

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

DEBRA FLEURAT, *Applicant*

vs.

**BIOBANC, USA and ACE AMERICAN INSURANCE COMPANY; administered by
ESIS, INC., *Defendants***

**Adjudication Number: ADJ6653112
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Defendant Biobanc USA, by and through its insurer, Ace American Insurance Company, seeks reconsideration of the May 12, 2021 Findings, Award and Order, wherein the workers' compensation administrative law judge (WCJ) found that applicant Debra Fleurat sustained permanent total disability as a result of an admitted July 10, 2008 industrial injury to her cervical spine, bilateral shoulders, bilateral knees, vertigo/gait imbalance, and psyche, while employed as a donor center supervisor. The WCJ awarded permanent disability indemnity at the rate of \$916.33 per week for life, commencing January 8, 2011, less credit for permanent disability advances and a 15% attorney's fee. Defendant was found to have unreasonably delayed permanent disability advances during a two year period ending October 24, 2017, and was ordered to pay a penalty of \$4,784.00.

Defendant contests the WCJ's award of permanent total disability, contending that the medical and vocational evidence does not support the finding that applicant rebutted the scheduled rating of her impairments. Defendant further contends that the vocational evidence failed to address the apportionment of applicant's disability to non-industrial factors, asserting that applicant's vocational expert ignored the internal medicine apportionment of AME Dr. Ng.

Applicant has filed an Answer to the defendant's Petition for Reconsideration. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration, in which he recommends that we deny defendant's petition.

We have considered the Petition for Reconsideration, the Answer and the contents of the WCJ's Report, and we have reviewed the record in this matter. For the reasons discussed below, we will affirm the Findings and Award and Order, and will deny defendant's Petition for Reconsideration.

FACTS

According to defendant's Statement of Facts, applicant sustained an admitted injury on July 10, 2008, to her cervical spine, bilateral shoulders, bilateral knees, vertigo/gait imbalance, and psyche, while employed as a donor center supervisor.¹

Defendant makes no reference or citation to the medical evidence that establishes the nature and extent of applicant's injury and resulting disability, which defendant placed at issue at trial. Our review of the record reveals that applicant sustained an injury when she accidentally tripped and fell on a sidewalk while delivering flyers in the course of her employment. (Jt. 1, 9/3/09 AME Dr. Mandell Report, p. 1.)

Applicant testified at trial on March 16, 2021, about her industrial injury, her subsequent medical treatment and the physical and psychological limitations she currently experiences as a result. She testified that she has not looked for work because she spends most of her day sitting and resting and icing her neck and back due to her pain. She takes pain medications and medications for her depression. Due to her right shoulder problems, she cannot lift dishes into the cupboard, sweep or mop. She has to be careful not to jostle her neck, and lifting either arm causes pain in her neck and shoulders. She is limited in the amount of time she can read, write or sit at the computer before she develops a lot of pain. This pain prevents her from sleeping at night. It also prevents her from using the computer for video conferencing for more than 15-20 minutes, otherwise she is miserable and needs to lay down and take pain medication. She has balance and fall issues due to her spinal cord injury. She has multiple close calls with falling and walks with her husband or uses a walking stick. Her husband helps her navigate stairs. She testified to having problems with concentration, as her pain distracts her. She has to read things over and over to absorb information, and is unable to keep her mind on a single subject because she is distracted by

¹ Appeals Board Rule 10945(a) requires "Every petition for reconsideration . . . shall fairly state all of the material evidence relative to the point or points at issue. Each contention shall be separately stated and clearly set forth. A failure to fairly state all of the material evidence may be a basis for denying the petition." Defendant's summary statements in the petition regarding the medical evidence is not sufficient to fully convey the material nature of that evidence, and greater detail is required to establish the facts upon which the petition is based.

pain. She feels she cannot perform a sedentary job because she has to lie down, use ice and rest and take pain medications that prevent concentration. When she has exacerbations, she experiences several bad days in a row. Her bad days happen three to four days a week, and she spends her day in a recliner.

Dr. Mandell took a history from applicant detailing her injury and medical treatment. Despite initially receiving medical treatment, her condition worsened. An MRI revealed a disc injury at C6-7, and a partial thickness tear of her rotator cuff in her right shoulder. (Jt. 1, p. 2.) She underwent a total disc replacement at C6-7 in 2010, and right shoulder arthroscopic surgery and rotator cuff repair in 2011. (Jt. 2, 7/16/20 AME Dr. Mandell Report, p. 1; Jt. 3, 9/30/11 AME Dr. Mandell Report, p. 1.) She subsequently developed symptoms in her left shoulder, which was diagnosed as a “type II SLAP lesion as well as partial thickness rotator cuff tear,” as a compensable consequence from favoring her right shoulder. (Jt. 5, 7/11/12 AME Mandell Report, p. 6.) She had left shoulder surgery in 2013, to repair the tear, and another right shoulder surgery in 2014.

