his bilateral lower extremities, resulting in bilateral below the knee leg amputations, lumbar spine, vascular system, sleep and psyche. The WCJ found that applicant is permanently totally disabled, without apportionment, as a consequence of his industrial injury. Applicant was awarded temporary disability indemnity and permanent disability at the weekly rate of \$804, subject to credit for permanent disability advances, increases due to the State Average Weekly Wage, and less attorney fees.

Defendant contends the award of 100% permanent disability is not justified on this record. First, defendant contends the WCJ erred in calculating the permanent disability rating by adding applicant's impairments rather than using the combined values chart. Second, defendant contends the WCJ erred in failing to apportion the permanent disability from applicant's bilateral amputations to his non-industrial diabetes. Third, defendant contends the findings of injury to applicant's vascular system, sleep and psyche is not supported by substantial medical evidence.

We have received applicant's Answer to the Petition for Reconsideration. The WCJ prepared a Report and Recommendation on Petition for Reconsideration, recommending that the Petition be denied.

We have considered the allegations and arguments of the Petition for Reconsideration, as well as the Answer thereto, and have reviewed the record in this matter and the WCJ's Report and Recommendation on Petition for Reconsideration of May 19, 2021, which considers, and responds to, each of the defendant's contentions. Based upon our review of the record, and for the reasons stated in the WCJ's Report, which we adopt and incorporate as the decision of the Board, we will affirm the WCJ's determination that applicant sustained 100% permanent disability as a result of his industrial injury.

Additionally, we note defendant's contention that applicant's disability is subject to apportionment based on the medical evidence that applicant's pre-existing, non-industrial diabetes caused, in part, his need for the bilateral amputations. Defendant challenges QME Dr. Karras's opinion that the bilateral below the knee amputations, and not the diabetes, is the cause of applicant's rated orthopedic impairment. Defendant argues that Dr. Karras's reliance on the panel decision in *Parga v. City of Fresno* 2011 Cal. Wrk. Comp. P.D. LEXIS 238 is misplaced, as apportionment is required where there is an underlying diabetic condition that led to the need for the amputations.

The panel in *Parga* held that while underlying non-industrial diabetes contributed to the need for an amputation, it did not play a role in the resulting orthopedic impairment. The same analysis by Dr. Karras, and adopted here by the WCJ, was followed in *State of California v. Workers' Comp. Appeals Bd. (Ham)* (2019) 84 Cal.Comp.Cases 1006 [writ denied], where the need for a partial foot amputation was contributed to, in part, by the applicant's non-industrial diabetes. The medical evidence indicated that the orthopedic impairment was due to the amputation, not the diabetes, though the diabetes contributed to the need for the amputation.

Here, applicant's permanent disability rating is not based on any diabetic impairment, but on the orthopedic impairments from his amputations and gait derangement. This situation is distinguishable from the non-industrial pathological eye condition in *City of Petaluma v. Workers' Comp. Appeals Bd. (Lindh)* (2018) 29 Cal.App.5th 1175 [83 Cal.Comp.Cases 1869], where apportionment was found based on medical evidence that attributed the industrial disability, impaired vision, to both a workplace injury and an underlying asymptomatic condition which was

identified as a contributing cause of the disability. “[W]hat is required is substantial medical evidence that the asymptomatic condition or pathology was a contributing cause of the disability.” (*Lindh*, 29 Cal.App.5th at 1193.) While applicant’s diabetes here was a causal factor in the need for the bilateral amputations, the resulting permanent disability was rated on the basis of his orthopedic disability alone and was not related to his diabetic condition.

