WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

BRIAN BARRICK, *Applicant*

vs.

CALIFORNIA DEPARTMENT OF PUBLIC HEALTH, Legally Uninsured, adjusted by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ11190499
Redding District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

We have considered the allegations of the Petition for Reconsideration, the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's Report and Opinion on Decision, which are both adopted and incorporated herein, and for the reasons stated below, we will deny reconsideration.

Labor Code section 3208.3 states that "In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Lab. Code, § 3208.3(b)(1).) Thus, benefits for a psychiatric injury may be awarded only when the employee establishes that industrial factors account for more than 50 % of the employee's psychiatric injury. (*Pacific Gas & Electric Co. v. Workers' Comp. Appeals Bd*. (2004) 114 Cal.App.4th 1174, 1181 [69 Cal. Comp. Cases 21].) There must now also be "objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury." (*Verga v. Workers' Comp. Appeals Bd*. (2008) 159 Cal.App.4th 174, 186 [73 Cal.Comp.Cases 63].)

Defendant incorrectly argues that applicant's mere perception of an increased workload is not an actual event of employment and that he, therefore, fails to meet his burden of proof. We disagree. In *Verga*, the Court of Appeal agreed with the Appeals Board's finding that Verga's perception of harassment and persecution was insufficient to support her claim of injury where no

objective evidence of that harassment existed and where the injured worker herself created the negative work environment that she alleged caused her psychiatric injury. (*Verga, supra*, 159 Cal.App.4th at p. 174, 186.) The facts of this case are distinguishable. In this case, defendant's witnesses corroborated applicant's testimony regarding the increase in workload as noted by the WCJ.

Moreover, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id*.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCUR NOT SIGNING

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

AUGUST 30, 2021

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

BRIAN BARRICK
SHATFORD LAW
STATE COMPENSATION INSURANCE FUND

PAG/*pc*

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date.
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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

Date of Injury:	1/30/2018
Age on DOI:	49
Occupation:	Contract Manager
Parts of Body Injured:	Psyche
Identity of Petitioner:	Defendant, State of California, Dept. of Public Health
Timeliness:	The Petition was timely filed
Verification:	The Petition was properly verified.

Petitioner's Contentions: Petitioner contends that in 2017 applicant's workload did not increase, and therefore, since the evaluator, Dr. Kastl, based his opinion on the idea that the workload did increase, his report cannot be substantial evidence.

II.

FACTS

All parties agree that applicant was hired by California Public Health and Tobacco Control in 2011, where he worked as a Contract Manager, drawing up and executing contracts, and paying invoices on the contracts (Summary of Testimony, 1/12/21, page 3: 23-24).

Everyone also agrees that in 2015 he developed non-industrial non-Hodgkins lymphoma, stage IV, and subsequently viral meningitis and encephalopathy. During the treatment for this, the applicant was off work, but he returned to work in about January of 2016, at half time, or four hours a day, and at that point in time he could finish about 30 to 40% of the work he would normally have been able to get done.

In March of 2016, he went up to six hours a day (Summary of Testimony, page 9: 15-17), and near the middle of 2016, he finally returned to full time (Summary of Testimony, Nadine Roh, 3/30/21, page 8:10).

Thereafter, in June of 2017, Proposition 56 passed, which resulted in a significant increase in work in the department for everyone.

This was the testimony of Nadine Roh, the Section Chief overseeing the department (Summary of Testimony, 3/30/21, page 8: 16-17).

This was also the testimony of Angela Mandich, applicant's co-worker and who was also, like Mr. Barrick, a Contract Manager (Summary of Testimony, 1/12/21, page 7: 15-20).

This was also the testimony of Robert Bell, another of applicant's co-workers (Summary of Testimony, 1/12/21, page 12: 1-3).

This was also the testimony of Mandeep Sohi, another of applicant's co-workers (Summary of Testimony, 1/12/21, page 13: 15-18).

This was also the testimony of Linda Amoruso, another of applicant's co-workers (Summary of Testimony, 1/12//21, page 4:8-11).

