

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

MICHAEL CARRILES, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES *Defendants***

**Adjudication Number: ADJ11290614
Van Nuys District Office**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings of Fact and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on March 13, 2023, wherein the WCJ found in pertinent part that based on the medical report of orthopedic agreed medical examiner (AME) Ray R. Craemer, M.D., 50% of applicant's right knee permanent disability is attributable to the cumulative trauma injury and 50% is attributable to the June 9, 2013 injury.

Applicant contends that the reports from Dr. Craemer are not substantial evidence regarding the issue of apportionment of applicant's right knee disability, and that applicant's 2013 right knee injury did not cause any disability.

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 and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will affirm the F&A except that we will amend the F&A to defer the issues apportionment of applicant's right knee disability (Finding of Fact 5); the permanent disability caused by applicant's injury (Finding of Fact 4); and the attorney fees for applicant's attorney (Finding of Fact 7); based thereon, we will amend the Award and return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant claimed injury to his cervical spine, right shoulder, bi-lateral wrists, lumbar spine, and right knee, and in the form of GERD, hearing loss, tinnitus, actinic keratosis, and a hernia, while employed by defendant as a deputy sheriff during the period from January 7, 1986, through April 11, 2018.

AME Dr. Craemer evaluated applicant on March 26, 2019. Dr. Craemer examined applicant, took a history, and reviewed the medical record. Regarding applicant's right knee injury, Dr. Craemer stated:

There was a report dated 6/10/13 for a date of injury of 6/10/13. The patient had sudden onset of right knee pain while at work. The patient jumped onto the boat deck approximately two feet and twisted his right knee. Diagnosis: Sprain/strain of the right knee. The patient was dispensed medications and given a knee support. The patient was referred for physical therapy. The patient was able to work full duty work.

(Joint Exh. 1, Ray R. Craemer, M.D., March 26, 2019, p. 10.)

There was a report dated 6/20/13. This was a maximum medical improvement. The patient was released from care and returned to full duty work with no disability or need for future medical care. (Joint Exh. 1, p. 11.)

DIAGNOSES:

A. Industrial injury, jumping two feet down to the boat deck, D/I 6/9/13.

1. Right knee sprain. ... ¶

B. Industrial, long history of vigorous law enforcement, D/I CT 1/7/86 to 4/11/18. ... ¶

4. Aggravation right knee degenerative joint disease, D/I CT 1/7/86 to 4/11/18.

(Joint Exh. 1, pp. 13 - 14.)

Permanent Impairment: ...

Right Knee: Page 532, table 17-8. See physical examination for muscle weakness. He had 5% whole person impairment for the right knee. ... ¶ ...

Apportionment Determination labor Code 4663,4664:

For the right knee, apportionment is 50% to the 6/9/13 injury and 50% to the continuous trauma. I reviewed with him the prior injuries and they were not of significance and apportionment to these injuries.

(Joint Exh. 1, p. 17.)

Dr. Craemer re-evaluated applicant on March 24, 2021. His opinions as to impairment and apportionment were limited to applicant's bi-lateral wrist condition. (Joint Exh. 2, Ray R. Craemer, M.D., March 24, 2021, pp. 11 - 12.) Dr. Craemer's subsequent reports and deposition testimony do not address applicant's right knee impairment/disability or apportionment of that disability.

The parties proceeded to trial on January 19, 2023. The WCJ's summary of applicant's testimony included the following:

On June 10, 2013, he injured his right knee while jumping from one boat to another and landing wrong, causing a sharp pain to his right knee. He recalls getting Naproxen and a knee support but did not get physical therapy (although it was recommended). He recalls being discharged and did not miss any time from work.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), January 19, 2023, p. 5.)

The issues submitted for decision included permanent disability and apportionment. (MOH/SOE, p. 2.)

DISCUSSION

It is well established that an award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) In order to constitute substantial evidence as to the issue of apportionment, the medical opinion must disclose the reporting physician's familiarity with the concepts of apportionment and must identify the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors. (Lab. Code, § 4663; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board *en banc*)). Also, the physician must explain the nature of the other factors, how and why those factors are causing permanent disability at the time of the evaluation, and how and why those factors are responsible for the percentage of disability assigned by the physician. (*Id.* at 621.)

Here, when addressing apportionment of applicant's right knee disability Dr. Craemer stated, "For the right knee, apportionment is 50% to the 6/9/13 injury and 50% to the continuous trauma ." (Joint Exh. 1, p. 17.) However, he did not identify the factors of permanent disability

caused by the 2013 injury. Nor did he explain how and why those factors were causing permanent disability regarding applicant's right knee at the time of the evaluation, or how and why those factors were responsible for 50% of applicant's right knee disability. It is important to note that in his review of the medical record, Dr. Craemer specifically stated that:

There was a report dated 6/20/13. This was a maximum medical improvement. The patient was released from care and returned to full duty work with no disability or need for future medical care.
(Joint Exh. 1, p. 11.)

Again, Dr. Craemer did not explain the basis for his opinion that although at the time applicant was released from treatment for the June 20, 2013, injury, it had not caused any disability, but at the time of his March 26, 2019, evaluation of applicant, it was causing 50% of applicant's right knee disability. A physician's opinion that does not explain the underlying basis for the physician's conclusion, does not constitute substantial evidence, and in turn, cannot be the basis for an Appeals Board decision. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Escobedo v. Marshalls, supra.*)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue that was submitted for decision. (Lab. Code §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) When the medical record requires further development, it should first be supplemented by physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) In this matter, upon return to the WCJ, it would be appropriate for the parties to request that Dr. Craemer submit a supplemental report addressing and clarifying his opinions as to the issues of permanent disability and apportionment regarding applicant's right knee injury.

Accordingly, we affirm the F&A except that we amend the F&A to defer the issues of apportionment of applicant's right knee disability, the permanent disability caused by applicant's injury, and the attorney fees for applicant's attorney. Therefore, we amend the Award and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the March 13, 2023, Findings of Fact and Award, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

4. The issue of permanent disability caused by applicant's injury is deferred.
5. The issue of apportionment of applicant's right knee disability is deferred; pursuant to Labor Code section 3212, there is no legal apportionment as to the disability caused by applicant's hiatal hernia.
7. The issue of attorney fees for applicant's attorney is deferred.

AWARD

* * *

- (a) The award of permanent partial disability indemnity is deferred.
- (c) The award of attorney fees is deferred.

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 WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ NATALIE PALUGYAL, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 29, 2023

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

**MICHAEL CARRILES
STRAUSSNER, SHERMAN, LONNÉ, TREGER & HELQUIST
PURINTON LAW**

TLH/mc

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