

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

ARLEEN KETELES, *Applicant*

vs.

**COUNTY OF ALAMEDA, permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

Adjudication Number: ADJ13757266, ADJ13757284

Oakland District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 29, 2022, wherein the WCJ found in pertinent part that applicant sustained a cumulative injury during the period from December 2017, through January 2018, that caused 70% permanent disability.

Defendant contends that the F&A does not comply with the requirements of Labor Code section 5313; and that based on the opinions of impairment rater Brittany Dayes the opinions of pain medicine qualified medical examiner (QME) William G. Brose, M.D., are inconsistent with the American Medical Association Guides to the Evaluation of Permanent Impairment, (AMA Guides) and are not substantial evidence.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We received an Answer from applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to her right upper extremity nerves, right elbow, right wrist, right thumb, and left wrist, while employed by defendant as a as a sheriff technician during the period from December 1, 2017, through April 12, 2018.

Applicant was evaluated by QME Dr. Brose on April 30, 2019. Dr. Brose examined applicant, took a history, and reviewed the medical record. The doctor determined that applicant's condition had not reached maximum medical improvement (MMI) status and he re-evaluated applicant on February 24, 2021. Dr. Brose stated that applicant's right hand had reached MMI status, but as a result of her left hand injury she remained temporarily totally disabled. (App. Exh. 3, William G. Brose, M.D., February 24, 2021, p. 11.) Dr. Brose examined applicant again on March 1, 2022. After re-examining applicant, taking an interim history, and reviewing additional medical records, he diagnosed:

1. Chronic bilateral right greater than left hand and wrist pain and numbness.
 2. DeQuervain's tenosynovitis right arm.
 3. Right wrist CMC joint [carpometacarpal thumb/hand joint] arthritis.
 4. Status post right endoscopic carpal tunnel release with CMC joint excision and right trapezius interposition arthroplasty (09/17/19).
 5. Left wrist dorsal ganglion cyst (12/01/20 MRI).
 6. Clinical right cubital tunnel syndrome.
 7. Clinical right carpal tunnel syndrome with normal nerve conduction.
 8. Right medial epicondylitis.
 9. Possible Ehlers-Danlos syndrome [inherited connective tissue disorder].
- (App. Exh. 4, Dr. Brose, March 1, 2022, p. 7.)

Dr. Brose concluded that applicant had 37% whole person impairment as a result of her industrial injury, and he explained that:

As described in my February 24, 2021, report, there does not appear to be any new information contained from my history and review with the patient today that would suggest a contribution of nonindustrial or prior industrial exposure to creating today's permanent disability.
(App. Exh. 4, p. 11.)

The parties proceeded to trial on August 1, 2022. The issue submitted for decision was applicant's permanent disability. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 1, 2022, p. 2.) On August 22, 2022, the WCJ issued formal rating instructions and on October 7, 2022, the Disability Evaluation Unit (DEU) rater issued an amended rating, indicating that based on the WCJ's instructions, applicant's injury caused 70% permanent disability. The matter was again tried on October 10, 2022. Defendant cross-examined the DEU rater and called Britany Dayes, a private rater, to testify. (MOH/SOE, October 10, 2022.) The finding of 70% permanent disability in the F&A was based on the DEU rating.

DISCUSSION

Pursuant to Labor Code section 5313:

The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made.

(Lab. Code, § 5313.)

Defendant argues that “the WCJ’s decision does not comply with Labor Code § 5313...”

(Petition p. 6.) In the Report, the WCJ explained:

Dr. Brose evaluated applicant on 04/30/2019, 02/24/2021 and 03/01/2022, took a thorough history, and reviewed various medical reports and records, and authored five reports. In his reports of 02/24/2021 and 03/01/2022, Dr. Brose opined applicant sustained cumulative trauma injury from December 2017 into January 2018 to her right thumb, right wrist, right elbow, right upper extremity, and left wrist. ... In his 03/01/2022 report, Dr. Browse provided extensive impairment factors and opined to no apportionment.

(Report, p. 2; citations to exhibits removed; F&A, p. 3, Opinion on Decision.)

Regarding the disability rating, the WCJ stated:

Ms. Sun [the DEU rater] received and reviewed my formal rating instructions and provided ratings based on those instructions, which is consistent with the law. Ms. Dayes [defendant’s rater] never reviewed my formal rating instructions and according to her testimony, made changes to Dr. Brose’s impairment opinions and rated those changes as well. I found Ms. Sun’s amended rating to be better reasoned, more thorough and more persuasive due to her ten years of experience and training and because she provided a formal rating consistent with the law.