Of course, this was also the testimony of the applicant, Mr. Barrick (Summary of Testimony, 1/12/21, page 4: 9-12).

There was no evidence to the contrary in this record.

Therefore, there is no legitimate dispute that in the middle of 2017, the department's workload suddenly became much heavier.

Thereafter, applicant felt overwhelmed by a much increased workload, requested that changes be made to his physical workstation and to his work load, but when these were not forthcoming, he decided to leave his job through disability retirement.

III.

DISCUSSION

Petitioner argues that although it looked as if the applicant was doing a full load of work "on paper," he was in actuality not doing a full load, and this continued into 2017 (Summary of Testimony, Nadine Roh, 3/30/21, page 8:10-15).

In support of this position, petitioner cites the testimony of both Nadine Roh and Linda Amoruso.

First, witness Linda Amoruso's full testimony on page 4 of the 3/30/21 Summary of Evidence, line 10, was "She said that she and Mr. Barrick had a similar workload *in* 2017 (emphasis added)." As an aside, note as well that petitioner erroneously cites the 1/12/21 Summary of Evidence for the location of this testimony, but the correct location is the 3/30/21 Summary.

The distinction is important, as 2017 was the year everyone agrees the department's workload soared as a result of the passage of Proposition 56.

In fact, Ms. Amoruso also testified on page 14 of the 1/12/21 Summary of Testimony, lines 9-11, that *"…after the effects of Proposition 56 were felt, she would work far more than 20 contracts at a time. She indicated that the workload was so high that she complained to the union.*"

Also very relevant is Mr. Amoruso's testimony further down on page 14, lines 19-22, where she noted that "…*the applicant's workload was as heavy as hers in 2017. She thought that the more the applicant struggled with his workload, the more work that he was assigned.*"

Considered in whole and in context, Ms. Amoruso's testimony, contrary to what the petitioner argues, is that the applicant did in fact carry a workload as heavy as everyone else did in 2017, and in saying this she was referencing specifically to the increased workload after Proposition 56.

Therefore, Ms. Amoruso's testimony was seen by this judge as supporting the applicant's position, that the applicant in fact did experience an increase in his workload after Proposition 56. There is therefore no contradiction between applicant's testimony and Mr. Amoruso's about the increase in workload in mid 2017.

Next, this judge considered whether any other testimony supported Mr. Barrick's testimony that his workload significantly increased after Proposition 56 took effect in mid 2017.

Mr. Barrick was specific in his testimony that "*Before the Proposition 56 influx, he had about 20 to 25 contracts. Afterwards, it was about 80 to 100. He felt his work clearly quadrupled and made it almost impossible for him to keep up the workload."* (Summary of Testimony, 1/12/21, page 4: 10-12). Note that this is consistent with Mr. Amoruso's testimony that she handled 15 to 20 contracts before Prop 56, but "far more than 20" afterwards.

Mr. Barrick also felt he was assigned more complex tasks than his co-workers (Summary of Testimony, 1/12/21, page 10: 9).

Co-worker Robert Bell testified that before the effects of Prop 56, he had 12 to 14 contracts to handle, but afterwards this shot up to 50 to 60. The increased workload ultimately caused him to leave his job (Summary of Testimony, 1/12/21, page 12: 1-3).

Mr. Bell also testified that the workload increased across the board, and that the applicant was assigned two of the biggest projects (Summary of Testimony, 1/12/21, page 12: 22-24).

Co-worker Mandeep Sohi testified that after Prop 56, his workload increased by a factor of three to four. He did not believe his workload was manageable (Summary of Testimony, 1/12/21, page 13: 15-18).

Michael Brant, the Union Shop Steward, testified that the applicant felt he had a workload that was the highest in his group, and wanted it reduced at least to a level consistent with everyone else's (Summary of Testimony, 3/30/21, page 5: 6-9).

It is important to note that this is fully consistent with the testimony offered by applicant's co-worker, Angela Mandich, who stated that "*The applicant was overloaded with work and given more work than any other analyst. The assignments he was given were harder than hers, and she felt he could not possibly have handled these more difficult assignments.*" (Summary of Testimony, 1/12/21, page 7: 24-25, page 8: 1-2).

