

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

SARINA OLIVER, *Applicant*

vs.

**STATE COMPENSATION INSURANCE FUND,
insurer for MONTEREY BAY HORSEMANSHIP
AND THERAPEUTIC CENTER, *Defendants***

**Adjudication Number: ADJ11295343
Salinas District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case.¹ We now issue our Opinion and Decision After Reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the 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, we will affirm the December 20, 2021 Findings and Award.

¹ Deputy Commissioner Schmitz, who was on the panel that issued a prior decision in this matter is unavailable to participate further in this decision. Another panel member was assigned in her place.

For the foregoing reasons,

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the December 20, 2021 Findings and Award is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 14, 2022

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

**SARINA OLIVER
RUCKA, O'BOYLE, LOMBARDO & MCKENNA
STATE COMPENSATION INSURANCE FUND**

PAG/abs

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

Applicant has filed a timely, verified Petition for Reconsideration of the undersigned's 12/20/2021 Findings and Award.

II

FACTS

Applicant, Sarina Oliver, while employed on 5/6/17 as a Barn Manager/Riding Instructor, Occupational Group 491, at Watsonville, California, by Monterey Bay Horsemanship and Therapeutic Center, then insured by State Compensation Insurance Fund, sustained injury AOE/COE to her facial bones, lumbar spine, cervical spine, lip (laceration), teeth (numbers 8 to 11 and 24 to 25), and head (including headaches).

After trial, the court found that Applicant had sustained 11% permanent partial disability for the lumbar spine and headaches. (Findings of Fact, 12/20/21, Finding 9; Op. on Dec., p. 3.) Applicant appeals Finding 9, contending that Applicant has additional permanent disability due to injuries to her jaw/teeth and neck. (Appl's Pet. for Recon., 1/13/2022, p. 3, "Questions Presented.")

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. Workers' Comp. Appeals Bd. (Rutherford)* (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd.* (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.

The parties utilized Dr. Pramila Gupta as an AME. In her 2/13/20 report, Dr. Gupta found Applicant to be MMI and provided 3% WPI for Applicant's neck. (JOINT EX. J-3: Report, Pramila Gupta, M.D., 2/13/20, p. 14.) The court did not include the 3% WPI for the neck in her final PD rating, because Dr. Gupta's statement that DRE Category I has a range of 0-3% WPI is erroneous. "[Not] all medical opinion constitutes substantial evidence upon which the board may rest its decision. Medical reports and opinions are not substantial evidence if they are known to be erroneous... (*Hegglin v. W.C.A.B.* (1971) 4 Cal.3d 162, 169.)" As well, a conclusory opinion does not constitute substantial evidence. (See *Ins. Co. of No. America v. W.C.A.B.* (1981) 46 Cal. Comp. Cases 913, 917.)

The court did not accept the AME's opinion as to impairment for the cervical spine, because it does not comport with the AMA Guides as required by the en banc decision of *Blackledge v. Bank of America* ((2010) 75 C.C.C. 613). The AMA Guides provides that a

physician “may increase the [previously-calculated WPI] by up to 3%” without undertaking a formal pain-related impairment assessment. (See AMA Guides, Chapter 18, § 18.3d, at p. 573 (emphasis in original); see also p. 574, Figure 18–1.) Because this pain add-on can be assessed only to ‘increase’ other ratable impairment (id.), there can be no pain add-on if there is no underlying WPI for a particular body part or system.” (Ibid at p. 631.) Per the PDRS, “The maximum allowance for pain resulting from a single injury is 3% WPI regardless of the number of impairments resulting from that injury.” (Schedule for Rating Permanent Disabilities, January 2005, p. 1-12.)

