WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PHILIP SCHULTZ, *Applicant*

vs.

SAITEK INDUSTRIES, LTD.; CIGA, by its servicing facility, SEDGWICK FOR PACIFIC NATIONAL INSURANCE in liquidation, *Defendants*

Adjudication Numbers: ADJ10160818; ADJ1459849 (AHM 0149908)
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on September 8, 2023, wherein the WCJ found in pertinent part that applicant sustained a cumulative trauma to his thoracic spine, with a cumulative trauma period ending on October 19, 2001 (finding no. 5, finding no. 7) and that there is 10% legal apportionment to non-industrial causes (finding no. 11).

Defendant contends that:

> 1) The WCJ erred in finding a CT injury through 2001. There is only one CT, running from 2004-2005, and CIGA has no liability for that injury, for which there is solvent coverage in Travelers.
>
> 2) Assuming alternatively that multiple CTs do exist, the WCJ erred by disregarding Dr. Newton's most recent apportionment splitting the disability between the CTs.

We received an answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations in the Petition, the answer, and the contents of the Report with respect thereto.

Based on our review of the record, and for the reasons discussed below, we will grant the Petition, rescind the F&A issued on September 8, 2023, substitute new Findings of Fact, and return the matter to the WCJ for further proceedings consistent with this decision.

BACKGROUND

We will briefly review the relevant facts.

In case number ADJ1459849, which applicant previously settled in January 2009, applicant claimed injury to his back (420) while employed by defendant as a warehouseman, during the period from August 22, 2004 to August 22, 2005.[1] Case number ADJ1459849 was settled by way of compromise and release (C&R), based on the report of Agreed Medical Evaluator (AME) Dr. Peter Newton, dated July 14, 2008. (Order Approving Compromise and Release (OACR) of case number ADJ1459849, dated January 21, 2009; C&R in case number ADJ1459849, p. 7.) Dr. Newton provided an impairment rating as to applicant's lumbar spine, but as relevant here, Dr. Newton did not provide an impairment rating to applicant's thoracic spine. (Report of AME Dr. Newton, dated July 14, 2008 in case number ADJ1459849, p. 12.)

Turning to the matter before us, case number ADJ10160818, applicant claimed injury to his back while employed by defendant as a warehouse manager on October 19, 2001. The record reflects that applicant received temporary disability indemnity for the period of October 24, 2001 through April 7, 2004 and permanent disability indemnity for the period of April 12, 2004, through November 21, 2017. (Minutes of Hearing and Summary of Evidence (MOH/SOE), May 18, 2023 trial, p. 2.)

On July 14, 2008, applicant was evaluated by orthopedic AME Dr. Newton. Dr. Newton examined applicant (Ex. E, Dr. Newton's AME report, dated July 14, 2008, pp. 8-11), took a detailed history (*Id*., pp. 2-4), and reviewed extensive medical records (*Id*., pp. 4-8, 12).

In his July 14, 2008 report, Dr. Newton opined that applicant had attained maximal medical improvement to his lumbar spine and he apportioned 10% of applicant's disability to preexisting degenerative disc disease and 90% to an industrial injury of August 22, 2005. (Ex. E, Dr. Newton's AME report, dated July 14, 2008, p. 13.)

[1] No issues regarding case number ADJ1459849 were raised and thus it is not addressed herein.

Dr. Newton reviewed additional medical records, examined applicant again on October 9, 2017, and issued a further report. (Ex. D, Dr. Newton's AME report, dated October 9, 2017.) Dr. Newton stated:

> CAUSATION OF INJURY:
> Although I do not have any records available for review, it appears that the applicant sustained a continuous trauma injury to his thoracic spine through 10/19/01 when he was taken off of work and, a continuous trauma injury to his lumbar spine through 08/22/05.
>
> CAUSATION OF DISABILITY AND IMPAIRMENT:
> Factors contributing to this applicant's thoracic condition/disability/impairment are age-appropriate and age-related degenerative changes and the continuous trauma through 10/19/01.
>
> Factors contributing to this applicant's lumbar condition/disability/impairment are age-appropriate and age-related degenerative changes and, the continuous trauma through 08/22/05.

(Ex. D, Dr. Newton's AME report, dated October 9, 2017, p. 32.)

At his deposition on January 14, 2019, Dr. Newton requested additional medical records. (Ex. A, deposition of AME Dr. Newton, taken January 14, 2019, at 14:23-15:22.)