Further down on page 8, she stated under oath that, "…*projects assigned to the managers were of varying difficulty. She felt that the applicant was given more time consuming and complex assignments.*"

Against all of this very specific testimony, from people who were applicant's co-workers and saw him work every day, petitioner offers the testimony of Nadine Roh, the department Section Chief.

First, petitioner cites Ms. Roh's testimony on page 8 of the 3/30/21 Summary of Testimony, lines 10 -15, where she testifies about the applicant's work load in 2016, and into 2017, but before the changes wrought by Proposition 56. This is wholly irrelevant to the applicant's work load after the change, which was what was causing his increased stress according to the applicant and to Dr. Kastl.

Next, Petitioner cites Ms. Roh's testimony further on page 8, lines 21 to 24. There, Ms. Roh was testifying about the changes in the work load required by the implementation of Proposition 56, noting that an attempt was made to even out the workload among the staff so that everyone had about an equal level of work.

This testimony is NOT inconsistent with applicant's claim that an increased workload after Prop 56 caused his injury, as it describes the department's attempt to dole out this increased work so that everyone had "about" an equal level of the new, higher level of work.

Looked at from another direction, this testimony actually supports applicant's claim, as it addresses the efforts to make the work load, now greatly increased, as equitable as possible.

If that increased workload was doled out evenly among the staff, then applicant's claim that his workload significantly increased is supported by this testimony.

In addition, this claim should be contrasted with the contrary testimony cited above by every other witness and the applicant, to the effect that Mr. Barrick, as a senior contract manager, was given more complex and difficult assignments at this time.

Finally, petitioner notes Ms. Roh's testimony that "the managers" considered his work capacity when they doled out these contracts. However, Ms. Roh does not explain how these unnamed managers considered Mr. Barrick's work capacity in doing this, or what mechanism or logic they used to "dole" out work assignments. Without further clarification, we really are left to speculate as to whether this means they tried to lessen his work, or increase it given the circumstances and applicant's status as a senior contact manager. Thus, this testimony is vague and unhelpful.

Petitioner claims that applicant's workload had been reduced "informally." Although petitioner does not cite the source of this statement, it is most likely a reference to Mr. Roh's testimony on page 9 of the 3/30/21 Summary, lines 5-6, where she stated that "*She was not aware of any request for a decrease in the applicant's workload but noted that they were actually already doing this informally.*"

Unfortunately, this is not explained further, so we don't know what reductions were being done, what time frame these occurred in, who decided this, and why this was done "informally." Ms. Roh did not explain why she thought that it looked like applicant was doing more work than he was "on paper," but really wasn't. If this testimony is a reference to the time in 2016 when applicant returned to work at half time, this may make some sense, but this is unclear. Petitioner asks us, however, to read this as applicable to the time in 2017 after the Prop 56 increase in the workload. Again, this testimony is too vague to be helpful, and as such is not necessarily contradictory to the rest of the testimonial evidence in the record. Further, the way petitioner asks us to interpret this testimony, vague as it is, would be inconsistent with all the other testimony on the record, and as discussed above.

In summary, as shown by the evidence cited above, the testimony of Linda Amoruso was in fact not inconsistent with the testimony of applicant or of all the other witnesses.

The testimony of Ms Roh was so vague that it may or may not be inconsistent with all the other testimony, but such as it is, it was considered by this judge in reaching the decision, in that it was either of little to no use, or if we are to consider it as petitioner wishes us to do, fully inconsistent with the specific and consistent testimony of all the other witnesses, and thus not credible.

This judge therefore did weigh the testimonial evidence, and found it consistent and in support of applicant's contention that the increase in the workload he actually experienced post Prop 56 was a significant source of his psychiatric injury, as defined properly by Dr. Kastl. Given this, it was further found that Dr. Kastl did in fact have the proper history, his opinions were based in part thereon, and therefore his opinions were substantial evidence. As the only substantial medical evidence in the record, they were followed in making the decision.

IV.

RECOMMENDATION

For the reasons discussed above, it is respectfully recommended that the Petition for Reconsideration be denied in its entirety.

DATE: 7/9/21
Curt Swanson
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

OPINION ON DECISION

INJURY AOE/COE

Under Labor Code section 3208.3, an injury to the psyche is compensable if it is a mental disorder which causes disability or a need for medical treatment, and is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2 or, until those procedures are promulgate, it is diagnosed using the terminology and criteria of the American Psychiatric Association's Diagnostic and Statistical Manual of mental Disorders, Third Edition- Revised, or the terminology and diagnostic criteria of other psychiatric diagnostic manuals generally approved and accepted nationally by practitioners in the field.

Here, Dr. Kastl clearly meets this test with his diagnosis on page 20 of his 6/28/18 report, Joint Exhibit BB.

Further, Mr. Barrick needed and obtained treatment for this injury, as well as suffered disability in the form of temporary disability.

Under Labor Code section 3208 (d), it is necessary for the employee claiming psychological injury to have worked for the employer for at least six months. Here, applicant began working for defendant in 2011, and continued working there until 2018 (Summary of Testimony, 1/12/21 trial, page 3: 22-23).

Labor Code section 3208.3(h) states the following:

"No compensation under this division shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, non-discriminatory, good faith personnel action. The burden of proof shall rest with the party asserting the issue."

This Labor Code section was interpreted by the board in **Rolda v. Pitney Bowes, Inc. (2001) 66 CCC 241 (en banc).** There, the board en banc determined that to resolve the question of whether there has been a compensable psychiatric industrial injury, the following issues must be determined:

(1) Whether the alleged psychological injury involves actual events of employment, a factual/legal determination;

(2) If so, whether such actual events were the predominant cause (i.e. accounting for 51% or more of the psychological injury), a determination which requires medical evidence;

(3) If so, whether any of the actual employment events were personnel actions that were lawful, nondiscriminatory, and in good faith, a factual/legal determination; and,

(4) If so, whether the lawful, nondiscriminatory, good faith personnel actions were a "substantial cause" (accounting for at least 35% to 40% of causation from all sources combined) of the psychological injury, a determination that requires medical evidence.

Here, the parties used Dr. Albert Kastl, Ph.D. to evaluate the case, and this evaluator produced five reports (Joint Exhibits BB through FF) and he testified at deposition (Joint Exhibit GG).

In those reports and testimony, Dr. Kastl identified four main causes of the applicant's injury. Two were non-industrial (the development of non-Hodgkins Lymphoma in 2004, and the subsequent development of viral meningitis leading to encephalitis during the treatment of the lymphoma).

Two causes, however, were considered industrial, namely a large increase in workload in 2017 due to a change in the law, and subsequently applicant's fruitless attempts to obtain reasonable accommodation for his struggles with this workload.

Applicant suffered additional psyche injury due to the extreme stress he felt during his unsuccessful efforts to cope with the quadrupling of his workload, and also due to his lack of success in obtaining effective accommodation from his employer.

The first test in the Rolda analysis is whether the alleged psychological injury involves actual events of employment. This is a factual/legal determination for the judge.

Here, the two main contributors to the applicant's psychiatric injury do indeed involve actual events of employment. Specifically, they are the struggle the applicant had with the quadrupling of his workload in 2017 (Summary of Testimony, 1/12/21 trial, page 4: 8-17), and his futile attempts to get his employer to grant him effective accommodation for the significant changes to his workload (Summary of Testimony, 1/12/21 trial, page 4: 18-25; pages 5 and 6, page 7:1-9).

Next, Rolda requires a determination as to whether the actual events of employment were the predominant cause, accounting for 51% or more, of the psychological injury. This requires medical evidence.

