

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

ARSEN HAKOBYAN, *Applicant*

vs.

**CYPRESS SECURITY, LLC; EVEREST NATIONAL INSURANCE COMPANY,
*Defendants***

**Adjudication Numbers: ADJ9283221; ADJ9217169
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

We have considered the allegations of defendant's Petition for Reconsideration (petition) 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, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings on the issues of: 1) causation of applicant's alleged psychiatric injury, and 2) whether the alleged psychiatric injury is "catastrophic" under Labor Code section 4660.1(c)(2)(B).¹ This is not a final decision on the merits of these issues and any aggrieved person may timely seek reconsideration of the WCJ's new decision thereon.

As noted in the Report, the WCJ agrees with defendant's additional argument that the WCJ erroneously awarded applicant an increase in his permanent disability rating for sexual dysfunction under section 4660.1(c)(2)(B). (Lab. Code, § 4660.1(c)(2)(B).) This issue and the other issues discussed in the Report should be considered at the trial level in the first instance.

¹ All future references are to the Labor Code unless noted.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of December 21, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the decision of December 21, 2023 is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 18, 2024

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

**ARSEN HAKOBYAN
YADEGARI & ASSOCIATES
LAW OFFICE OF DENNIS TRIPLETT**

AH/cs

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

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

- | | |
|--|--|
| 1. Applicant's Occupation: | Security Officer |
| 2. Applicant's Age: | [] |
| 3. Dates of injury: | 6/1/2013 to 1/27/2014; 11/6/2013 |
| 4. Parts of Body Alleged:
ADJ9283221(MF) | neck, back, lower extremities, psyche
sleep, sexual dysfunction, Internal
(gastrointestinal), urinary issues, mouth and
teeth |
| 5. Parts of Body Injured:
ADJ9217169 | lumbar spine |
| 6. Parts of Body Alleged:
ADJ9217169 | neck, lower extremities, head, psyche, sleep
difficulties, internal (gastrointestinal),
mouth, teeth, sexual dysfunction and urinary
difficulty. |
| 7. Manner in which injuries have occurred: | cumulative trauma and specific date of
injury |
| 8. Identity of Petitioner: | Defendant, Cypress Security, LLC; Everest
National Insurance Company |
| 9. Timeliness: | The petition was timely filed. |
| 10. Verification: | A verification is attached. |
| 11. Date of Findings and Award: | 5/23/2023 |
| 12. Petitioner's contentions: | 1.) The WCJ acted in excess of her powers
when she found that Applicant sustained a
compensable psychiatric injury, that the
exception under Labor Code Section 4660.1
(c) applies and that Applicant is entitled to
impairment for sexual dysfunction. |

II

JURISDICTIONAL HISTORY

Applicant, Arsen Hakobyan, while employed during the period 6/1/2003 to 1/27/2014, as a security officer, by Cypress Security, LLC, claims to have sustained injury arising out of and in the course of his employment to his neck, back, lower extremities, psyche, sleep, sexual dysfunction, internal (gastrointestinal), urinary issues, mouth and teeth. (ADJ9283221) (MF)

Applicant, Arsen Hakobyan, while employed on 11/6/2013, as a security officer, by Cypress Security, LLC, sustained injury arising out of and in the course of his employment to his lumbar spine. Additionally, Applicant claims to have sustained injury arising out of and in the course of his employment to his neck, lower extremities, head, psyche, sleep difficulties, internal (gastrointestinal), mouth, teeth, sexual dysfunction and urinary difficulties. (ADJ9217169)

These cases were consolidated and commenced trial on 11/10/2020. After the testimony of the Applicant was completed, the matter was submitted for decision on 3/11/2021. Upon discovery of numerous problems with the exhibits submitted by the parties the WCJ issued a Joint Order Vacating Submission and Order Regarding Development of the record on 5/27/2021. A telephonic status conference was scheduled on 7/14/2021 for clarification of the problems with the trial record submitted. After several appearances, the matters were re-submitted post development of the record pending trial briefs on 1/14/2022.

On 3/8/2022 the WCJ issued another Joint Order Vacating Submission and Order Regarding Development of the Record primarily due to the unfortunate fact that the AME Dr. Roger Sohn passed away before he had the opportunity to examine the Applicant after his 2019 industrial back surgery. Dr. Sohn's last examination of the Applicant took place in 2015. Without a post-surgical examination by a qualified orthopedic AME or Panel QME, the reporting submitted could not be considered substantial medical evidence.