Dr. Mandell provided strict AMA Guides impairment ratings for her cervical disc injury of 27% whole person impairment, apportioning 95% to the industrial injury “with the remainder going to preexisting problems that she had with her neck before that point.” (Jt. 5, p. 7.) He limited her to light work and indicated she was not yet permanent and stationary for her shoulders. (Ibid.)

Due to continuing problems, applicant had another right shoulder surgery on January 13, 2014, and then aggravated her right shoulder when a chair slipped out from under her while on vacation in Hawaii in May of 2014. Dr. Mandell evaluated her again on September 24, 2014, and rated her right shoulder impairment at 9% WPI, based on an AMA Guides rating, apportioning 25% to “prior problems,” 10% to her fall in Hawaii, and 65% to the industrial injury. He precluded her from “heavy lifting, repetitive bending and stooping, pushing, pulling, lifting, carrying, etc.” (Jt. 8, 9/24/14 AME Dr. Mandell Report, p. 5-6.)

In his final report, Dr. Mandell adopted the work restrictions identified in a functional capacity evaluation performed on March 20, 2019, stating:

The FCE indicates that Ms. Fleurat meets the definition of doing sedentary work but not light work. She can’t lift more than about 10 pounds occasionally or 5 pounds more frequently. Her postural tolerances are limited for standing, walking, squatting, bending, and climbing as well as overhead reaching and balancing. It was recommended that she not do activities which require crawling and kneeling. It was noted that she should not be in situations where she would

be bumped or jostled by the public due to her neck pain. She would need to rest for significant amounts of time during the day.

I would adopt these work restrictions and indicate that this FCE would be useful in offering Ms. Fleurat appropriate future employment.
(Jt. 11, 4/13/19 AME Dr. Mandell Report, p. 1.)

AME Dr. Gravina evaluated applicant's neurological issues related to her complaints of loss of balance and vertigo from her spinal cord injury. He noted his initial reporting in 2011, wherein he opined that her neurological condition was "secondary to spinal cord symptomatology, 100% due to the accident of July 10, 2008" Dr. Gravina rated applicant's neurological impairment based on a gait and station impairment of 19% WPI, citing Table 13.15 the AMA Guides (rises to a standing position; walks some distance with difficulty and without assistance but is limited to level surfaces). He provided work preclusions of "ability to sit at will, avoidance of stairs, climbing, working with power tools and at heights." (Jt. 16, 8/27/18 AME Dr. Gravina Report, p. 1-2.)

Dr. Gravina indicated that Dr. Mandell's impairment rating for applicant's cervical issues "should be considered distinct" from his rating of her spinal cord symptoms. "The orthopedic and neurologic impairments are separate and do not overlap." He also opined that they should be combined per the Combined Values Chart. (Jt. 15, 2/23/18 AME Dr. Gravina Report, p. 4.)

AME Dr. Ng evaluated applicant's internal medicine condition, specifically her hypertension and gastrointestinal symptoms. After reviewing applicant's extensive medical history, Dr. Ng concluded that her GERD was not causally related to her industrial injury. (Jt. 17, 12/13/13 AME Dr. Ng Report, p. 20; Jt. 18, 11/3/16 AME Dr. Ng Report, p. 21.) He also concluded in his 2017 evaluation that her longstanding hypertension was not caused by her industrial injury, and further opined that since her condition was adequately controlled through medication, she did not require any work restrictions and was not a qualified injured worker. (Jt. 19, 4/5/17 AME Dr. Ng Report, p. 34-35.)

She was evaluated by AME Dr. Petrakis for her psychiatric injury in 2017 and 2018. He diagnosed applicant as suffering from Major Depressive Disorder – Recurrent, and Adjustment Disorder with Anxiety, which were predominantly caused by her 2008 industrial injury. Noting that her symptoms had worsened between his two evaluations, Dr. Petrakis gave her a GAF score of 60, corresponding to a 15% WPI. He found no grounds to apportionment her psychiatric disability. (Jt. 22, 7/26/18 AME Dr. Petrakis Report, p. 8-9.)