Dr. Newton reviewed additional treatment records from 2001 through 2019 and issued a supplemental report on December 4, 2019.

> DISCUSSION:
> I initially evaluated Mr. Schults (sic) on 07/14/08 and the last time on 10/09/17. At the time of his last evaluation, he had ongoing complaints of pain in his thoracic and lumbar spine.
>
> Based on the history, physical exam, review of records, and review of radiologic studies, I made 2 diagnoses as listed on page 31 of my report. I found the applicant's condition remained permanent and stationary as of 07/14/08. I assigned an impairment for the thoracic and lumbar spine.
>
> The records reviewed above include additional treatment records from 2001 extending through 2019. On 01/22/19, the applicant continues to be treated by Dr. Paicius, the pain management physician who recommends additional treatment including radiofrequency thermocoagulation. I agree with Dr. Paicius that under future medical care, this form of treatment should be afforded, given the applicant's ongoing significant symptoms.
>
> The records reviewed above would not cause me to change my opinion as noted in the 10/09/17 report.

(Ex. C, Dr. Newton's AME supplemental report, dated December 4, 2019, p. 19.)

Dr. Newton was deposed again on April 27, 2022, testifying in pertinent part as follows:

Q Would you say that there is one CT or two CTs?
A I think there was one CT.

(Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 17:2-3.)

Q All right. So for the sake of our question and answers here today, you would say that there's a single CT ending in approximately October 2005, Doctor?

A Yes. If it was October. I had August 2005, but if the last day of work was October, then it would be October, yes.

Q To be honest, I am not exactly sure, but I do have a report which you reviewed from Dr. Field from September 2005 which indicates that applicant is still working. So this is again the questionnaire that we referred to previously. It was apparently filled out by applicant, or signed by him, and is dated 9/28/05. Do you see where it says applicant is working now according to him?

A Yes.

(Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 17:11-25.)

Q Now, Mr. Thomas is correct in that date of injury is a legal determination. So let's say for the sake of argument that the judge finds two CTs. The second CT ending in 2005, that would involve both the lumbar spine and the thoracic spine; correct?

MR. THOMAS: Objection. Calls for a legal conclusion.

You can answer from a medical perspective.

THE WITNESS: Yes. Based on the report of Dr. Field that you showed me earlier which really had no significant abnormal findings for the thoracic spine in 2004, yes.

Q "Yes" meaning the second CT ending in 2005 would involve both the thoracic and the lumbar spine?
A That's correct.

Q But your ultimate determination from a medical perspective is that Mr. Schultz sustained a single CT to both the thoracic and lumbar spine ending when he stopped working at Saitek; correct?

A Yes.

(Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 18:4-24.)

Q Given this information that I have asked, do you believe, in fact, that there are two continuous trauma injuries?
A Well, the reason I feel there is -- are you asking for just the thoracic or the thoracic and lumbar?

Q Thank you, Doctor. I was going to interject. As it applies to the thoracic spine, do you believe, based on the questions I have asked and the reports I have shown, that there was a CT documented as early as sometime in 2001 for his thoracic spine based on the employer's first report of injury?
A Yes.

(Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 21:5-16.)

Q So what I asked you earlier, Doctor, and in your prior deposition, you had said that there was in your opinion a single CT ending in 2005, but in your response to Mr. Thomas' questions, you said, I believe, that there was an earlier CT. Do you believe there's one CT or multiple CTs?
A After reconsideration, for the thoracic spine there are two CTs. He clearly had an injury, had treatment, and then got better. Dr. Field's report makes it -- even though he still includes a diagnosis there, his condition had improved to the point that he had full, painless range of motion, was nontender, and was able to return to work, which means there was sufficient healing of his prior injury, and then his condition got worse again through October 2005.

Q Let's focus on the first CT then. Just the thoracic or the low back as well?
A Just the thoracic. There's no mention to the lumbar spine prior to 2004.

Q And in -- the second CT ending in 2005 would involve both the thoracic and the lumbar spine; correct?
A Yes.

(Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 24:6-25:2.)

Q So how did you apportion the thoracic spine between the two CTs?
A I would apportion it based on the time that he worked there prior to and after the three-year period of time off. So it would be 18 months for the subsequent CT and however much time he worked prior to that.

Q And the lumbar spine for the industrial, you would apportion that solely to the second CT ending in 2005; right?
A Well, I think he -- no. I think there are two CTs there, but I think those really are -- I don't like to use this term, but they are inextricably intertwined

that there is one long CT. He didn't become symptomatic until that second period of time, but I don't think he just injured his back while working with restrictions the last 18 months. That's mechanically not probable, medically improbable that there -- there's something during those first few years of work would have made him susceptible to the development of his symptoms when he returned back to work in 2004.

