

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

**RANDY MEZA, *Applicant***

**vs.**

**SOUTHERN CALIFORNIA EDISON; Permissibly Self-Insured, *Defendant***

**Adjudication Number: ADJ1786046 (POM 0258774)  
Pomona District Office**

**OPINION AND DECISION  
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.

In the Findings of Fact and Award of September 9, 2019, the Workers' Compensation Judge (WCJ) issued findings concerning the timely Petition to Reopen filed by applicant on February 10, 2003.<sup>1</sup> The WCJ found that applicant, while employed as a meter reader by Southern California Edison during the period January 1, 1993 through June 12, 2001, sustained industrial injury to his cervical spine, psyche, headaches, and tinnitus, and that the injury to applicant's cervical spine and psyche caused permanent disability of 92% and the need for further medical treatment, with the parties to adjust credit for applicant's Stipulated Award of July 15, 2002. In the Stipulated Award of July 15, 2002, which included only one case number, it was stipulated that applicant, while employed as a meter reader by Southern California Edison on September 20, 1993, and during the period January 1, 1993 through June 12, 2001, sustained an industrial injury to his "cervical/spine," causing permanent disability of 25%.

Defendant filed a timely petition for reconsideration of the WCJ's decision. Defendant contends that the WCJ erred in awarding new and further disability for applicant's psyche injury, because there is no substantial medical evidence the disability arose within five years of the ending date of the cumulative trauma of June 12, 2001. Defendant further contends that the WCJ erred in

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<sup>1</sup> Despite carrying the title "Findings of Fact and Award," the WCJ's decision of September 9, 2019 did not include an Award.

not apportioning the orthopedic and psychiatric disabilities, and that the WCJ's finding of psychiatric disability is not supported by Dr. Feldman, the Agreed Medical Evaluator (AME) in psychiatry, because applicant's trial testimony is inconsistent with the history and complaints recorded by Dr. Feldman in his medical reports.

Applicant filed an answer. Therein applicant asserts that the WCJ made a clerical error in determining permanent disability. Although applicant maintains that correction of the error will result in an increased permanent disability rating, he also concedes that Dr. Feldman's medical opinion supports five percent non-industrial apportionment of the psychiatric disability.

Defendant filed a response (supplemental pleading) to applicant's answer. We have exercised our discretion to accept and consider the supplemental pleading. Therein defendant asserts that it is seeking apportionment of the psychiatric disability only, with defendant apparently abandoning the contention in its petition for reconsideration that the WCJ erred in failing to apportion the orthopedic disability. In any case, defendant is admonished for failing to request permission to file a supplemental pleading under WCAB Rule 10964(b), which requires a showing of good cause. (Cal. Code Regs., tit. 8, § 10945(b).)

The WCJ submitted a Report and Recommendation ("Report").

Based on our review of the record and applicable law, we conclude that the WCJ must revisit the issues of permanent disability, apportionment, credit for the Stipulated Award of July 15, 2002, and attorney's fees. We will amend the WCJ's decision accordingly, and we will return this matter to the trial level for further proceedings and new findings by the WCJ on the outstanding issues.

We begin by recapitulating the brief overview of relevant facts included within the WCJ's Report:

Applicant, RANDY MEZA, initially filed an Application for Adjudication dated October 29, 2001, alleging he sustained a cumulative trauma injury while working for defendant as a meter reader. The (ct) was plead as from 1993 through June 12, 2001, [which subsequently] was amended to allege the injury date as 1993 through June 12, 2000. The injury was alleged to the spine. Applicant had sustained a prior injury on September 20, 1993. Those facts are not in dispute.

A joint Stipulation with Request for Award was issued on July 15, 2002, for both the claimed (ct) as well as the 1993 specific injury. That award of 25% permanent disability included the stipulation of

the parties there was no permanent disability as a result of the September 20, 1993 injury.

At the time the present case proceeded to trial the issues were limited to permanent disability and whether the applicant sustained new and further disability, as well as apportionment. Following the trial on those limited issues Findings of Fact and Opinion on Decision were issued. There were issues raised in Petition for Reconsideration which warranted further review resulting in those findings and opinion being vacated and the case returned to the trial level for further development of the record.

Following the MSC this matter was referred to the DEU for formal ratings. Following resubmission of this matter the Findings of Fact and Opinion on Decision were issued September 6, 2019.