Essentially, Dr. Gupta added 3% WPI for pain to a 0% rating. In her deposition, Dr. Gupta explained that she would place Applicant in a DRE Category I, with a 3% WPI, because,

“I think she does have some functional limitation. That's the reason I decided to give her DRE I, because she still has some pain in her neck. She has pain while driving. And she's a young lady, and her cervical spine motions are good; but it's not completely within normal range. So I thought there was some limitation and she needs some impairment. And when you look at every category, DRE category II, category III, there's a range of 3 percent. So why not DRE category I should have a 3 percent decreased range? And it's -- Every DRE should have a 3 percent.” (JOINT EX. J-1: Deposition of Pramila Gupta, M.D., 5/6/21, p. 12, lines 1-14.)

Per the AMA Guides, DRE Category I for the cervical spine provides 0% WPI. DRE Category I is for injuries with “[n]o significant clinical findings, no muscular guarding, no documentable neurologic impairment, no significant loss of motion segment integrity, and no other indication of impairment related to injury or illness; no fractures.” (AMA Guides, 5th Ed., Table 15-5, p. 392.) Per Dr. Gupta, Applicant’s “[n]eck pain is intermittent. It is related to activities when she does a workout. The pain level is 3/10. It is worsened by neck movements and by prolonged driving.” (JOINT EX. J-3: Report, Pramila Gupta, M.D., 2/13/20, p. 4.) In Dr. Gupta’s review of Applicant’s activities of daily living (ADLs), the neck was mentioned only with respect to travel. “Travel: The examinee can drive for up to one hour, but she reported that it causes her to have increased neck pain.” (Ibid.)

Dr. Gupta’s examination of the neck showed “...mild tenderness in the paracervical region, right greater than left. There is also some tightness of the muscles and trapezius muscles on the right side.” Dr. Gupta’s examination of Applicant’s lumbar spine is similar, but has an important distinction. Dr. Gupta noted “...mild tightness/palpable muscle spasm on the right side.” (JOINT EX. J-3: Report, Pramila Gupta, M.D., 2/13/20, p. 7.) The presence of spasms supports Dr. Gupta’s 5% WPI rating for the back taken from DRE Category II. (AMA Guides, 5th Ed., Table 15-3, p. 384.) Dr. Gupta did not indicate any spasms in the Applicant’s neck to warrant a Category II rating. (AMA Guides, 5th Ed., Table 15-5, p. 392.)

Moreover, in determining the Applicant suffered 11% PD, the court considered a 3% WPI pain add-on for Applicant’s headaches, “which, in part are due to the cervical spine and in part due to the jaw injury.” (JOINT EX. J-3: Report, Pramila Gupta, M.D., 2/13/20, p. 14.) Dr. Gupta opined that, “...taking into account the frequency and intensity of the headaches the examinee's impairment of the headaches can be described by chapter 18 table 18-1 as a 3% impairment of the

whole person.” (Ibid.) Per the AMA Guides, headaches can be evaluated per the pain chapter (Ch. 18.) Headaches are considered an example of a “well-established pain syndrome without significant, identifiable organ dysfunction to explain the pain.” (AMA Guides, supra, pp. 570-571.)

Finally, Applicant was evaluated by Dr. Jeffrey Light for the injuries to her teeth and jaw. Dr. Light determined that Applicant has not suffered any permanent impairment. (JOINT EX. J-6: Report, Jeffrey Light, D.D.S., signed 6/7/21, dated 5/14/21, p. 5.) Dr. Light wrote,

“Ms. Oliver noted that she is having no limitations related to mastication, indicating that she can chew hard and chewy foods, such as nuts and tough meats without discomfort. She indicated having occasional clicking and popping from her TMJs that occurs once per week when she opens widely at which time she will have minor discomfort that last for only several seconds.

Ms. Oliver indicated that she is able to brush and floss her teeth without limitation. She noted that on occasion, the gum tissues are sensitive when she brushes her teeth.

Ms. Oliver also has some slight sensitivity to her teeth when drinking very cold drinks, such as ice water.

Ms. Oliver indicated that she continues to have daily headaches, but these originate towards the back of her head and she does not feel they are related in any way to her stomatognathic system. She indicated her headaches do not worsen with any type of speech or masticatory function.