With regard to work restrictions and applicant's ability to return to work, in a November 7, 2018 supplemental report, Dr. Petrakis noted several factors that could hinder her return to work. (Jt. 23, 11/7/18 AME Dr. Petrakis Supplemental Report.) He identified applicant's pain as interfering with her concentration, and her anti-depressant medications "can cause some bluntness in thinking and decreased reflexes." He noted applicant's sleep issues can have a major impact on her ability to function. "She certainly would have some difficulties with cognitive functioning where decision and understanding have to occur on a continuing basis in order to get the job done." "The sleep issue is a major one although it is very difficult to treat and cognitive functioning is likely interfered with by the medications." He stated that with her depression it would be challenging for her to work for more than an hour, though she might be able to work an 8 hour day if she had the ability to get up and interact with others. He also noted that applicant was no longer grieving the death of her mother, but that she was still "scoring in the severe range of depression on the Beck criteria as well as on the anxiety criteria with ongoing somatic preoccupation." He opined that applicant "should be able to work in some capacity but this may have to be further trialed in a work environment and with a vocational counselor."

Applicant obtained a vocational evaluation from Mr. Gonzales in December of 2019. (Ex. A-1, 12/20/19 Gonzales Vocational Report.) After reviewing applicant's medical reports, interviewing applicant and conducting vocational testing, the vocational expert concluded that due to the effects of her industrial injury, applicant was not amenable to be vocationally retrained for any gainful employment and lost her ability to compete in the open labor market. He opined that as a result of her industrial injury, applicant is permanently totally disabled.

Mr. Gonzales described applicant's physical limitations in performing activities of daily living. She reported that light activity is the most strenuous level of activity that she can do for at least two minutes. She has some difficulty climbing one flight of stairs, sitting for 30 minutes to one hour, and a lot of difficulty sitting, standing or walking for two hours. She has a lot of difficulty with reaching and grasping something from a shelf at eye level, and cannot do this repetitively. She cannot perform pushing or pulling, and has difficulty gripping or grasping and manipulating objects with her hands. Using a computer causes her to suffer pain in her neck, right shoulder and upper back. Her pain is moderate, at a 3-4 level most of the time, and it interferes with her ability to concentrate and think. She also reported that her pain causes emotional distress with severe depression and anxiety. (Ex. A-1, p. 3-4.)

During her vocational testing, Mr. Gonzales observed applicant had difficulty with concentration and stamina, noting her complaints of neck pain prevented her from focusing on the activity. “Thus, it is this counselor’s opinion that the claimant’s difficulties with concentration and evident fatigue limitations will impede her ability to sustain competitive work.” (Ex. A-1, p. 10.)

Mr. Gonzales reviewed the work restrictions from the AMEs, noting Dr. Mandell’s limitation to sedentary work, and her preclusions from standing, walking, squatting, bending, and climbing as well as overhead reaching and balancing. It was recommended that she not do activities which require crawling and kneeling. It was noted that she should not be in situations where she would be bumped or jostled by the public due to her neck pain. She would need to rest for significant amounts of time during the day. Dr. Gravina found applicant’s episodic imbalance was secondary to her spinal cord injury, and required she be able to sit at will, avoid stairs and climbing. Mr. Gonzales noted Dr. Ng’s findings of non-industrial causation of her internal medical conditions and his conclusion that she was not a qualified injured worker and had no work restrictions as a consequence of her hypertension and GERD. Finally, Mr. Gonzales reviewed Dr. Petrakis’s discussion of the limitations on applicant’s ability to work in view of her psychiatric injury. He noted applicant’s psychiatric impairment would be a significant handicap. “She does have a high level of anxiety with worry which would be a significant handicap although not an overwhelming handicap in the open labor market.” (Ex. A-1, p. 14-21.)

Evaluating applicant’s ability to participate in vocational rehabilitation in order to return to gainful employment, Mr. Gonzales indicated that despite her pre-existing skills, her physical and psychiatric impairments prevent her from accessing her skills in any future employment. He also noted the FCE evaluation indicated that applicant would be limited to only part-time sedentary work “due to significant elevation in symptoms during the evaluation and for several days following.” (Ex. A-1, p. 24.) Mr. Gonzales found that due to the effects of her industrial injury, she would not be capable of participating in education training. (Ex. A-1, p. 31.)

Mr. Gonzales concluded that applicant was not able to return to her usual and customary occupation, and that she was not amenable to vocational rehabilitation.

I found Ms. Fleurat’s amenability to rehabilitation to be eliminated. I based my opinion on the medical reporting of AME Dr. Mandell, AME Dr. Gravina, and AME Dr. Petrakis. Per Dr. AME Petrakis, Ms. Fleurat has psychiatric symptoms and limitations that exacerbate her physical injuries in a synergistic fashion. Additionally, Ms. Fleurat has demonstrated that an increase in activity results in

an increase of pain and symptoms, as evidenced in PT Gorman's FCE report and my own vocational testing.

The combination of these factors will ultimately impede Ms. Fleurat's ability to benefit from vocational rehabilitation. She has demonstrated difficulties with concentration and focus, which will hinder her ability to acquire new skills. Per AME Dr. Petrakis, Ms. Fleurat has severe problems with learning new tasks, which is essentially the aim in vocational rehabilitation. Given that, it was obvious to this counselor that Ms. Fleurat will not benefit from vocational rehabilitation. In fact, in all likelihood, Ms. Fleurat's participation in vocational rehabilitation may only result in an increase of her physical and psychiatric symptoms based on the medical evidence made available.

From a vocational perspective, Ms. Fleurat will be unable to return to work in the open labor market. It is evident that the combination of Ms. Fleurat's physical and psychiatric difficulties makes it unlikely that she can ever return to work in the open labor market. Thus, I concluded that Ms. Fleurat has lost access to her pre-injury labor market, evident through her inability to return to her usual and customary work. I also concluded that Ms. Fleurat is not amenable to rehabilitation due to her physical limitations and psychiatric symptoms, namely difficulties with concentration and learning new tasks.

This counselor has concluded that Ms. Fleurat has lost access to their pre-injury labor market and is not amenable to rehabilitation, therefore, she is unable to compete in the open labor market successfully on a part-time or full-time basis. Consequently, absent considerable improvement in her medical condition, *Ms. Debra Fleurat has lost 100% access to the open labor market, which is the equivalent of 0% earning capacity, due to an inability to benefit from vocational rehabilitation. Thus, Ms. Debra Fleurat is 100% permanently and totally disabled.*

(Ex. A-1, p. 33. Emphasis in original.)

Addressing vocational apportionment, Mr. Gonzales noted that Dr. Mandell had apportioned 5% of applicant's cervical disc impairment and 35% of her right shoulder impairment to non-industrial factors. While noting that Dr. Mandell's apportionment determination did not include an explanation for how and why her pre-existing problems were responsible for causing the percentage of her disability, Mr. Gonzales also noted that despite her pre-existing impairments, applicant was vocationally feasible until her industrial injury. Therefore, he found that all of applicant's loss of earning capacity was due to her industrial injury. He also noted that Dr. Ng found applicant's hypertension did not result in any disability, as he placed no work restrictions for her non-industrial condition.

In contrast to Mr. Gonzales, defendant's vocational expert, Mr. Simon concluded that applicant was amenable to vocational rehabilitation and that there were sedentary jobs in the open labor market that applicant would be able to do. (Ex. D-2, 9/1/2020 Simon Vocational Report.)

On this record, the WCJ concluded that applicant sustained 100% permanent disability from her 2008 industrial injury. He agreed with Mr. Gonzales that Dr. Mandell's 5% apportionment of applicant's cervical spine impairment was not valid under *Escobedo*, but found that the 35% apportionment of her shoulder impairment was valid. However, he concluded that even with the apportionment of the shoulder impairment, applicant's AMA Guides rating exceeded 100% permanent disability, based on adding the disabilities as recommended by Dr. Mandell and Dr. Petrakis. He further found applicant had met her burden to rebut the rating schedule by establishing that she was not able to benefit from vocational rehabilitation and had suffered a total loss of her earning capacity.

DISCUSSION

The WCJ correctly determined that applicant is permanently totally disabled, based upon substantial evidence that establishes that applicant is unable to benefit from vocational rehabilitation or return to full time employment in the labor market.

Labor Code section 4660 provides that permanent disability is determined by consideration of whole person impairment within the four corners of the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition (AMA Guides), the proper application of the PDRS in light of the medical record and the effect of the injury on the worker's future earning capacity. (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1320 [72 Cal.Comp.Cases 565] ["permanent disability payments are intended to compensate workers for both physical loss and the loss of some or all of their future earning capacity"]; *Department of Corrections & Rehabilitation v. Workers' Comp. Appeals Bd. (Fitzpatrick)* (2018) 27 Cal.App.5th 607, 614 [83 Cal.Comp.Cases 1680]; *Almaraz v. Environmental Recovery Service/Guzman v. Milpitas Unified School District* (2009) 74 Cal.Comp.Cases 1084 (Appeals Board en banc) as affirmed by the Court of Appeal in *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837]. It may also be shown by rebutting the diminished future earning capacity factor supplied by the PDRS. (*Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262 [76 Cal.Comp.Cases 624] (*Ogilvie*); *Contra Costa County v.*

Workers' Comp. Appeals Bd. (Dahl) (2015) 240 Cal.App.4th 746 [80 Cal.Comp.Cases 119]; c.f. *LeBoeuf v. Workers' Comp. Appeals Bd.* (1983) 34 Cal.3d 234 [48 Cal.Comp.Cases 587].)