(Report, p. 6.)

Having reviewed the entire record, it appears that the WCJ provided a detailed explanation of the basis for her decision in the Opinion on Decision and in the Report. Although we see no factual support for defendant's argument, it is important to note that the WCJ's Report cures any technical or alleged defect in satisfying the requirements of Labor Code section 5313. (*City of Maywood v. Workers' Comp. Appeals Bd. (Smith)* (1991-W/D) 56 Cal.Comp.Cases 704; *City of San Diego v. Workers' Comp. Appeals Bd. (Rutherford)* (1989-W/D) 54 Cal.Comp.Cases 57; *Smales v. Workers' Comp. Appeals Bd.* (1980-W/D) 45 Cal.Comp.Cases 1026.)

Defendant also argues that:

Dr. Brose does not provide any rationale to support the WPIs beyond stating he used the "Cedaron" software. Dr. Brose does not explain how the software works. He does not explain how or why the reported impairments are consistent with the AMA Guides. Dr. Brose's reporting does not provide any explanation as to how he arrived at the reported WPIs. He also does not explain whether or how the impairments are supported by diagnostic tests or his physical examination.

(Petition, p. 11.)

However, in his March 1, 2022 report Dr. Brose described his physical examination of applicant including the neurologic examination, range of motion, flexibility, and grip strength. (See App. Exh. 4, pp. 6 – 7.) Later in the report, Dr. Brose referred to the "Cedaron Impairment Rating" which includes the range of motion, hypertrophy, flexion, extension, and further results of the examination. The rating chart repeatedly cites various chapters, figures, and tables (on specific pages) in the American Medical Association Guides to the Evaluation of Permanent Impairment, (AMA Guides). (See App. Exh. 4, pp. 12 – 14.) Clearly defendant's argument is inconsistent with the evidence in the trial record.

Further defendant also argues that its impairment rater, Brittany Dayes reviewed Dr. Brose's March 1, 2022, report and "found errors in the physical examination and the operative examination." (Petition p. 5.) Defendant states that:

Ms. Dayes testified that she reviewed the entirety of Dr. Brose's March 1, 2022, report. Ms. Dayes testified, "the examination findings on page 13 did not support fully impairment for the right carpal tunnel." (Minutes of Hearing and Summary of Evidence, October 10, 2022, at 3:29-3:30). Ms. Dayes also testified, "Applicant had negative nerve test results, and that makes the doctor's findings not fully reliable." (Id. at 4:2-4:4) Ms. Dayes testimony was unrebutted, and a review of the AMA Guides confirms the accuracy of Ms. Dayes' testimony. (Petition, p. 14.)

It is important to note, it has long been established that a DEU rater is an expert only in the application of the rating schedule and is required to make a formal rating recommendation solely on the information provided by the WCJ. The rater must consider no more and no less than the instructions provided by the WCJ. (*Gregory Aliano v. Workers' Comp. Appeals Bd.* (1979) 100 Cal.App.3d 341 [44 Cal.Comp.Cases 1156]; *State Compensation Insurance Fund v Workers' Comp. Appeals Bd. (Stapp)* (1978) 81 Cal.App.3d 586 [43 Cal.Comp.Cases 658].) We see no basis for a party's impairment rater not to be held to the same standard. Also, because a rater is an expert only in the application of the rating schedule, the rater cannot substitute his or her lay judgment on medical issues, for that of the reporting physician. (*Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 624 (Appeals Board en banc).) Lay witness testimony is not substantial evidence upon which to base a finding of compensable permanent disability. Where issues exist regarding diagnosis, prognosis, treatment, or disability that is beyond the bounds of ordinary knowledge, medical proof is required. (See *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988, 996 [42 Cal.Comp.Cases 114].) Here, Ms. Dayes testified that she has had no medical training and has never worked as a nurse or in a medical office. (MOH/SOE, October 10, 2022, p. 4, lines 32 – 33.) Her lay opinions cannot be substituted for the opinions of Dr. Brose.

