

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

EPIFANIO MEDINA, *Applicant*

vs.

**MATTHEW WILSON SPECIALTY CONTRACTOR'S, INC., dba SECOND NATURE,
and MID-CENTURY INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ1413052 (STK 0170134), ADJ4567871 (STK 0173676)
Stockton District Office**

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

Applicant, in pro per, seeks reconsideration of the 2nd Amended Findings of Fact, Award, and Order, (F&A) issued by the workers' compensation administrative law judge (WCJ) on May 18, 2021, wherein the WCJ found in pertinent part that the issues previously resolved by the Findings of Fact, Award, and Order issued on June 26, 2019, would not be re-addressed, and that applicant did not sustain injury arising out of and occurring in the course of employment (AOE/COE) to his right leg, right knee, and left leg (except for the left knee which was an accepted injury).

Applicant contends that the F&O did not address applicant's need for future medical treatment for his left knee, that he should be sent to and evaluated by, a specialist for his left knee, and that the opinions of psychology qualified medical examiner (QME) Karen A. Hutchinson, Ph.D., regarding apportionment are outdated and no longer accurate.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition), and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&A except that we will amend the F&A regarding case number ADJ1413052, to find that the reports from QME Dr. Hutchinson are not substantial evidence (Finding of Fact 9) and to defer the issue of the permanent partial disability caused by

the July 9, 2001 injury (Finding of Fact 6); based thereon the Award will be amended to defer the award of permanent disability indemnity benefits pending further development of the record, and we will return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant has undergone an extensive course of treatment, he was evaluated by independent medical evaluator (IME) Henry L. Edington, M.D., on several occasions, and the matter has been tried and reconsideration has been sought a number of times since 2014. The history of the injury claims relevant to the issues raised by applicant's Petition, and addressed herein, is summarized as follows:

Applicant claimed injury to his neck, back, left leg, left knee, right leg, right knee, and psyche, while employed by defendant as a as a labor manager, on July 1, 2001 (ADJ1413052). Applicant also claimed injury to his left eye while employed by defendant as a labor manager, on April 6, 2001 (ADJ4567871).¹

QME Dr. Hutchinson evaluated applicant regarding both injury claims on February 4, 2009, and she re-evaluated applicant on June 12, July 10, and August 7, 2014. (Joint Exh. 9, Dr. Hutchinson, October 12, 2014, p. 1 [EAMS p. 59].) For the 2014 evaluation Dr. Hutchinson interviewed applicant, conducted various psychological tests, and reviewed the medical record that she was provided. She assigned a Global Assessment of Function (GAF) Score of 59 (17% whole person impairment (WPI)), and explained that:

Unfortunately, there are no records of any mental health treatment for review and Mr. Medina's description is not sufficient to determine what the treating parties considered as his diagnoses, the severity of his conditions, what treatments were tried, which medications did or did not help, and what progress or lack thereof occurred. Without such records, I must rely only upon the data provided by Mr. Medina and my assessment of him clinically and through testing. On this basis, it appears that he continues to have depression and anxiety of sufficient magnitude to warrant continuation of the diagnoses of Depressive Disorder, NOS and Anxiety Disorder, NOS.
(Joint Exh. 9, October 12, 2014, p. 61 [EAMS p. 119].)

¹ Although case number ADJ4567871 was included in the caption, the Petition raises no issues in regard to that case and it will not be addressed herein.

As to the issue of apportionment, Dr. Hutchinson concluded that 25% of applicant's psychiatric disability was the result of a pre-existing personality disorder, 15% was due to his wife's poor health, and 60% was caused by the industrial injury. (Joint Exh. 9, October 12, 2014, pp. 63 - 64 [EAMS pp. 121 - 122].)

Having previously evaluated applicant and "rendered multiple reports," IME Dr. Edington re-evaluated applicant on March 7, 2016. (Joint Exh. 6, Dr. Edington, March 7, 2016, p. 2 [EAMS p. 29].) After re-examining applicant and reviewing the interim medical record, Dr. Edington diagnosed applicant as having "Discogenic disorder of the lumbar spine" and "Failed total knee arthroscopy on the left." (Joint Exh. 6, March 7, 2016, p. 30 [EAMS p. 57].)

The parties proceeded to trial on May 8, 2019. The stipulations included:

The applicant is in need of future medical to cure or relieve from the effects of the industrial injury to the left knee, back and psyche.
(Further Minutes of Hearing and Summary of Evidence (MOH/SOE), May 8, 2019, p. 3.)

The issues submitted for decision included whether the parts of body injured included applicant's neck, right leg, right knee, and left leg (excluding the left knee which was accepted as an injured body part); the permanent and stationary date; permanent disability/apportionment; and future medical treatment for the claimed/denied body parts. (MOH/SOE, May 8, 2019, pp. 3 - 4.)

The June 26, 2019 Findings of Fact, Award and Order included an award of future medical treatment based on the parties' stipulation, and the WCJ ordered that the parties further develop the record by having applicant re-evaluated by Dr. Edington. (See Findings of Fact, Award and Order, June 26, 2019.) On August 4, 2020, Dr. Edington re-evaluated applicant. The doctor re-examined applicant, took an interim history, and reviewed additional medical records. He diagnosed:

1. Postop total knee replacement arthroplasty of the left knee, with residuals.
 2. Discogenic disorder of the lumbar spine with radiculopathy.
 3. Cervical strain. ...
- (Joint Exh. 10, Dr. Edington, August 4, 2020, p. 19 [EAMS p. 24].)

Dr. Edington's discussion regarding various issues as to applicant's injury included:

Mr. Medina notes that he had had no prior injuries or difficulty with his neck, back or lower extremities until his injury of 2001. The records noted that Mr. Medina fell into an empty pool while in the course of his occupation. ... He

apparently landed on his knees taking the brunt of the fall on the left knee. ... Mr. Medina had significant ongoing symptoms about the left knee and MRI scan revealed evidence of an internal derangement of the knee.
(Joint Exh. 10, p. 2 [EAMS p. 20].)

There is no evidence to suggest that there was a work related injury to the residuals, injury to the right knee as a consequence of the incident of July 2001 and its sequela.
(Joint Exh. 10, p. 20 [EAMS p. 38].)

Mr. Medina has disability of the left lower extremity precluding heavy lifting, prolonged weightbearing and prolonged climbing, walking over uneven ground, squatting, kneeling, crouching, crawling, and pivoting or other activities involving comparable physical effort.
(Joint Exh. 10, p. 21 [EAMS p. 39].)

His disability to the lower back subsumes symptomatology about the right leg. Mr. Medina does not have any disability specific to the right knee.
(Joint Exh. 10, p. 21 [EAMS p. 39].)

The parties again proceeded to trial on March 4, 2021. The parties' stipulations, and the issues submitted for decision, were the stipulations and issues "previously recited" in the May 8, 2019 MOH/SOE (as noted above); and the August 4, 2020 report from Dr. Edington was admitted into evidence. (See MOH/SOE, March 4, 2021, p. 2.)

DISCUSSION

In her Report the WCJ stated that pursuant to the June 26, 2019 Findings of Fact, Award and Order, applicant had been awarded "future medical treatment to cure or relieve the effects of the industrial injury" and the award "does not need to be reiterated" in the F&A. (Report, p. 2.) Having reviewed the Electronic Adjudication Management System (EAMS) ADJ file, it is clear that the WCJ is correct, applicant was previously awarded future medical treatment for his July 1, 2001 injury and we agree with the WCJ that there is no need to make another award of the same benefits.

As to whether applicant should be referred to a specialist to evaluate his left knee, we first note that this issue was not submitted for decision. (See MOH/SOE, May 8, 2019, pp. 3 – 4; and MOH/SOE, March 4, 2021, p. 2.) An issue that could have been raised at trial, but was not raised, cannot be raised for the first time in a petition for reconsideration. (*Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1265 [54 Cal.Comp.Cases 145, 148]; *Davis v. Interim*

Health Care (2000) 65 Cal.Comp.Cases 1039, 1044 (Appeals Board en banc).) If the issue had been raised at trial, it would be important to note that although the record contains numerous requests for authorization (see e.g. App. Exh. 22, Frank Fine, D.C., M.D.) none of the requests for authorization are for applicant to be seen by an orthopedic specialist. Absent a request for authorization and the subsequent utilization review, there is no basis for applicant's argument that he is wrongfully being denied treatment to which he is entitled. (See Lab. Code, §§ 4610 et seq.; and Cal. Code Regs., tit. 8, §§ 9792.6 et seq.)

Regarding the report from QME Dr. Hutchinson: 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, and the medical opinion must set forth the reasoning behind the physician's opinion, not merely his or her conclusions; a mere legal conclusion does not furnish a basis for a finding. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

In her October 12, 2014 report, Dr. Hutchinson stated that she was not provided any mental health treatment reports for review and that absent such records she had to rely on applicant's description of his symptoms and treatment. (Joint Exh. 9, October 12, 2014, p. 61 [EAMS p. 119].) Thus, it appears that her opinions are based on an inadequate medical history. Also, we note that in her initial report, Dr. Hutchinson apportioned 75% of applicant's psychiatric disability to the industrial injury (Joint Exh. 9, June 22, 2009, p. 54) and approximately three years later, in her subsequent report she stated that 60% of applicant's disability was caused by the industrial injury. (Joint Exh. 9, October 12, 2014, pp. 63 - 64 [EAMS pp. 121 - 122].) It has now been more than six years since Dr. Hutchinson evaluated applicant, and it may well be that her opinion regarding apportionment is based on facts no longer germane. Finally, although Dr. Hutchinson evaluated applicant in regard to both of his injury claims, she did not address the issue of whether any of applicant's psychiatric disability was caused by his left eye injury. Nor did she discuss the issue of, if both injuries caused psychiatric disability, could the disability caused by the injuries be properly apportioned. (*Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113].) For these reasons, Dr. Hutchinson's reports do not constitute

substantial evidence, they are not an appropriate basis for an award of permanent disability, and the record must be further developed.

In our *en banc* decision, *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated, “Where the medical record requires further development either after trial or submission of the case for decision,” the medical record should first be supplemented by physicians who have already reported in the case. “Only if the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, should other physicians be considered.” (*Id.*, at pp. 139, 142.) Under the circumstances of this matter it would be appropriate for the parties to request that Dr. Hutchinson re-evaluate applicant, review the appropriate medical records, and submit a supplemental report that addresses the issues discussed herein.

Accordingly, we grant reconsideration and affirm the F&A except that we amend the F&A regarding case number ADJ1413052, to find that the reports from QME Dr. Hutchinson are not substantial evidence (Finding of Fact 9) and to defer the issue of the permanent disability caused by the July 9, 2001 injury (Finding of Fact 6); based thereon the Award will be amended to defer the award of permanent disability indemnity benefits pending further development of the record, and we will return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the 2nd Amended Findings of Fact, Award, and Order, issued by the WCJ on May 18, 2021, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 18, 2021 2nd Amended Findings of Fact, Award, and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

ADJ1413052

* * *

6. The issue of permanent disability caused by the July 9, 2001 injury is deferred; and the issue of applicant's entitlement to Life Pension benefits is deferred.

* * *

9. The reports of Karen A. Hutchinson, Ph.D., are not substantial evidence on the issues of permanent disability and apportionment.

* * *

AWARD

ADJ1413052

* * *

1. The award of permanent disability indemnity benefits is deferred pending further development of the record.

2. The award of Life Pension benefits to which applicant may be entitled, is deferred pending further development of the record.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 2, 2021

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

**EPIFANIO MEDINA
HARTSUYKER STRATMAN**

TLH/pc

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