We turn to defendant's contention that the WCJ erred in awarding new and further disability for applicant's psyche injury. Defendant alleges there is no substantial evidence establishing that the disability arose within five years of the ending date of the cumulative trauma of June 12, 2001. We disagree.

In *Applied Materials v. Workers' Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042, 1080 [86 Cal.Comp.Cases 331], the Court of Appeal recently discussed the requirements of establishing "new and further disability" as follows:

To recover additional benefits, the injured worker must not only file a timely petition to reopen but must also have suffered a "new and further disability" within that five-year period, unless there is otherwise "good cause" to reopen the prior award. [*Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 926 (72 Cal.Comp.Cases 778).] An injured worker cannot confer jurisdiction on the WCAB by filing a petition to reopen before the five-year period has expired for anticipated new and further disability that may occur after the five-year limitation period has run. (*Ibid.*) "New and further disability" means disability resulting from *some demonstrable change in the employee's condition*, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability. (*Ibid.*)

(64 Cal.App.5th at 1080, italics added.)

In this case, the history of injury/medical history included within Dr. Feldman's June 3, 2015 report (p. 4) shows that applicant began experiencing new or worsening psychological

symptoms no later than the end of 2004, which was within five years of the date of the cumulative trauma injury that ended on June 12, 2001:

[Applicant's] orthopedic disability continued, and on January 13, 2003 he had a second surgical procedure by Dr. Dodge, a posterior laminectomy and facetectomy, C4-5, CS-6, followed by postoperative physical therapy.

Despite the second surgery, his orthopedic disability continued, and November 12, 2003 Dr. Dodge noted he still complained of pain in his neck. He had follow-up with Dr. Tarter and Dr. Dodge.

March 18, 2004, Dr. Tarter diagnosed sudden onset pronounced confusion, disorientation, ataxic speech, and confused thought, specific cause not recalled, and on April 7, 2004 Dr. Dodge considered him permanent and stationary with a preclusion from heavy lifting. He had follow-up with Dr. Dodge, who, on July 20, 2004 noted his continued complaints of neck pain into the trapezius muscle and shoulders and recommended pain management.

He had follow-up with Dr. Dodge, who, on October 13, 2004 noted he was frustrated because he had not yet received authorization for pain management, which was clearly indicated on the basis of his injury, and December 1, 2004 Dr. C. C. Brizzolara noted a diagnosis of neck pain, anxiety, and hypertension. He had follow-up with Dr. Dodge, and December 14, 2004 Dr. Dodge noted he was extremely stressed, contributing to his pain, psychologically compromised at that time, and December 28, 2004 Dr. Craig Banta diagnosed Anxiety Disorder and Depression.

He followed up with Dr. Dodge, who on January 12, 2005 noted he was quite depressed and reported chronic neck pain.

Contrary to defendant's allegation, the above history of injury/medical history recorded by Dr. Feldman is substantial evidence that applicant suffered new and further psychiatric disability within five years from the date of original injury.<sup>2</sup> In other words, Dr. Feldman's report of June 3, 2015 shows that within the five years in question, applicant had a demonstrable change in his psychiatric condition, including a gradual increase in disability or a new need for medical treatment in his December 2004 visits with Drs. Dodge and Banta, as required by *Applied Materials, supra*.

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<sup>2</sup> We also note that at trial on October 10, 2018, defendant stipulated that during the period January 1, 1993 through June 12, 2001, applicant sustained industrial injury to his *psyche*, headaches, and tinnitus, in addition to the injury to his cervical spine. (See Minutes of Hearing, 10/10/18, p. 2.) Thus, it appears there is no issue of applicant needing to establish he sustained a compensable consequence injury to his *psyche* within five years of June 12, 2001.

Defendant further contends that the WCJ erred in relying on Dr. Feldman to determine permanent disability, with defendant alleging that applicant's trial testimony shows he is able to do activities of daily living that he would not be expected to do if he really had the extent of permanent disability reported by Dr. Feldman.

Applicant testified at trial that he does not have problems being with other people and does not have trouble picking out clothes to wear, grocery shopping or doing simple repetitive tasks. Applicant also testified that he is able to socialize and see family and friends on occasion, and that he gets along with his family and is able to do small household chores such as laundry and simple cooking. (Summary of Evidence, 10/10/18, p. 9). In his report dated June 3, 2015, Dr. Feldman concluded that applicant has slight to moderate psychiatric disability and a GAF score of 60 (moderate symptoms of psychiatric disability), with frustration, depression and anxiety related to the significant extent of his orthopedic disability. (Exhibit Z, Feldman report dated 6/3/15, p. 35.)