Finally, if a party disagrees with the opinions stated by a reporting physician, the appropriate procedure would be to request a supplemental report addressing that issue or in the alternative to depose the reporting physician. However, in this matter defendant chose to rely on the opinions of its impairment rater who had no medical education and/or training. Thus, we agree with the WCJ that:

[B]ased on the evidence at trial, the formal rating, and the relevant law, applicant's 12/2017 to 01/2018 cumulative trauma injury to her right thumb, right wrist, right elbow, right upper extremity nerves and left wrist caused permanent partial disability of 70 percent.
(Report, pp. 7 – 8.)

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on November 29, 2022, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 31, 2023

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

**ARLEEN KETELES
RAYMOND E. FROST & ASSOCIATES
MICHAEL SULLIVAN & ASSOCIATES LLP**

TLH/mc

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

Terri Ellen Gordon, Workers' Compensation Judge, hereby submits her Report and Recommendation on the Petition for Reconsideration filed herein.

INTRODUCTION

Defendant County of Alameda, permissibly self-insured and administered by York Risk Services Group, Inc., a Sedgwick Company (hereinafter referred to as "defendant") petitions for reconsideration of the Findings and Award that issued in this case on 11/29/2022 wherein I found applicant Arleen Keteles (hereinafter referred to as "applicant") while employed during the cumulative trauma period 12/2017 to 01/2018 as a sheriff technician (Occupational Group Number 111) by defendant sustained injury arising out of and in the course of her employment to her right thumb, right wrist, right elbow, right upper extremity nerves, and left wrist and that her injury to her right thumb, right wrist, right elbow, right upper extremity nerves and left wrist caused permanent partial disability of 70 percent.

Defendant contends that I acted without or in excess of my powers, that the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision, or award. Defendant takes issue with my finding permanent partial disability of 70 percent based on the medical opinions of the panel qualified medical evaluator Dr. Brose and as provided in a formal rating by the DEU. Defendant contends that I failed to explain why I found the DEU rating more persuasive than the rating of defendant's private rater and why I found Dr. Brose's medical opinions to constitute substantial medical evidence. Defendant further submits that Dr. Brose's opinions do not constitute substantial medical evidence in that he does not explain how his WPI is consistent with the AMA Guides and that there is un rebutted evidence at trial establishing his WPI is not consistent with the AMA Guides.

Defendant's Petition for Reconsideration was timely filed and is accompanied by the verification required under Labor Code section 5902. Applicant timely filed a verified Answer on 12/19/2022.

DISCUSSION

In my Opinion on Decision, I explained the rationale for my decision as follows:

["PERMANENT DISABILITY

At the 08/01/2022 trial, the parties stipulated that applicant Arlene Keteles (hereinafter referred to as "applicant") sustained industrial injury to her bilateral wrists on 12/01/2017 and 04/12/2008. (Minutes of Hearing, hereinafter referred to as M.O.H., 08/01/2022, page 2).

William Brose, M.D. is the parties' panel qualified medical evaluator (hereinafter referred to as "PQME") in this matter. Dr. Brose evaluated applicant on 04/30/2019, 02/24/2021 and 03/01/2022, took a thorough history, and reviewed various medical reports and records, and authored five reports. In his reports of 02/24/2021 and 03/01/2022, Dr. Brose opined applicant sustained cumulative trauma injury from December 2017 into January 2018 to her right thumb, right wrist, right elbow, right upper extremity, and left wrist. (Applicant's Exhibit 3 at pages 1, 10; Applicant's Exhibit 4 at pages 1, 10. In his 03/01/2022 report, Dr. Brose provided extensive impairment factors and opined to no apportionment. (Applicant's Exhibit 4 at pages 1, 10 – 14)

After trial on 08/01/2022, and on 08/22/2022, I issued permanent disability rating instructions to the Disability Evaluation Unit of the Division of Workers' Compensation (the rater) and requested a rating utilizing the AMA Guides, 5th Edition for rating permanent disabilities. Based on those instructions, the DEU rater issued a recommended permanent disability rating that was served on the parties on 08/30/2022. The DEU rater calculated the recommended rating of 68 percent. Defendant timely objected to the rating in its entirety and filed a Declaration of Readiness for a cross-examination of the DEU rater and the testimony of a rebuttal private rater. I set the matter for a second day of trial on 10/10/2022. On 10/07/2022, the DEU rater emailed me an amended rating. In the amended rating, the DEU rater calculated the final

recommended rating of 70 percent. I forwarded that email and the amended rating to the parties, asked if either party requested a continuance of the scheduled 10/10/2022 trial date, and, as there was no request for a continuance or objection to the trial proceeding on 10/10/2022, confirmed that trial would proceed on that date. On 10/10/2022, the parties requested we proceed to trial and defendant cross-examined the DEU rater, Dorothy Sun. Defendant also called Britany Dayes, a private rater, who testified as well.

Ms. Sun testified she has been a DEU rater for almost ten years and has testified once before today. She was trained by the DEU manager. This is her first job in workers' compensation. She provides a formal rating based on a judge's instructions. In this matter, she was instructed to review two pages of the evaluator's March 1, 2022 report, specifically, pages 12 and 13. She did not review the entire report. She was limited by the rating instructions to those two pages. If she had done a consultative report, she would have looked at the entire report. She provided an initial rating in this matter and then an amended rating. She was not prompted to provide an amended rating by anyone. She was reviewing the rating instructions and rating to prepare for this cross-examination and noticed her mistake. That mistake was the disability number she used for the elbow, and she corrected the disability number. In providing ratings, she refers to the AMA Guides to make sure the values are correct. As to the original consultative rating in this matter, she does not recall it. As to the first formal rating, it was for 68 permanent disability. The amended rating is for 70 permanent disability. As to left elbow/forearm in the first formal rating, that is what she changed. The impairment numbers stayed the same. The only thing that changed was the disability number. She rated the report per the rating instructions. If she had done a consultative rating, she would have annotated any changes or corrections. She does not know if she rated under *Almaraz-Guzman*. In a consultative rating, she would rate strict under AMA and *Almaraz-Guzman*. (M.O.H., dated 10/10/2022 at pages 2 – 3)

Ms. Dayes testified she has been doing consultative ratings for IRatings for the last three years. She was certified about two-and-a-half years ago. She has completed about 3,000 ratings under the new edition. She performed a rating in this matter. She has reviewed Dr. Brose's March 1, 2022 report. She noted errors in the physical examination and the operative examination. She noted the examination findings on page 13 did not support fully impairment

for the right carpal tunnel, so she reduced them per page seven. The sensory loss, per the guides, does not meet the criterion. Page seven of his report reflects additional information. As to the right thumb, the doctor provided impairment, but the operative report of March 17, on page 10, that it is for the joint. It would have changed the rating by removing the impairment to the wrist and using the right thumb. The two-point discrimination is for the carpal tunnel and is not related to the thumb. After reviewing her rating, she explained why her right thumb and right wrist ratings are different based on the physical examination findings and the sensory loss not being fully supported. As to carpal tunnel, the evaluator equated grip loss for impairment and is not allowed to do so. Also, Applicant had negative nerve test results, and that makes the doctor's findings not fully reliable. That is why she rated under a different scenario. As to the cubital tunnel, while there was documented sensory loss, there is no supporting test to support that impairment. She was certified by CEDIR. She was certified two-and-a-half years ago. The CEDIR certification was only offered until 2018, and it was then changed. She provides consultative ratings. In this matter, the defendant is Alameda County, and the administrator is Sedgwick. She used to work at Sedgwick as a claims adjuster. A consultative rating results from the review of the entire report, and a formal rating is based only on the rating instruction. Her rating, in this matter, was based on her review of all of the evaluator's reports. She did see the amended rating, but she has not done a rating based on the judge's instructions. She has no medical training and has never worked as a nurse or in a medical office. She believes the error(s) in this matter is the doctor's error(s) in writing his report. She does not know Tim Null, although the name is familiar. Of the 3,000 ratings, she does not know what percentage of those were requested by Applicant. She has looked at the I Ratings website a time or two and is not aware that they rate only for defendants. She believes they also provide ratings for applicants. She has not testified before today. She has reviewed the amended rating. She did not note any technical errors in the rating. She has not seen the judge's instructions. Her prior employment with Sedgwick does not impact her current work. Nothing defense counsel advised her affected her rating in this matter. She does not believe there is any requirement reflected in the AMA Guides that a rater must have medical training. (M.O.H., dated 10/10/2022 at pages 3 – 5)

Applicant's private rater, Tim Null, rated Dr. Brose's impairment factors as 74 percent under the strict AMA Guides and 78 percent per Kite. (Applicant's Exhibit 6) Defendant's private rater, Ms. Dayes, rated Dr. Brose's impairment factors as 44 percent. (Defendant's Exhibit I)

Although I have considered the ratings of Mr. Null and Ms. Dayes, I find the final amended rating opinion of the DEU rater to be better reasoned, more thorough, and more persuasive in that it is consistent with the opinions of Dr. Brose and the relevant law.