Accordingly, we affirm the Findings and Award and will deny defendant’s Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the April 20, 2021 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 29, 2021

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

**SCOTT WIEST
ROSE, KLEIN & MARIAS
STATE COMPENSATION INSURANCE FUND**

SV/pc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

1. Applicant's Occupation: Plumber Occ. Grp. No 481
Applicant's Age: 52
Dates of Injury: May 19, 2015
Parts of Body Alleged: Right Foot & Ankle; Bilateral below the knee amputations; Left lower extremity; Lumbar Spine; Psyche, Sleep & Vascular
2. Identity of Petitioner: CDCR CENTINELLA STATE PRISON; SCIF
3. Timeliness: Petition was timely
4. Verification: The Petition was verified.
5. Date of Issuance of Order: April 21, 2021

6. Petitioner's Contention(s):

CONTENTION A: THE COMBINED VALUES CHART SHOULD BE USED TO DETERMINE PERMANENT DISABILITY IN THE PRESENT CASE

CONTENTION B: APPORTIONMENT MUST BE CONSIDERED IN ORDER TO COMPLY WITH THE REQUIREMENTS OF LABOR CODE 4663

CONTENTION C: THE WCJ ERRED IN FINDING INJURY TO THE APPLICANT'S VASCULAR SYSTEM, SLEEP AND PSYCHE WITHOUT ANY MEDICAL EVIDENCE IN SUPPORT OF THE FINDING

II
FACTS

Scott Weist's fully credible and un rebutted testimony is as follows:

Mr. Wiest was diagnosed as a diabetic at age 42. He was 52 at the date of injury (MOH: 2:3; 11 :14). Mr. Wiest started working with the defendant as Plumber II in July 2002. He worked full duty prior to the injury in May 2015. He also was an instructor. Mr. Wiest's job requires a lot of walking. There were no vehicles for him to use. Each plumber was assigned a "yard" but there were times he was responsible for other "yards". Mr. Wiest spent 80 percent of the time walking and 20% of the time doing things like "tool" control", "inmate time cads" and instruction. He would sit or stand doing these activities. (MOH/SOE: 6:14-20).

On the date of injury, the applicant was summoned to clear a plugged toilet. As he walked down the exercise track, he twisted his right ankle. He felt the symptoms of the sprain immediately

and reported it to his supervisor. Mr. Wiest saw a doctor the next day due to the swelling and pain. He was given a “boot” and a prescription for physical therapy to start the next day. The swelling made his ankle and foot tender. It became awkward to walk. This caused him to put more pressure on the left leg due to the pain in his right ankle. He missed two to three months from work, and then was released full duty. He was not walking normally due to the pain in his right ankle. He was no longer wearing a boot because the doctor said it was not necessary. Mr. Wiest did not have a support in his shoe or an ankle brace. His foot and ankle were very painful (MOH/SOE: 5:17-6:13).

After returning to work, his foot and ankle felt different, not the same as before. He felt it had a different shape. He noticed a blister when he took off his shoe. Mr. Wiest continued working and walking fully duty until he could not work anymore. At that point he saw a doctor. He was treated and had a fifth toe amputation. The applicant returned to his regular work, limping, and walking 80 percent of his work day. He did have a footed shoe for a while but then wore regular tennis shoes. The swelling remained the same after the amputation. His foot was swollen from the toes to the ankle. Eventually he developed a “collapsed arch” or Charcot’s foot. His foot was rubbing in his shoe because of this. The applicant stopped working in July 2017. (MOH/SOE: 7:1-20).

In 2018 his right leg was amputated below the knee. This was because he developed a sore on his right foot that started as a blister. This was caused by the rubbing in his shoe on the “dropped arch”. Then, as he continued walking, the wound got bigger. He saw a wound care doctor who did a debridement. The blister got bigger. Eventually, he was he had a below the knee amputation of the right leg. This was done at UCSD Hospital. He was then transferred to La Mesa Rehab for approximately 1-1/2 to 2 months. There he got a wound on this left foot. Mr. Wiest believes it was because he was transferring from the wheelchair to the bed and back again. He received wound care, and was improving when he was released from La Mesa Rehabilitation. However after his release, the wound deteriorated so he was sent back to the hospital. At the hospital he was given the option of treating the wound or an amputation. Mr. Wiest fought for a while, but eventually had his left leg amputated below the knee in August 2018. He was fitted for bilateral prosthesis. (MOH/SOE: 7:21-8: 19). The employer/administrator admitted the right foot and ankle only throughout the pendency of this claim.