Q So when you say that both the lumbar and the thoracic spine are inextricably intertwined as to the two CTs –
A No. Just with the lumbar.

Q Why not for the thoracic as well?
A Because there's clear documentation of a thoracic injury for which he received treatment and then recovered. There is no such documentation of symptoms for the lumbar spine. Although it's probable that he was injuring his low back while working, there's really no documentation, and, therefore, I can't separate those two.

(Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 25:3-26:9.)

On June 29, 2022, applicant filed an amended application, to change the injury to a cumulative trauma and to amend date of injury (DOI) to the period from October 16, 1997 to October 19, 2001.

On May 18, 2023, the matter proceeded to trial on the following issues:

1. Injury arising out of and in the course of employment.

2. Permanent and stationary date: Employee-claims October 9, 2017, based on Dr. Newton; employer/carrier claims July 14, 2008, based on Dr. Newton.

3. Permanent disability.

4. Date of injury pursuant to Labor Code Section 5412.

   Applicant claims a specific date of injury of October 19, 2001. Defendant claims a cumulative trauma injury ending on August 22, 2005.

   Defendant asserts that CIGA has no liability of a cumulative trauma ending on August 22, 2005, pursuant to Insurance Code Section 1063.1 (c) (9); Statute of Limitations.

   Applicant asserts that the injury is presumed compensable as there was no timely denial and Intercare paid benefits.

(MOH/SOE, p. 2.)

At trial, the parties stipulated as follows.

1. Philip Schultz, born on [], while employed as a warehouse manager, Occupational Group Number 360, at Torrance, California, by Saitek Industries, claims to have sustained injury arising out of and in the course of employment to his thoracic spine and lumbar spine.

2. At the time of injury, the employer's workers' compensation carrier was CIGA by its servicing facility Sedgwick for Pacific National Insurance, in liquidation.

3. The carrier/employer has paid compensation as follows: Temporary disability, at a weekly rate of $490.00 for the period of October 24, 2001, through April 7, 2004; Permanent disability, at a weekly rate of $140.00 for the period of April 12, 2004, through November 21, 2017.

4. The employer has furnished some medical treatment.

5. Applicant is deceased.

(MOH/SOE, p. 2.)

The WCJ made the following findings:

1. Phillip Schultz, while employed as a warehouse manager, occupational group number 360, at Torrance, California, Saitek Industries, claims to have sustained injury arising out of and in the course of employment to his thoracic spine and lumbar spine.

2. At the time of injury, the employer's workers' compensation carrier was CIGA by its servicing facility Sedgwick for Pacific National Insurance, in Liquidation.

3. The carrier/employer has paid compensation as follows: temporary disability at a weekly rate of $490 for the periods of October 24, 2001 through April 7, 2004 and permanent disability, at weekly rate of $140.00 for the period of April 12, 2004, through November 21, 2017.

4. Applicant's Exhibits 1-5 are admitted into evidence.

5. It is found that applicant sustained injury to his thoracic spine.

6. Applicant did not sustain injury to his lumbar spine.

7. It is found that the date of injury is a cumulative trauma period ending on 10/19/2001.

8. There is no other coverage pursuant to Insurance Code section 1063.1 (c) (9) is not applicable.

9. It is found that applicant was permanent and stationary on 7/14/2008.

10. Applicant is entitled to a permanent disability award of 36 percent, equivalent to 168.00 weeks of indemnity payable at the rate of $140.00 per week, in the total sum of $23,520., less prior payments made and less attorney fees of $3,528.00, which shall be commuted from the far end of the award.

11. There is 10% legal apportionment to non-industrial causes.

12. The statute of limitations defense is not applicable.

13. It is found that a reasonable attorney fee is $3,528.00.

AWARD IS MADE in favor of PHILIP SCHULTZ against SAITEK INDUSTRIES LTD, SAITEK INDUSTRIES LTD of:

Applicant is entitled to a permanent disability award of 36 percent, equivalent to 168.00 weeks of indemnity payable at the rate of $140.00 per week, in the total sum of $23,520., less prior payments made and less attorney fees of $3,528.00, which shall be commuted from the far end of the award.

(September 8, 2023 Findings and Award, p. 2.)

DISCUSSION

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd*. (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable, although not certain or 'convincing.'" (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 416-417, 419 [33 Cal.Comp.Cases 660].) "That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd*. (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].)

