

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

DEEANN SOUZA, *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF STATE HOSPITALS - ATASCADERO, legally
uninsured, administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Numbers: ADJ10711319, ADJ10711318
San Luis Obispo District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Orders, issued by the workers' compensation administrative law judge (WCJ) on August 9, 2021, wherein the WCJ found in pertinent part that applicant was temporarily totally disabled (TTD) from September 27, 2016, to October 15, 2016, on an orthopedic basis, and from November 2, 2016, to the present and continuing on a psychiatric basis; and that applicant was entitled to an additional 17 days of temporary disability indemnity (TDI) in case number ADJ10711318.

Applicant contends that she is entitled to a separate 104 week award of temporary disability indemnity (TDI) for each of her two injuries.

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

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed a psychiatric injury and injury to her cervical spine, lumbar spine, and coccyx/hips, while employed by defendant as a psychiatric technician on September 27, 2016 (ADJ10711319). The injury claim was accepted and industrial disability leave (IDL) benefits were paid starting September 29, 2016. (Def. Exh. 1, IDL Notice, October 14, 2016.) Applicant also

claimed a psychiatric injury and injury to her right shoulder, while employed by defendant during the period from January 1, 2002, through November 2, 2016 (ADJ10711318). (See Minutes of Hearing and Summary of Evidence (MOH/SOE), June 21, 2021, p. 2.) The injury claim was initially denied (Def. Exh.12, Denial of Claim, February 8, 2017) and the psychiatric claim was accepted as of May 23, 2018. (MOH/SOE, p. 2, stipulation 9.)

Applicant was evaluated by orthopedic qualified medical examiner (QME) Jeffrey M. Lundeen, M.D., on October 11, 2017. Dr. Lundeen re-evaluated applicant on March 15, 2018. (Def. Exh. 10, Dr. Lundeen, March 15, 2018, p. 1.) Regarding applicant's disability status Dr. Lundeen stated:

It is my opinion that the patient can be considered permanent and stationary as of the date of today's evaluation, March 15, 2018. It is my opinion that the patient has achieved maximum medical improvement and her conditions have been stable for a reasonable period of time.
(Def. Exh. 10, p. 15.)

On February 19, 2019, applicant underwent a left shoulder surgery by Christopher Proctor, M.D. (Def. Exh. 14, Dr. Lundeen, May 27, 2020, p. 11, medical records review.) On October 30, 2019, applicant underwent an anterior cervical discectomy and fusion at the C4-C7 levels, performed by Amy M. Wickman, M.D. (Def. Exh. 14, p. 14, medical records review.)

Applicant was evaluated by Dr. Lundeen on May 27, 2020. (Def. Exh. 14.) Dr. Lundeen examined applicant, reviewed the interim medical record, and concluded:

[W]ithin reasonable medical probability, this patient's neck pain condition and low back pain condition are the result of the injury involved in this claim, September 27, 2016 ¶ It is my opinion, within reasonable medical probability, that the injury involved in this claim, September 27, 2016, caused permanent aggravation to this patient's preexisting left shoulder pain condition. --- It is my opinion that the patient can be considered permanent and stationary as of the date of today's evaluation, May 27, 2020. (Def. Exh. 14, p. 19.)

On January 20, 2021, applicant was evaluated by psychiatric QME Steven Barnett, M.D. (App. Exh. A, Dr. Barnett, February 22, 2021.) Dr. Barnett reviewed the extensive medical record (App. Exh. A, pp. 11 – 199), took a history, and performed various psychiatric tests. The diagnoses included clinical psychiatric syndrome, post-traumatic stress disorder (PTSD), and depressive disorder. (App. Exh. A, p. 214.) As to the cause of applicant's psychiatric condition, Dr. Barnett concluded:

It is within reasonable medical probability that the applicant's PTSD, Chronic was caused 100% on an industrial basis relative to the assault she experienced while working at ASH on September 27, 2016. ... ¶ It is within reasonable medical probability that the applicant's Depressive Disorder, NOS was caused 100% on an industrial basis by her work at ASH on a combined continuous trauma and specific injury basis. That is, 40% was caused on a continuous trauma basis ... 20% was caused by the specific incident (assault) of September 27, 2016 ... 40% was caused by the orthopedic injuries the applicant incurred on September 27, 2016 ... 0% was caused by non-industrial factors. (App. Exh. A, p. 225.)