Here, we turn to page 29 of Dr. Kastl's 5/21/20 report, Joint Exhibit FF, where he states, "…*I believe the causation threshold has been met, that the events of employment are predominant as to all causes combined."*

On page 24 of his 6/28/18 report, the doctor stated that, "*In my opinion, the psychological state constitutes a "predominant cause" which is greater than 50% of the entire sum of causal factors."*

This is consistent with the doctor's conclusion that 30% of the causation is due to the applicant's frustration and struggles with his suddenly increased workload, and 30% to the failure to achieve accommodation to this situation from his employer – a total of 60% of the causation of his injury. (See Dr. Kastl's deposition transcript, Joint Exhibit GG, pages 32 and 32).

Therefore, it is clear from this medical opinion that actual events were the predominant cause of the psychiatric injury. There is no medical opinion to the contrary.

The next question to answer is whether these employment events were personnel actions that were lawful, nondiscriminatory, and done in good faith.

To determine what a personnel action is, we find guidance from the case of **Larch (Flemming) v. Contra Costa County (1998) 63 CCC 831, 834-835.**

There, the board in this significant panel decision defined a personnel action as follows:

"We conclude that a personnel action is conduct either by or attributable to management including such things as done by one who has the authority to review, criticize, demote, or discipline an employee. It is not necessary for the personnel action to have a direct or immediate effect on the employment status. Personnel actions may include but are not necessarily limited to transfers, demotions, layoffs, performance evaluations, and disciplinary actions such as warnings, suspensions and terminations of employment."

The board in Larch went on to further define a personnel action as follows:

"It is an action attributable to management, or an action of one who has the authority to evaluate, criticize or correct the activity of the employee. Thus, the WCR concluded that the type of personnel action "envisioned by the legislature in enacting section 3208.3(h) is conduct attributable to management in managing its business including such things as done by one in authority to review, criticize, demote, or discipline an employee…"

Based on this test, while the actions, or lack thereof, of management regarding the applicant's requests for accommodation are personnel actions, the

exponential increase in workload that caused the applicant to be unable to cope was not.

Specifically, the spike in workload was not in any way an act of management in managing its business, but rather the result of an act of the legislature in changing the law in such a way that the workload of the department exploded.

According to Dr. Kastl's calculation, this increase in workload was responsible for 30% of the total industrial causation of the applicant's psychiatric injury, and thus only the remaining 30% is even potentially the result of a nondiscriminatory, lawful and good faith personnel action.

Therefore, the remaining potential personnel action does not meet the final test, which is whether the personnel action in question was a substantial cause, accounting for at least 35% to 40% of causation from all sources combined of the psychological injury.

In summary, applicant meets the tests required to show an industrial and compensable industrial psyche injury as set forth in Labor Code section 3208.3 and as further defined in **Rolda** (supra).

No evidence was presented to show industrial injury to any other body part.

IS THE REPORTING OF DR. KASTL SUBSTANTIAL EVIDENCE?

Here, Dr. Kastl clearly takes a full history of the applicant's industrial and non-industrial problems, performed a full evaluation with extensive testing, reviewed the voluminous medical evidence, and reported five times as well as testified in a deposition. His analysis conformed to professional requirements as relevant to the claimed psych injury. He explained his findings on several occasions, and his positions were tested by competent counsel in deposition.

From a general perspective, his opinions are certainly substantial evidence on the issues presented by the psych injury.

However, more specifically, the substantiality of this evaluator's opinions are challenged due to his alleged refusal to defer body parts to other experts on issues that are outside of Dr. Kastl's area of expertise. It is notable that Dr. Kastl is listed as a doctor of neuropsychology and psychiatry on his letterhead.

After review of the record, this judge finds that Dr. Kastl recommended on several occasions that if the parties thought it necessary, that a referral to additional specialists would be appropriate.

In his report of 6/28/18, Joint Exhibit BB, on page 26, the doctor said, "…*he may benefit from further neurological assessment by a QME, or perhaps the report of Dr. Lum of Kaiser Permanente is sufficient."*

On page 27 of the doctor's 5/21/20 report, Joint Exhibit FF, the doctor said, "*His physical limitations should be further analyzed by an appropriate specialist."*

This judge can find no place where the doctor outright refused to agree to obtain additional evaluation from a different specialist.

Therefore, there is no evidence that Dr. Kastl refused to agree to additional commentary from any additional specialist, and on more than one occasion clearly recommended it.