A Findings and Award issued on April 21, 2021 finding that the applicant not only sustained injury to his right foot and ankle but also sustained injury to his bilateral legs resulting in bilateral below the knee amputations, lumbar spine, vascular system, sleep and psyche. The WCJ found the applicant to be 100% disabled without any apportionment.

On May 11, 2021, the defendant filed a timely, verified Petition for Reconsideration. The Petition limited the request for reconsideration on the issues of the use of “addition” rather than the combined values chart, apportionment and a finding of causation to the vascular system, sleep and psyche. Therefore, the discussion below will address these issues and not the citations to support a finding of AOE/COE to the lumbar spine, and bilateral below the knee amputations.

II DISCUSSION

CONTENTION A: THE COMBINED VALUES CHART SHOULD BE USED TO DETERMINE PERMANENT DISABILITY IN THE PRESENT CASE

Currently Mr. Wiest is able to walk with his prostheses. Unfortunately at the time of the hearing, Mr. Wiest had developed a sore on him stump, and was in the hospital from which the Life Size Cloud hearing was conducted.

Mr. Wiest also has a wheelchair which uses in his apartment. He uses his prostheses to walk outside the apartment and a cane for balance. Walking on slight inclines like driveways are difficult. He can walk five to ten minutes before he needs to sit down and relax. He feels pain in his back, upper legs and knees. He has knee pads to get to the bathroom and to move around in the kitchen. He has a dog but is unable to walk him so his girlfriend does that. He lives upstairs and needs help to get outside.

On a normal day he feels phantom pain in his stumps. These occur about two times per day and also when he sleeps. It feels like he has a cramp in his right or left foot, but he knows the foot is not there. The pain is a 10 at the worst and at a 4 at its best.

He feels that the back pain is due to his injury which causes him to move in an abnormal way. The amputations took away his lifestyle. He used to be able to fish, and loved to be outdoors. He hiked, did off-roading and other activities that would take him outdoors. He has lost his self-esteem and his plans for the future look bleak. His symptoms interfere with his sleep. His source of income has dwindled and his credit is shot. See MOH/SOE 2/9/2021 page 8:20-10:24.

Dr. Karras performed an AMA Guide compliant rating as a required first step *Almaraz/Guzman*. The AME Guide compliant rating is set for on pages 14-15 of Jt. Ex. 5) and DEU rating of August 11, 2020. That rating equated to 87% final permanent disability.

Dr. Karras then opined that a more accurate description of the applicant's disability would be to add rather than combine the impairments, following the *Kite* case.

1. KITE ANALYSIS

Applicant argues that the use of the Combined Values Chart for the combination of the disabilities as described in the report of Dr. Karras (Jt. Ex. 5) is not an accurate or fair description of the impact of the applicant's various, severe impairments. The WCJ agrees.

The AMA Guides, 5th ed. on page 9, Section 1.4 describes the philosophy and the use of the Combined Values Chart as follows:

The Chart was designed to come up with a formula whereby different impairments could be combined without exceeding 100%. Therefore the formula is used to decrease the effect of each succeeding impairment. According to the Guides, supra at page 10, "A scientific formula has not been established to indicate the best way to combine multiple impairments. Given the diversity of impairments and great variability inherent in combining multiple impairments, it is difficult to establish a formula that accounts for all situations. A combination of some impairments could decrease overall functioning more than suggested just adding the impairment ratings for separate impairment (eg. blindness and the inability to use both hands). . . . Other options are to combine (add, subtract or multiply) multiple impairment based upon the extent to which they affect an individual's ability to perform activities of daily living."