Overall, Ms. Oliver indicated that she feels her condition since her industrial injury on May 6, 2017 has improved since my last evaluation. (JOINT EX. J-6: Report, Jeffrey Light, D.D.S., signed 6/7/21, dated 5/14/21, pp. 2-3.)

At trial, Applicant testified that she has no limitations in what she can eat. She can chew hard and chewy foods, like nuts and tough meats, although her jaw gets tired, if she chews too much. (Trial 8/31/21, Minutes of Hearing and Summary of Evidence, p. 5, lines 2-7.)

In his deposition, Dr. Light noted that he reviewed several sections of the AMA Guides in formulating his opinion on permanent disability.

Q. Okay. When you give somebody who's been through all this a zero percent whole person impairment, what specifically in the guides did you look at?

A. In the guides I will look at -- On page 262 there's the tables that relate to masticatory disabilities, the ability to chew.

I look at page 573, which is pain, which can apply to my area of expertise as well as any other body parts.

I will look at page 265, which is speech, because some individuals, depending on their conditions, will have speech limitations. And then there's the area in the guides related to the cranial nerves beginning around page 330, 331, and goes through all of the cranial nerves of the head and neck area. So sometimes there can be limitations or whole person impairment related to cranial nerve damage.

If an individual has scars, facial disfigurements, I believe there's a section in the guides related to that as well. But as I understand the guides, if someone has pain it has to be attached to a -- some other aspect of disability in the guides. The pain in itself, you can't just put pain only for whole person impairment. I may be wrong. (JOINT EX. J-7: Deposition of Jeffrey Light, D.D.S., 12/11/20, p. 16, lines 24-25; p. 17, lines 1-22.)

Notably, the AMA Guides does not equate 0% WPI with no impairment. "A 0% whole person (WP) impairment rating is assigned to an individual with an impairment if the impairment has no significant organ or body system functional consequences and does not limit the performance of the common activities of daily living indicated in Table 1-2." (AMA Guides, supra, p. 5, emphasis added.)

The court sees no basis for developing the record as Applicant wishes. (Appl's Pet. for Recon., 1/13/2022, p. 4, lines 9-19.) The Applicant took Dr. Light's deposition and was reevaluated after that deposition. Dr. Light did not change his opinions.

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

ROISILIN RILEY
Workers' Compensation
Administrative Law Judge

Filed and served by email on 2/3/22

OPINION ON DECISION

Applicant claims injury to her head. The undersigned finds that Applicant suffered compensable injury to her head. Applicant was injured when her face, a part of her head, was kicked by a horse. As a result of the injury to her head, Applicant now suffers increased headaches. Per AME Dr. Pramila Gupta, Applicant's headaches are caused by a combination of her jaw and dental injuries and cervical strain.

Applicant was evaluated by Dr. Jeffrey Light for the injuries to her teeth and jaw. Dr. Light determined that Applicant did not suffer any permanent impairment. Applicant testified that she has no limitations in what she can eat. She can chew hard and chewy foods, like nuts and tough meats, although her jaw gets tired, if she chews too much.

Dr. Gupta's report(s) rate to 11% PD, whether rated separately for the headaches or together:

15.03.01.00 - 8 - [1.4]11- 491H - 14 - 11% PD

15.03.01.00 - 5 - [1.4]7 - 491H - 10 - 8% PD [lumbar spine]

13.07.05.00 - 3 - [1.4]4 - 491E - 4 - 3% PD [headaches-cranial nerve – facial]

8 C 3 = 11% PD

A rating of 3% for the cervical spine is not included. Dr. Gupta indicated, incorrectly, that DRE Category I has a range of 0-3%. Per the AMA Guides, DRE Category I provides 0% WPI. Dr. Gupta did not indicate that she was providing an alternate rating per the *Guzman* case.

Per the evaluators, Applicant is in need of further medical treatment to cure and relieve the effects of the injury herein.

Applicant's attorney has rendered services the reasonable value of which is 15% of the permanent disability indemnity awarded herein.

ROISILIN RILEY
Workers' Compensation
Administrative Law Judge

Date: 12/20/2021