Thus, there is no reason to find this doctor's opinions to be not substantial on the basis of a refusal to defer body parts to other specialists.

TEMPORARY DISABILITY

On this issue, some history is necessary.

Applicant battled non-industrial lymphoma and viral meningitis until he recovered to the point he could return to part time work in 1/5/16. He worked part time until improvement in his condition allowed a return to full time work after May of 2016. He worked full time until 1/10/18, when he went out on medical leave, and remained on medical leave until his formal disability retirement on or about 4/4/2018.

Applicant's psyche condition was declared at maximum medical improvement by Dr. Kastl at the time of his retirement (page 24, 6/28/2018 report, Joint Exhibit BB: page 27, 5/21/20 report, Joint Exhibit FF). The actual date of his disability retirement is not clear, as several dates are mentioned in the record.

Temporary disability is paid when a worker suffers a temporary wage loss as a result of an industrial injury. Here, applicant claims temporary disability from the time he went out on medical leave, 1/10/18. It appears that he first suffered wage loss as a result of his industrial psyche injury at that point.

Temporary disability is paid until the applicant reaches a permanent and stationary status. As noted above, Dr. Kastl concluded that this occurred at the point he formally retired on disability.

Therefore, temporary disability is owed from the point of medical leave on 1/10/18, to the date of disability retirement.

It should be noted that the record is unclear as to the actual retirement date, but since this is a date the parties should clearly be able to identify, the parties are ordered to adjust the question of the precise date of disability retirement, with jurisdiction reserved. The same is true for the applicant's earnings and what temporary disability rate that the applicant should be paid. The parties are for that reason further ordered to adjust the question of the proper temporary disability rate, with jurisdiction reserved.

PERMANENT DISABILITY / APPORTIONMENT

In his reports of 6/28/18 and 5/21/20 (Joint Exhibits BB and FF, respectively), the PQME explains in detail his conclusions on the applicant's permanent disability.

On pages 20 through 23 of Joint Exhibit BB, the doctor goes through his analysis of the applicant's impairment, and concluded that the applicant had a GAF score of 40, and from that a whole person impairment of 51%.

Again, on pages 22 through 25 of the 5/21/20 report, Joint Exhibit FF, the doctor goes through the same analysis and does not change his conclusion that the applicant's GAF score is 40, which gives him a whole person impairment of 51%.

On apportionment, the doctor follows the requirements of **Escobedo v. Marshalls (2005) 70 CCC 604**, in explaining how and why the apportionment was determined.

Specifically, the doctor noted in several places that the applicant experienced two causes of the industrial injury to the psyche: the increase in workload due to a change in the law, and then the desperate but ultimately ineffective efforts he made to get accommodation from his employer to alleviate the problem.

Dr. Kastl concluded that these two industrial stressors caused an increase in the applicant's anxiety and psychological distress, and because of that, working on top of the non-industrial neuropsychological issues that had already been caused by the lymphoma and meningitis, there was a permanent increase in his impairment. (Joint Exhibit BB, pages 16-20, 24; Joint Exhibit FF, pages 25-29).

The evaluator has clearly identified the causes of impairment, described why and how these causes result in disability, and assigned a percentage to each based on his evaluations, experience and expertise, to a reasonable medical probability. This apportionment is legal.

Given that, the permanent disability rates as follows:

60%(14.01.00 – 51 – [1.4]71 – 110J – 80 – 82) = 49

49% permanent disability entitles the applicant to 264 weeks of permanent disability payments at 290.00 dollars a week.

FUTURE MEDICAL TREATMENT

Dr. Kastl indicated on page 28 of Joint Exhibit FF that the applicant needed additional treatment for the industrial psyche injury. Therefore, an award of future medical treatment is appropriate.

ATTORNEY'S FEE

A reasonable attorney's fee, given the complexity of the issues presented, the significant discovery needed, and the requirement to take the case to trial, would be 15% of both the temporary and permanent disability award, to be commuted off the far end of the award, if necessary.

DATE: 6/4/21
Curt Swanson
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE