

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

JEREMY THORNTON, *Applicant*

vs.

G&C AUTO BODY; INSURANCE COMPANY OF THE WEST, *Defendants*

**Adjudication Number: ADJ12733273
Santa Rosa District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of January 24, 2024, wherein it was found that, while employed during a cumulative period ending November 8, 2019, applicant sustained industrial injury in the form of irritable bowel syndrome but did not sustain compensable industrial injury to the psyche. Although permanent disability was not placed at issue or decided upon, there was a finding that, "The apportionment opinion on QME [internist] Dr. Chang-Sing constitutes substantial medical evidence."

Applicant contends that the WCJ erred in finding that the apportionment determination of Dr. Chang-Sing constitutes substantial medical evidence. Applicant argues that Dr. Chang-Sing merely incorporated the apportionment of the psyche qualified medical evaluator, without adequately explaining how factors other than the industrial injury were contributing to applicant's irritable bowel syndrome permanent impairment. We have not received an answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We will grant reconsideration and amend the WCJ's decision to defer the issue of apportionment, since any findings regarding apportionment are premature prior to any findings regarding the permanent impairment to be apportioned. Labor Code section 4663 states, "A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was

caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.” However, since there is no final decision as to the applicant’s permanent disability, it is premature to determine the extent to which apportionment of this yet uncertain permanent disability is proper. Applicant’s permanent disability must first be determined in order to determine which portion of the permanent disability is attributable to other factors.

We thus grant reconsideration and defer the issue of apportionment of permanent disability on that basis. The applicant may re-raise his contentions regarding Dr. Chang-Sing’s apportionment determination, and the parties and the WCJ may wish to further develop the medical record on this issue. We take no position on the ultimate determination of this issue.

For the foregoing reasons,

IT IS ORDERED that Applicant’s Petition for Reconsideration of the Findings and Award of January 24, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings and Award of January 24, 2024 is **AMENDED** as follows:

FINDINGS OF FACT

1. Jeremy Thornton, age 40 on the date of injury, while employed during the period from June 12, 2017 through November 8, 2019, as an auto repair service estimator (Occupational Group No. 214) at Santa Rosa, California, by G&C Auto Body, Inc., sustained injury arising out and in the course of employment in the form of Irritable Bowel Syndrome.
2. At the time of injury, the employer’s workers’ compensation carrier was Insurance Company of the West.
3. Applicant did not sustain an injury arising out of and in the course of employment to his psyche.
4. All other issues are deferred with jurisdiction reserved.

AWARD

AWARD IS MADE in favor of JEREMY THORNTON against INSURANCE COMPANY OF THE WEST;

a) All appropriate benefits stemming from the compensable industrial injury in accordance with finding #1.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

CRAIG SNELLINGS, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 15, 2024

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

**JEREMY THORNTON
SHATFORD LAW
D'ANDRE LAW**

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