Dr. Barnett later stated:

The applicant's psychiatric condition is not yet permanent and stationary. (App. Exh. A, p. 226.)

The applicant has been temporarily totally disabled from working in her usual and customary position, on a psychiatric basis from November 2, 2016 to April 2018 and from her last date of work to present and continuing. (App. Exh. A, p. 228.)

The parties proceeded to trial on June 21, 2021. (MOH/SOE, June 21, 2021.) They stipulated that in case number ADJ10711319 applicant received IDL benefits from September 28, 2016, to October 15, 2016, and from November 3, 2016, to October 14, 2017; and that she received TDI benefits from October 15, 2017, to April 27, 2018, and from February 19, 2019, to August 16, 2019. (MOH/SOE, p. 2.) The issues submitted for decision in case number ADJ10711318, included applicant's entitlement to TDI benefits for the period from August 16, 2019, and continuing. (MOH/SOE, p. 3.)

DISCUSSION

Pursuant to Labor Code section 4656 (c)(2):

Aggregate disability payments for a single injury occurring on or after January 1, 2008, causing temporary disability shall not extend for more than 104 compensable weeks within a period of five years from the date of injury. (Lab. Code, § 4656.)

Applicant relies on the Appeals Board panel decisions of *Hernandez v. Precision Castparts Corporation* [2014 Cal. Wrk. Comp. P.D. LEXIS 681], and *Dickerman v San Joaquin Community Hospital* [2008 Cal. Wrk. Comp. P.D. LEXIS 823], to support her contention that she is entitled to an additional 104 week award of TDI benefits.

Applicant argues that:

The periods of temporary disability are not completely overlapping because the temporary disability for the specific injury ended in August 16, 2019 and QME Dr. Barnett has established that temporary disability for the cumulative trauma injury is still ongoing to the present and continuing. (Petition, p. 5.)

Applicant's argument is inaccurate and misrepresents the evidence submitted at trial. In his report, Dr. Barnett stated that applicant was temporarily totally disabled on a psychiatric basis, from November 2, 2016, to the present and continuing. (App. Exh. A, p. 228.) Further, he stated that 40% of applicant's psychiatric injury was caused by the cumulative trauma, 20% was caused by the specific injury, and 40% was the result the orthopedic condition caused by the specific injury. (App. Exh. A, p. 225.) Thus, both injuries caused the periods of temporary total disability, "the temporary disability for the specific injury" did not end on August 16, 2019, and in turn, the periods of temporary total disability for both injuries were concurrent and "overlapping."

There is no language in Labor Code section 4656 (c)(2) stating that the limitations periods will not run concurrently where multiple injuries cause an overlap, either partial or complete, during periods of temporary disability. The statute does not toll the period during which a worker is entitled to temporary disability benefits based on another injury. As stated by the Third District Court of Appeal, where separate injuries result in concurrent periods of temporary disability, the 104 week limitation periods run concurrently. (*Foster v. Workers' Comp. Appeals Bd.*, (2008) 161 Cal.App.4th 1505 [73 Cal.Comp.Cases 466].)

Also, it must be noted that applicant received the maximum of 104 weeks of IDL/TDI benefits and that she underwent a significant course of psychiatric treatment. (See MOH/SOE, p. 2 and App. Exh. A, medical records review, November 28, 2016, through November 5, 2020, pp. 17 – 189.)¹ In light of the fact that the orthopedic/psychiatric specific injury claim was accepted and based thereon applicant received medical treatment, psychiatric treatment, and indemnity benefits, it does not appear that there would have been any difference in the benefits applicant would have received if the psychiatric injury claim in case number ADJ10711318 had been accepted prior to May 23, 2018. For these reasons, the analysis and decisions made by the Appeals

¹ Applicant actually received 102.8 weeks of IDL/TDI benefits paid after November 2, 2016. The additional 17 days of TDI benefits awarded by the WCJ makes a total of 105.2 weeks.

Board in the *Hernandez* and *Dickerman* panel decisions, as discussed by applicant in the Petition, do not apply to this matter.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact and Orders issued by the WCJ on August 9, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 22, 2021

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

**DEEANN SOUZA
SPATAFORE & GRANT
STATE COMPENSATION INSURANCE FUND**

TLH/pc

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

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