Based on my review of the reports of Dr. Brose and the relevant law, I find the reports of Dr. Brose constitute substantial medical evidence and that the opinions of Dr. Brose justify my permanent disability rating instructions as to the impairment caused by applicant's industrial injury during the cumulative trauma period 12/2017 to 1/2018 to her right thumb, right wrist, right elbow, right upper extremity nerves, and left wrist. I further find the opinion of the DEU rating expert justifies the conclusion that the rating instructions warrant a permanent disability rating of 70% as follows:

Left wrist range of motion 16.04.01.00 – 4 – [1.4]6 – 111G – 7 – 9

Right arm peripheral neuropathy entrapment/compression carpal tunnel

16.01.02.02 – 17 – [1.4]24 – 111G – 27 – 32

2 WP add on included for pain

Right arm peripheral neuropathy entrapment/compression other

16.01.02.03 – 8 – [1.4]11 – 111G – 13 – 16

Right elbow/forearm range of motion

16.03.01.00 – 1 – [1.4]1 – 111F – 1 – 1

Wright wrist other

16.04.02.00 – 10 – [1.4]14 – 111G – 16 – 19

Right thumb range of motion

16.06.01.01 – 8 – [1.4]11 – 111G – 13 – 16

Combine upper right 32 C 19 C 16 C 16 C 1 = 61

Add left and right upper extremity 61 + 9 = 70 Final PD

Accordingly, I adopt that rating and find that applicant's industrial injury during the cumulative trauma period 12/2017 to 1/2018 to her right thumb, right wrist, right elbow, right upper extremity nerves, and left wrist caused permanent partial disability of 70%. Dr. Brose did not find any apportionment. Based on the opinion of the Dr. Brose, I find no apportionment. Accordingly, based on my review of EAMS, the relevant law, and the evidence at trial, I find applicant's industrial injury during the cumulative trauma period 12/2017 to 1/2018 to her right thumb, right wrist, right elbow, right upper extremity nerves, and left wrist caused permanent partial disability of 70%."

DISCUSSION
DEFENDANT'S CONTENTIONS

I

The Finding That Applicant's 12/2017 to 01/2018 Cumulative Trauma Injury to her right thumb, right wrist, right elbow, right upper extremity nerves and left wrist caused permanent partial disability of 70 percent is supported by the Medical Reports of Dr. Brose and his Opinions rendered therein justifying the Permanent Disability Rating Instructions, the opinion of the Rating Expert, the evidence received at trial, and the Relevant Law

In its Petition for Reconsideration, defendant cites Labor Code section 5313, claims Dr. Brose's opinions do not constitute substantial medical evidence, and contends that I failed to explain why I found Dr. Brose's medical opinions to constitute substantial medical evidence and/or why I found the DEU rating more persuasive than the rating of defendant's private rater Defendant's claims are without merit.

Labor Code section 5313 states as follows:

"The appeals board or the workers' compensation judge shall, within 30 days after the case is submitted, make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award, there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made."

Following the first day of trial on 08/01/2022, I issued Minutes of Hearing reflecting the parties' stipulations and issues for trial and the identification and admission of trial exhibits submitted by both parties. (M.O.H., 08/01/2022) I issued rating instructions to the DEU rater and served those instructions and the formal rating on the parties on 08/30/2022. The amended formal rating was provided to the parties on 10/10/2022 and served on the parties on 10/11/2022. Subsequent to the second day of trial on 10/10/2022, I issued Minutes of Hearing and Summary of Evidence reflecting the testimony of the Ms. Sun, the DEU rater and Ms. Dayes, the private rater defense called as a witness. (M.O.H.S.O.E., 10/10/2022) I issued Findings of Fact and Award and an Opinion on Decision in which I summarized the evidence, including the private ratings of Ms. Dayes and Mr. Null (offered as evidence by applicant). My Opinion on Decision reflects the evidence received and relied upon and the reasons and grounds upon which the determination was made. In my Opinion on Decision, I stated that although I have considered the ratings of Mr. Null and Ms. Dayes, I found the final amended

rating opinion of the DEU rater to be better reasoned, more thorough, and more persuasive in that it is consistent with the opinions of Dr. Brose and the relevant law. Ms. Sun testified she has been a DEU rater for almost ten years and was trained by the DEU manager. She provides a formal rating based on a judge's instructions. She further testified that she was instructed to review two pages of the evaluator's March 1, 2022 report, specifically, pages 12 and 13 only, and that she did not review the entire report. Ms. Dayes testified she was certified about two-and-a-half years ago and has been doing consultative ratings for IRatings for the last three years. Ms. Dayes further testified that she noted errors in the physical examination and the operative examination. She further testified that the examination findings on page 13 did not support fully impairment for the right carpal tunnel, so she reduced them per page seven. She also testified that the sensory loss, per the guides, does not meet the criterion. Finally, Ms. Dayes testified that she believes the error(s) in this matter is/are the doctor's error(s) in writing his report.

Ms. Sun received and reviewed my formal rating instructions and provided ratings based on those instructions, which is consistent with the law. Ms. Dayes never reviewed my formal rating instructions and according to her testimony, made changes to Dr. Brose's impairment opinions and rated those changes as well. I found Ms. Sun's amended rating to be better reasoned, more thorough and more persuasive due to her ten years of experience and training and because she provided a formal rating consistent with the law.

Insofar as defendant contends Dr. Brose's opinions are not substantial medical evidence, that claim lacks merit. In order to constitute substantial medical evidence, a medical opinion must be predicated on reasonable medical probability. Also, a medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal. App. 4th 922, 928 [71 Cal Comp Cases 1687].) Defendant does not allege that Dr. Brose' opinions are based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. Insofar as defendant claims Dr. Brose failed to set forth the reasoning behind his opinions and that his opinions are not consistent with the AMA

Guides, those claims are without merit. Dr. Brose evaluated applicant on 04/30/2019, 02/24/2021 and 03/01/2022, took a thorough history, and reviewed various medical reports and records, and authored five reports. In his reports of 02/24/2021 and 03/01/2022, Dr. Brose opined applicant sustained cumulative trauma injury from December 2017 into January 2018 to her right thumb, right wrist, right elbow, right upper extremity, and left wrist. (Applicant's Exhibit 3 at pages 1, 10; Applicant's Exhibit 4 at pages 1, 10. In his 03/01/2022 report, Dr. Brose provided extensive impairment factors and opined to no apportionment. After providing two pages of his Cedaron Impairment Rating, Dr. Brose further opined as follows:

“Direct rating of the patient’s impairment utilizing the AMA Guides is found in Cedaron software as described. I note that in characterizing the right upper extremity and left upper extremity with now bilateral upper extremity impairments that while the Cedaron software has incorporated the combined values chart in calculating the upper extremity impairment, that the evidence of bilateral wrist and hand losses would represent the presence of synergy between the upper extremity losses on the left and the upper extremity losses on the right, wherein neither wrist and hand can now provide usual compensation for a contralateral injury thereby invoking Kite as an appropriate representation of the disabilities wherein that from the right upper extremity should be added to that of the left upper extremity and the 2% for chronic pain would then be added to the right upper extremity representing the greater limitations as reported by the patient. With respect to AA request for Almaraz Guzman rating, I would offer rating by analogy using table 13-7 wherein a Class 2 impairment maximum of 39% may be considered as similar but not more accurate due to the presence of some digital dexterity in the patient’s presentation. ...I would identify the surgical treatment of the patient’s left and right hands as the parts of the objective disability as described citing the median and ulnar nerve losses in the right hand and the derivative strength losses as described as all being consistent. (Applicant’s Exhibit 4 at pages 1, 10 – 14)

Defendant essentially has problems with the opinions of Dr. Brose. However, it does not appear defendant deposed Dr. Brose in an attempt to get Dr. Brose to change his opinions.

Based on the foregoing, I remain persuaded that based on the evidence at trial, the formal rating, and the relevant law, applicant’s 12/2017 to 01/2018 cumulative trauma injury to her right thumb, right wrist, right elbow, right upper extremity nerves and left wrist caused permanent partial disability of 70 percent.

RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed 12/08/2022, be DENIED.

DATE: 12/21/2022

Terri Ellen Gordon
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

SERVICE:

ALAMEDA COUNTY, US Mail
ARLEEN KETELES, US Mail
FROST LAW FREMONT, Email
MICHAEL SULLIVAN EMERYVILLE, Email
YORK ROSEVILLE, US Mail

On: parties and lien claimants present

all parties as shown on Official Address Record

NOTICE TO:

Pursuant to Rule 10500, you are designated to serve this/these document(s) forthwith on all parties shown on the Official Address Record.

ON: December 21, 2022

BY:Kathi