After selecting another AME in orthopedics, Dr. Steven Meier, the parties assured the court that they were once again ready to submit the matters for decision. The matter was once again submitted for decision on 9/7/2023. A Joint Formal Rating and Formal Rating Instruction was served on all parties on 12/21/2023. Also on 12/21/2023, the WCJ issued a Joint Findings of Fact and Award. Defendant filed a timely and verified Joint Petition for Reconsideration on 1/13/2024. Applicant filed a Joint Answer to Petition for Reconsideration on 1/19/2024. The WCJ has

reviewed the contentions raised in these pleadings and concedes that Dr. Wexler's reporting on the issue of industrial causation may be unclear and therefore requires further development of the record. The second contention of whether Applicant's injury qualifies as the exception under Labor Code Section 4660.1(c) hinges on whether Applicant sustained an industrial injury to his psyche and as the WCJ is recommending that the WCAB return this matter to the WCJ for further development of the record, this issue should be deferred until after the record is developed. Finally, the WCJ concedes that she exceeded her authority by including sexual dysfunction permanent disability in her Award. Support for these recommendations is provided below.

III

DISCUSSION

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to Smales v. WCAB (1980) 45 CCC 1026, this Report and Recommendation cures that defect.

Defendant's Petition for Reconsideration only raises issues with the causation of psychiatric injury, whether Labor Code Section 4660.1(c) applies qualifying applicant for permanent disability for psyche and disputing that applicant is entitled to additional disability arising from sexual dysfunction. All other determinations made by the WCJ in her 12/21/2023 Findings of Fact and Award are unchallenged and therefore final.

The contentions from the Petition will be addressed in the order they were raised. Defendant cites a section entitled "Discussion of Compensability of Psychiatric Injury:" in Dr. Gerald Wexler's report dated 3/15/2023. From that section, Defendant quotes Dr. Wexler as follows: "Compensability of the 90% of the applicant's total emotional injury flowing secondary to his industrial orthopedic injury occurring in October 2013 are not compensable." However, this section cannot be read alone and ignores the previous section entitled "Discussion of Causation of Injury" in which he states "nearly all of applicant's psychiatric injury is due to his physical disability, with no grounds for other apportionment of causation of injury." He goes on to indicate "within reasonable medical probability, the actual events of employment were predominant to all causes combined to have produced psychiatric injury, "and "the injuries have arisen out of employment and during the course of employment".

This discussion continues onto page 93 where he indicates under the heading “Industrial Causation” that the Industrial factors were predominant as to all other factors to have resulted in the applicant’s psychiatric injury as they were secondary to job-induced pain and incapacity.

The WCJ followed Dr. Wexler’s opinion on causation not compensability but certainly understands how the language on both pages may appear to be in conflict. For this reason, the record needs to be developed so that the parties may exercise their right to cross-examine or submit an interrogatory to Dr. Wexler to clarify the issue of causation of psychiatric injury.

The second issue raised concerns whether the Applicant satisfies the requirements of Labor Code Section 4660.1(c). This issue hinges on the outcome of the development of the record regarding industrial causation of the psychiatric injury and need not be addressed until clarification is obtained. The WCJ was trained to avoid providing advisory or hypothetical opinions so will refrain from doing so in the instant case. This issue should be deferred pending the record being developed as recommended above.

The final argument as to whether the Applicant is entitled to additional disability for sexual dysfunction is clear. The WCJ erred in awarding permanent disability arising from sexual dysfunction as the sexual dysfunction arose out of a compensable consequence in the instant matter. Pursuant to Labor Code Section 4660.1, Applicant is not entitled to additional permanent disability arising from sexual dysfunction. The Petition for Reconsideration should be granted on this issue.

Based on the above, the Petition for Reconsideration should be granted on the issue of permanent disability from sexual dysfunction and the remaining issues remanded back to the WCJ for further development of the record regarding industrial causation of the psychiatric injury as set forth above.

RECOMMENDATION

Pursuant to the recommendations of the WCJ, the Petition for Reconsideration should be granted in part, and the remaining issues remanded back to the WCJ for further development of the record as set forth above.

Respectfully submitted,

CIRINA A. ROSE

Workers’ Compensation Judge

Date: 2/15/2024