

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

BRIAN HODSON, *Applicant*

vs.

**VACASA, LLC;
AMGUARD INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ11348346
Sacramento 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 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, which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

In his July 31, 2020 report, Steven McCormick, Ph.D., panel qualified medical examiner (PQME) in neuropsychology, clinical psychology, and pain management, stated that:

Synergy is the interaction or cooperation of two or more systems that produce a combined effect greater than the sum of their separate effects. Considering Mr. Hodson's industrial injury, cognitive and psychological symptoms interact whereby the cognitive symptoms cause the emotional symptom (worry, fear, helplessness and sadness) to become more intense and the emotional symptoms cause greater difficulty in accessing and using cognitive functional abilities (attention, concentration and memory). The two combined together in this way cause more disability than each by themselves.

....

With regards to overlap, the cognitive disability is due to an organic injury to the brain and the psychological (which for purposes of discussion I will refer to the injury causing emotional distress) is due to the reaction to the impact of that brain injury. Thus, there is no overlap in disability caused by the organic brain injury and the disability caused by the emotional reaction to the impairment

caused by that brain injury. By analogue the disability caused by the loss of a hand function would not overlap with the impairment due to the emotional reaction to that loss of hand function.

Now considering the best way to approach Mr. Hodson's cognitive and orthopedic disabilities it appears that we are again considering two totally different system. Thus, adding the two would arrive at the most accurate reflection of Mr. Hodson's overall disability.

(Dr. McCormick's 7/31/20 report, at pp. 1-2, applicant's Exhibit 8.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 8, 2021

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

**BRIAN HODSON
MARCUS REGALADO MARCUS & PULLEY
COLEMAN CHAVEZ & ASSOCIATES**

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

<u>Date of Injury:</u>	March 6, 2018
<u>Age on DOI:</u>	56
<u>Occupation:</u>	Client operations manager (property manager)
<u>Parts of Body Injured:</u>	Back, neck, bilateral arms/hands, left knee, and head.
<u>Identity of Petitioners:</u>	Defendant
<u>Timeliness:</u>	The petition was timely
<u>Verification:</u>	The petition was verified.
<u>Date of Order:</u>	April 16, 2021
<u>Petitioners Contentions:</u>	Defendant contends that it was incorrect to combine the disabilities in the case by the additive approach rather than using the combined values chart.

II

FACTS

While clearing snow on a staircase, applicant slipped on ice and fell down the stairs. He fell from the top of the stairs and hit his head on the last step, He may have lost consciousness. He went to the emergency room the next day and was worked up for cervical and head complaints. Further treatment was to the knee and left hand. He underwent a left ulnar nerve transposition and also arthroscopic knee surgery. He had recurring cognitive and psychiatric issues. (Exhibit 7, pages 10 and 11.)

Applicant was evaluated in Physical Medicine and Rehabilitation by Dr. Thomas Pattison, serving as PQME. (Exhibits 1 through 7.) Dr. Pattison found disability to the neck, back, elbow, knee, and in the form of headaches. (Exhibit 2, pages 13 through 18.) After adjustment and apportionment, these combined on the Combined Values Chart (CVC) to 51 % permanent disability.

Applicant's cognitive complaints were treated by Dr. Steven McCormack. (Exhibits 8 through 11.) Applicant was admitted to two separate one-month in-patient rehabilitation stays. (Exhibit 2, page 10; Exhibits 12 and 13.) Dr. McCormack wrote a PR-4 in which he found that applicant had

cognitive impairment of 14% whole person impairment (WPI) and psychiatric impairment of 8% WPI. (Exhibit 9, page 5.) These adjusted to 32% and 17% permanent disability.

The parties submitted the matter for trial on December 15, 2020. In the Findings and Award issued on March 26, 2021, it was determined that the combined value of the orthopedic disabilities (51%) should be added to the combined value of the cognitive and psychiatric disabilities (32 C 17 = 44%) for a total permanent disability of 95%.

Applicant filed a Petition for Reconsideration on April 1, 2021, on the issue of how to combine the disabilities. Applicant pointed out that Dr. McCormack had opined that due to the synergistic between the cognitive and the psychiatric disabilities, they should be added together. Pursuant to 8 Cal.Code.Regs 10961(c), the Findings and Award of March 26, 2021, was rescinded and an Amended Findings and Award was issued on April 16, 2021. In the Amended Findings and Award it was determined that the orthopedic disabilities, the cognitive disability, and the psychiatric disability should each be added together, for a total of 100%.

Defendant was newly aggrieved by the Amended Findings and Award and timely Petitioned for Reconsideration, challenging the use of the additive approach in combining the disabilities. Defendant argues that the orthopedic disability of 51% should be combined with the cognitive disability of 32% to reach 83%, which should then be combined using the CVC with the psychiatric disability of 17% for an overall permanent disability of 86%.

III

DISCUSSION

Dr. McCormack clearly found that there was a synergistic effect between the psychiatric and the cognitive disability

The central remaining question in the case is how to combine the three components of applicant's disability, which are the 51 % combined orthopedic disability, the 32% cognitive disability, and the 17% psychiatric disability.

Dr. Pattison addressed the question of how to combine the orthopedic disability with the neuropsychiatric disability and opined that they should be added. He found that because the cognitive and other difficulties make it hard to avoid flaring up the orthopedic injuries, they should be added. (Exhibit 1, page 2.) In defendant's Petition, it does not dispute this finding.

Defendant's contention is that in the Opinion, there was a misunderstanding of Dr. McCormack's opinion on whether there are synergistic effects between the psychiatric and cognitive disability. The opinion is found in Dr. McCormack's report dated July 31, 2020. In that report, Dr. McCormack was asked to "please comment whether the disability between the cognitive impairment and the psychological injury results in a synergistic effect." Dr. McCormack stated "cognitive and psychological symptoms interact whereby the cognitive symptoms cause the emotional symptom (worry, fear, helplessness and sadness) to become more intense and the emotional symptoms cause greater difficulty in accessing and using cognitive functional abilities

(attention, concentration and memory). The two combined together in this way cause more disability than each by themselves." (Exhibit 8, page 1.)

Defendant apparently is relying on the use of the word "symptoms" rather than the word "disabilities" in addressing the synergistic effect. This appears to be a distinction without a difference. The symptoms are what has led to the findings on disability. This was a response to the question of whether the disabilities had a synergistic effect. Dr. McCormack found that there was a synergistic effect.

In *Athens Administrators v. WCAB* (Kite) (2013) 78 Cal.Comp.Cases 213, the WCAB noted that in certain circumstances rigid use of the CVC is not appropriate. In that case, synergistic effects of one hip on the other was found to be an appropriate basis for using an additive approach. One consequence of the additive approach is that that the disability is not compacted, leading to higher overall disability. In this case, the higher disability happens to be 100%, however the principles of *Kite* were applied no differently than if they added to some lesser amount.

Here, both doctors find and clearly describe synergistic effect among the three components of the disability. These opinions were well-considered and well-supported.

IV

RECOMMENDATION

It is respectfully recommended that defendant's Petition for Reconsideration be denied.

Date: May 28, 2021

Michael Geller
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE