

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

JUAN VERDIN, *Applicant*

vs.

**BARRETT BUSINESS SERVICES, Permissibly Self-Insured, Adjusted By CORVEL,
*Defendant***

**Adjudication Number: ADJ9026031
Oakland District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Amended Findings, Award and Order November 18, 2020, wherein it was found that while employed on November 1, 2012 as a laborer, applicant sustained industrial injury to his neck, right shoulder, right elbow, wrists (in the form of carpal tunnel syndrome), fingers and psyche, causing the need for further medical treatment. As relevant to the instant Petition, the WCJ found that "Applicant's conditions became permanent and stationary on January 14, 2019," but that, "The medical record is in need of further development on the issues of permanent disability and apportionment." The WCJ's decision came after a telephonic hearing which took place on July 8, 2020, at which applicant testified.

Defendant contends that the WCJ erred in (1) making findings after a telephonic hearing, rather than continuing trial until an in-person hearing could be conducted (due to the present COVID-19 pandemic) and in (2) finding the applicant permanent and stationary, arguing that applicant is not yet permanent and stationary because of applicant's trial testimony that he underwent surgery weeks before trial. We have received an Answer from the applicant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, we affirm the propriety of a telephonic conference during the COVID-19 pandemic. (See *Gao v. Chevron Corp.* (2021) 86 Cal.Comp.Cases 44 [Appeals Bd. Significant Panel Decision].) However, we will grant reconsideration and amend the WCJ's decision to defer the issue of permanent and stationary date.

Since the issue of permanent disability is deferred, it was premature to decide the issue of permanent and stationary date, since it does not appear relevant to any issue already determined. The WCJ should determine if applicant is permanent and stationary when making a final decision regarding applicant's permanent disability. We take no position on the merits of this issue.

We note that exhibits D, E, and F are mislabeled in the electronic record (EAMS). The documents described as exhibits D, E, and F in the trial's Minutes of Hearing (MOH) are in EAMS, without being designated as exhibits. Other documents, which do not meet the description of the documents in the MOH are identified as exhibits D, E, and F. It is the responsibility of the parties and the WCJ to ensure that the electronic record is properly organized. In the further proceedings, the WCJ must properly label the exhibits. (*Hernandez v. AMS Staff Leasing* (2011) 76 Cal.Comp.Cases 343, 346-350 [Appeals Bd. significant panel decision].)

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Amended Findings, Award and Order issued on November 18, 2020 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Amended Findings, Award and Order issued on November 18, 2020 is **AMENDED** as follows:

FINDINGS OF FACT

1) Juan Verdin, while employed on November 1, 2012, as a laborer (occupational group 460), by Barrett Business Services, sustained injury, arising out of and in the course of employment, to his neck, right shoulder, right elbow, and bilateral carpal tunnel/wrists, fingers and psyche.

2) At the time of injury, Barrett Business Services was permissibly self-insured and administered by CorVel.

3) At the time of injury, the employee's earnings were \$587.22 warranting an indemnity rate of \$391.48 for temporary disability and a permanent disability rate of \$264.50.

4) The carrier has paid temporary disability benefits in the amount of \$391.48 per week through March 1, 2016, and has paid permanent disability benefits at the rate of \$264.50 per week, which includes a 15 percent statutory increase, subject to proof.

5) The medical record is in need of further development on the issues of permanent disability and apportionment.

6) There is no basis for temporary disability indemnity from March 2, 2016 through April 16, 2016.

7) The issue of permanent and stationary date is deferred, with jurisdiction reserved.

8) Applicant is in need of further medical treatment for the body parts found herein.

9) Applicant is entitled to a reasonable attorney's fee, to be determined after further development of the record, at which time the liens for attorney's fees for his prior attorneys shall be addressed.

AWARD

AWARD IS MADE in favor of Juan Verdin and against Barrett Business Services of further medical treatment to applicant's neck, right shoulder, right elbow, and bilateral carpal tunnel/wrists, fingers and psyche.

ORDERS

IT IS ORDERED that the parties are to further develop the medical record, and obtain a supplemental opinion from the psychiatric Qualified Medical Evaluator, Dr. James O'Dowd, on the issues of apportionment, as further set forth in the Opinion on Decision.

IT IS FURTHER ORDERED that upon receipt of the supplemental opinion from Dr. O'Dowd as set forth herein, the parties are to submit this report to the attention of Judge Griffin.

IT IS FURTHER ORDERED that the matter shall then be re-submitted for decision upon agreement of the parties, once the supplemental opinion of Dr. O'Dowd has been submitted. If the parties are unable to agree on submission at that time, then the case is to be activated via a Declaration of Readiness to Proceed.

IT IS FURTHER ORDERED that exhibits B, C, D, E and F are **ADMITTED** into evidence.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 9, 2021

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

**JUAN VERDIN
URIARTE & CARR
LAUGHLIN, FALBO, LEVY & MORESI**

DW/oo

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