Comparison of applicant's trial testimony with Dr. Feldman's evaluation of applicant's psychiatric disability shows that the premise of defendant's argument is flawed. The fact that applicant can do simple household chores and socialize with family and friends "on occasion," is not inconsistent with Dr. Feldman's opinion that applicant has a psychiatric disability characterized as slight to moderate. Although defendant's contention is unpersuasive for the additional reason that it is based upon defense counsel's unqualified medical opinion, we express no final opinion because the WCJ also must revisit the issue of apportionment of psychiatric disability, consistent with the following discussion.

Defendant has the burden of proof on the issue of apportionment. (*Kopping v. Workers' Comp. Appeals Bd.* (2006) 142 Cal.App.4th 1099, 1114 [71 Cal.Comp.Cases 1229].) We express no opinion as to whether defendant can meet its burden of proof, but we agree with defendant that the WCJ failed to properly address the issue of apportionment. Dr. Feldman apportioned 5% of applicant's psychiatric permanent disability to "personal and family" issues, as conceded in applicant's answer herein. (See Exhibit Z, Feldman report dated June 3, 2015, p. 35.) But according to the formula found on page four of the WCJ's Opinion on Decision, it appears that Dr. Feldman's assessment of five percent non-industrial apportionment was not included in the WCJ's rating of psychiatric disability.

As for apportionment of the orthopedic disability, the WCJ rejected any apportionment related to a car accident in 2002 because the preponderance of evidence does not establish that the

car accident actually occurred. Defendant apparently does not challenge this part of the WCJ's decision. However, in its petition for reconsideration (in contrast to its supplemental pleading) defendant asserts that 50% of any new and further orthopedic disability should be apportioned to the natural progression of the effects of the specific (cervical spine) injury of September 20, 1993. In support of this assertion, defendant relies upon the May 25, 2017 deposition testimony of Dr. Jackson, the AME in orthopedics. (Petition for Reconsideration, p. 12:3-20; Exhibit Y, pp. 28-32.) However, we note that the Stipulated Award of July 15, 2002 included a stipulation that "[t]here is no permanent disability as a result of the 9/20/93 [cervical spine] claim." This stipulation long ago became final and binding, so it is unclear how defendant can prove apportionment based on the cervical spine injury dating back to 1993. (See *Fireman's Fund Ins. Co. v. Workers' Comp. Appeals Bd.* (2010) 181 Cal.App.4th 752 [75 Cal.Comp.Cases 1].) Nevertheless, we express no final opinion on apportionment of the orthopedic disability, because at minimum the WCJ must revisit the issue of apportionment of the psychiatric disability, which was never done in the first instance. (See *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 (33 Cal.Comp.Cases 350, 351): [The WCJ's Opinion on Decision "enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful."].) In this regard, we also note that in her Report, the WCJ acknowledges the "clerical error" raised in applicant's answer, and this too must be addressed and resolved by the WCJ in further proceedings at the trial level. Specifically, the rating formula must use the correct age of applicant at the time of his injury.

Except for our rejection of defendant's contention that applicant failed to establish he suffered new and further psychiatric disability within five years from the date of original injury, we express no final opinion on the issues of permanent disability and apportionment. When the WCJ issues a new decision, any aggrieved party may seek reconsideration as provided by Labor Code sections 5900 et seq.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact and Award of September 9, 2019 is **AFFIRMED**, except that Findings 10, 11 and 12 are **RESCINDED**, and the following Findings 10, 11 and 12 are **SUBSTITUTED** in their place:

#### **FINDINGS**

10. The issues of permanent disability and apportionment are deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.
11. The issue of credit for the Stipulated Award of July 15, 2002 is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.
12. The issue of attorney's fees is deferred pending further proceedings and new determination by the WCJ, jurisdiction reserved.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that this matter is **RETURNED** to the trial level for further proceedings and determination of the outstanding issues by the WCJ, consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**April 18, 2022**

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

**RANDY MEZA  
LAW OFFICES OF O'MARA HAMPTON  
MICHAEL SULLIVAN & ASSOCIATES LLP**

**JTL/ara**

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