It is well established that "there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events." (*Western Growers*

Ins. Co. v. Workers' Comp. Appeals Bd. (*Austin*) (1993) 16 Cal.App.4th 227, 234 [58 Cal.Comp.Cases 323].)

Labor Code section 3208.1[2] defines "injury" as follows:

> An injury may be either: (a) "specific," occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) "cumulative," occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412.
> (Lab. Code, § 3208.1.)

The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB. (*Austin, supra*, at 234; see also Lab. Code, § 3208.2.) No cumulative injury can occur without disability. (*Van Voorhis v. Workmen's Comp. Appeals Bd.* (1974) 37 Cal.App.3d 81, 86-87 [39 Cal.Comp.Cases 137]; *Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd. (Coltharp)* (1973) 35 Cal.App.3d 329, 342-343 [38 Cal.Comp.Cases 720]; *Ferguson v. City of Oxnard* (1970) 35 Cal.Comp.Cases 452 (Appeals Bd. en banc).) As used in section 5412, "disability" means either compensable temporary disability or permanent disability. Medical treatment alone is not "disability" for purposes of determining the date of a cumulative injury pursuant to section 5412, but it may be evidence of compensable permanent disability. (*State Compensation Insurance Fund v. Workers' Comp. Appeals Bd. (Rodarte)* (2004) 119 Cal.App.4th 998, 1005 [69 Cal.Comp.Cases 579, 584].) Likewise, modified work is not a sufficient basis for finding compensable temporary disability, but it may be indicative of a compensable permanent disability, especially if the worker is permanently precluded from returning to his usual and customary job duties. (*Id*.)

An award, order or decision by the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code §§ 5903, 5952; *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317-319 [33 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd*. (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16].) Turning to whether there is substantial medical evidence of industrial causation, a medical opinion must be framed in terms of reasonable medical probability, it must be based on an adequate examination and history, and it must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager Construction v.*

[2] All future statutory references are to the Labor Code, unless otherwise specified.

Workers' Comp. Appeals Bd. (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc).)

When a physician's report is well-reasoned, is based on an adequate history and examination, and sets forth the reasoning behind the physician's opinion not merely their conclusions, the report constitutes substantial evidence. (*Granado v. Workmen's Comp. Appeals Bd*. (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen's Comp. Appeals Bd*. (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc).) Conversely, 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. (*Hegglin v. Workmen's Comp. Appeals Bd*. (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd*. (1968) 68 Cal.2d 794, 798 [33 Cal.Comp.Cases 358].)

In his report dated October 9, 2017, Dr. Newton opined that applicant sustained a continuous trauma injury to his thoracic spine through October 19, 2001 and a continuous trauma injury to his lumbar spine through August 22, 2005. (Ex. D, Dr. Newton's AME report, dated October 9, 2017, p. 32.) Dr. Newton provided a detailed analysis, his opinions are well-reasoned, based on an adequate history and examination, and he disclosed a solid underlying basis for his opinions, thus they are substantial medical evidence. (*Gatten, supra*; *Escobedo, supra*.) Dr. Newton's deposition was taken in 2019, at which point he requested additional records. (Ex. A, deposition of AME Dr. Newton, taken January 14, 2019, at 14:23-15:22.) After he reviewed the additional medical records, which ranged from 2001 through 2019, Dr. Newton issued a further report and opined that his opinion was unchanged from his October 9, 2017 report. (Ex. C, Dr. Newton's AME supplemental report, dated December 4, 2019, p. 19.)

Defendant CIGA contends that the WCJ erred by disregarding Dr. Newton's 2022 testimony. However, the opinions expressed in his 2022 transcript are based on surmise, speculation, and conjecture and therefore are not substantial medical evidence. (*Escobedo, supra,* at 621; see also *Hegglin, supra*; *Place, supra*; *Zemke, supra*.) Dr. Newton himself used the terms "mechanically not probable" and "medically improbable." (Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 25:12-22.) He also engaged in conjecture and speculation with respect to the number and nature of applicant's CT injuries, for example, testifying "I think there are two

CTs there, but I think those really are -- I don't like to use this term, but they are inextricably intertwined that there is one long CT." (*Id*. at 24:11-14; 24:21-24; 24:25-25:2.) With respect to applicant's lumbar spine, he testified that "[a]lthough it's probable that he was injuring his low back while working, there's really no documentation, and, therefore, I can't separate those two." (Ex. B, deposition of AME Dr. Newton, taken April 27, 2022, at 26:3-9.)

At trial, issue four was the date of injury pursuant to section 5412. Determination of the "date of injury" is a two-part analysis: 1) when did the employee first suffer a compensable disability from a cumulative injury; and 2) when did the employee know, or in the exercise of reasonable diligence should have known, that the compensable disability was caused by his or her employment. (Lab. Code, § 5412; *Rodarte, supra*.) Here, it is undisputed that applicant received temporary disability indemnity for the period of October 24, 2001 through April 7, 2004 and permanent disability indemnity for the period of April 12, 2004, through November 21, 2017. (MOH/SOE, p. 2.) In his 2019 report, Dr. Newton summarized records back to 2001, including a doctor's first report of occupational injury or illness by Michael E. Herman, D.C., followed by various other records by Dr. Herman starting October 24, 2001. (Ex. C, Dr. Newton's AME supplemental report, dated December 4, 2019, pp. 2-3.) Based on this information, as of October 24, 2001, applicant had a compensable disability (i.e., applicant was receiving temporary disability indemnity) and he knew or should have known that the injuries were work-related based on a "doctor's first report of occupational injury or illness" and subsequent treatment by Dr. Herman. (Ex. C, Dr. Newton's AME supplemental report, dated December 4, 2019, pp. 1-5.)

WCAB Rule 10517 states that "pleadings may be amended by the Workers' Compensation Appeals Board to conform to proof." (Cal. Code Regs., tit. 8, § 10517.) Thus, where the pleadings are incompatible with the evidence, the WCJ has the discretion to conform the pleadings to proof. (*Memorex Corp. v. Workers' Comp. Appeals Bd. (Kraten)* (1977) 42 Cal.Comp.Cases 458 (writ den.) [WCAB properly found cumulative trauma based on evidence, despite pleaded specific injury].) Thus, based on the foregoing, while defendant commenced payments on October 24, 2001, and clearly applicant had knowledge and disability on that date, a finding as to a 5412 date is superfluous, and not currently relevant to any of the issues before us.

Defendant contends that applicant's claim was barred by the one year statute of limitations to apply for workers' compensation benefits pursuant to section 5405. With respect to whether applicant's claims are barred by the statute of limitations, the three points designated in section

5405 as the start of the one year statute of limitations period are: date of injury; the last payment of disability indemnity; and the last date on which medical treatment benefits were furnished. (Lab. Code, § 5405(a)-(c).) Here, applicant filed an application for adjudication on October 22, 2015, more than two years prior to the last payment of permanent disability on November 21, 2017. (MOH/SOE, May 18, 2023 trial, p. 2; application for adjudication.)

Accordingly, we grant defendant's Petition, rescind the Findings and Award, substitute new Findings of Fact, and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on September 8, 2023 is **RESCINDED** and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Phillip Schultz, while employed as a warehouse manager, occupational group number 360, at Torrance, California, Saitek Industries, up to October 19, 2001, sustained injury arising out of and in the course of employment to his thoracic spine and not to his lumbar spine. At the time of injury, the employer's workers' compensation carrier was CIGA by its servicing facility Sedgwick for Pacific National Insurance, in Liquidation.

2. Philip Schultz, while employed as a warehouse manager, occupational group number 360, at Torrance, California, Saitek Industries, up to October 19, 2001, sustained injury arising out of and in the course of employment to his lumbar spine and not to his thoracic spine. At the time of injury, the employer's workers' compensation carrier was Travelers.

3. The carrier/employer has paid compensation as follows: temporary disability at a weekly rate of $490 for the periods of October 24, 2001 through April 7, 2004 and permanent disability, at weekly rate of $140.00 for the period of April 12, 2004, through November 21, 2017.

4. It is found that applicant was permanent and stationary on July 14, 2008.

5. Applicant is entitled to a permanent disability award of 36 percent, equivalent to 168.00 weeks of indemnity payable at the rate of $140.00 per week, in the total sum of $23,520, less prior payments made and less attorney fees of $3,528.00, which shall be commuted from the far end of the award.

6. The statute of limitations defense is not applicable.

7. It is found that a reasonable attorney fee is $3,528.00.

8. Applicant's Exhibits 1-5 are admitted into evidence.

9. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 4, 2023

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

PHILIP SCHULTZ
THOMAS LAW ALLIANCE
GUILFORD, SARVAS & CARBONARA
DIMACULANGAN & ASSOCIATES

JB/*cs*

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