The formula used to combine disability in the Combined Values Table (Page 604 of the AMA Guides, 5th is $[\text{major impairment} + ((100 - \text{major impairment}) \times \text{minor impairment})]$. For example a 90% impairment combined with a 25% impairment would result in: $90\% + [(100 - 90 = 10)(25) 2.5]$ 92.5%. Adding the two would result in 115% or 100% after application of Labor Code 4664. The effect of the Combined Values Table (CVT) demonstrated above in the AMA Guide Compliant ratings shows the absurdity of the Table with injured workers with more than one serious impairment, such as the applicant.

The use of the addition of the disabilities is supported by the reports of Dr. Kent Karras (Jt. Ex. 3, 4, 5, 6 and 7). In this case, the applicant has lost both his legs to below the knee amputations.

He suffers from phantom pain in both legs. He has an antalgic gait and requires a cane for stabilization as he uses his prostheses for ambulation. He also uses a wheelchair. His back in pain and adds additional impairment to the applicant. Therefore the Kite analysis is amply supported by substantial medical evidence. The applicant is determined to be 100% disabled.

Furthermore the [sic] neither the noteworthy panel decision in *Taina v. County of Santa Clara* 46 CWCR 214; 2018 Cal. Wrk. Comp. P.D. Lexis 344 nor the decision in *Borela v. State of California DMV* 2014 Cal. Wrk Comp P.D. Lexis 217 apply to this case. Unlike *Borela, supra* there was ample evidence to support the “addition” or *Kite, supra*, method. The Finding and Award set forth the reasons that supported the addition method.

Furthermore, unlike *Taina v. County of Santa Clara, supra*, in this case there is no overlap between the body parts, the synergistic effect of losing two legs to below the knee amputations is certainly greater than losing only leg and more limiting; and adding these values provide a more accurate “rating” of the applicant’s actual disability than the Combined Values Table.

CONTENTION B: APPORTIONMENT MUST BE CONSIDERED IN ORDER TO COMPLY WITH THE REQUIREMENTS OF LABOR CODE §4663

Apportionment was considered by Dr. Karras. He made an apportionment determination that there was is no apportionment to non-industrial causes for the bilateral leg amputations or the back. Dr. Karras explained his reasoning in his report of April 7, 2020 (Jt. Ex. 5). With respect to the bilateral legs, it was based on the loss of the leg below the knee and on gait. There was no part of the rating to diabetes and thus, no apportionment. He explains why apportionment is not applicable for the back in his report dated October 14, 2020 (Jt. Ex. 7 page 2 of 8). Dr. Karras points out that the findings on the MRI report could reasonably all post-date the ankle sprain injury and result from the use of a cane, crutches, wheel chair and bilateral lower leg prosthetics. He also attributes the findings on MRI to the gait abnormalities as well as having to push downward with his hands to elevate his lower torso and legs.

This contention should be denied.

CONTENTION C: THE WCJ ERRED IN FINDING INJURY TO THE APPLICANT’S VASCULAR SYSTEM, SLEEP AND PSYCHE WITHOUT ANY MEDICAL EVIDENCE IN SUPPORT OF THE FINDING

The applicant's testimony was that he was "depressed", lost his previous lifestyle and had problems sleeping (MOH/SOE 2/9/2021 page 8:20-10:24).

The applicant relies on the reports of Dr. Jeffrey Steinhardt (App. Ex. 2) and the PQME Dr. Kent Karras, D.C (Jt. Ex. 4, 4, 5, 6 and 7) and the deposition of Dr. Karras dated December 3, 2019 (Jt. Ex. 8) for compensability of injuries other than the right foot and right ankle, which were admitted. (Jt. Ex. 9 and 10). Defendants rely on the reports of Dr. John Lane who was the primary treating physician for the admitted right ankle and foot injury.

The totality of the medical and testimonial evidence supports the findings as to the injury to the applicant's vascular symptoms, sleep and psyche. This contention should be denied.

IV RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied. In its entirety.

LINDA F. ATCHERLEY
Workers' Compensation Judge
Date: May 19, 2021