To rebut a scheduled permanent disability rating, applicant must establish that her future earning capacity is actually less than that anticipated by the scheduled rating. The court in *Ogilvie, supra*, addressed the question of: "What showing is required by an employee who contests a scheduled rating on the basis that the employee's diminished future earning capacity is different than the earning capacity used to arrive at the scheduled rating?" (*Ogilvie*, 197 Cal.App.4th at p. 1266.) The primary method for rebutting the scheduled rating is based upon a determination that the injured worker is "not amenable to rehabilitation and, for that reason, the employee's diminished future earning capacity is greater than reflected in the scheduled rating." The employee's diminished future earnings must be directly attributable to the employee's work-related injury and not due to nonindustrial factors such as general economic conditions, illiteracy, proficiency in speaking English, or an employee's lack of education. (*Ogilvie*, 197 Cal.App.4th at pp. 1274–1275, 1277.)

The issue here is whether the vocational evidence the WCJ relied upon constitutes substantial evidence to support the conclusion that applicant was permanently totally disabled due to her inability to benefit from vocational rehabilitation, per *Ogilvie, Dahl* and *LeBoeuf*.

In *Dahl*, the Court of Appeal held that to rebut the scheduled rating, applicant must prove that the industrial injury precludes vocational rehabilitation, writing in pertinent part as follows:

The first step in any *LeBoeuf* analysis is to determine whether a work-related injury precludes the claimant from taking advantage of vocational rehabilitation and participating in the labor force. This necessarily requires an individualized approach...It is this individualized assessment of whether industrial factors preclude the employee's rehabilitation that *Ogilvie* approved as a method for rebutting the Schedule.

(*Dahl*, 80 Cal.Comp.Cases at 1128.)

The vocational evidence the WCJ relied upon, the reporting of Mr. Gonzales, indicates that applicant is not amenable to vocational rehabilitation and that the AMEs medical work restrictions preclude applicant from returning to full time employment. Mr. Gonzales's "individualized assessment" of the vocational factors affecting applicant's ability to return to work shows that the medical restrictions do preclude applicant from gainful employment. We find his analysis of

applicant's vocational limitations to constitute substantial evidence to support the WCJ's determination.

In contesting the WCJ's finding that applicant is permanently totally disabled, defendant argues that the expert opinion of Mr. Gonzales, upon whom the WCJ relied, is not substantial evidence to support the rebuttal of the scheduled rating of applicant's permanent disability. Defendant asserts that the medical evidence suggests applicant could return to work and that her failure to seek employment is not reasonable to defendant's counsel.² Counsel asserts that applicant could perform remote sedentary work, as employers are increasingly allowing remote work with the onset of COVID.

Defendant's argument is predicated upon an overly simplified portrayal of applicant's impairments. Defendant asserts that applicant is limited to sedentary work that does not involve overhead reaching. The medical evidence establishes applicant's limitation to sedentary work, but also establishes that due to the effects of her neck and shoulder pain, she is limited in the amount of time she can exert herself, with Dr. Mandell noting that she would "need to rest for significant amounts of time during the day." This is consistent with applicant's testimony regarding the extent of her daily pain level with minimal exertion which limits the time she can spend performing routine tasks. She testified that she has to rest and ice her neck and back when she is active. Additionally, Dr. Petrakis noted several factors that hinder applicant's ability to work, citing interference with concentration due to her pain levels, and her medications for depression and anxiety that cause "bluntness in thinking." He also cited her sleep issues, due to pain, that cause difficulties with her cognitive functioning. He questioned applicant's ability to work a full 8 hour day. Dr. Gravina found applicant's impairment due to her neurological balance issues stemming from her cervical disc injury required that she be allowed to sit and stand at will and not use stairs or work at heights.

Mr. Gonzales relied upon this medical evidence and his expert assessment of applicant's tolerances to conclude applicant would not be able to benefit from a vocational rehabilitation

² Defendant's counsel asserts in the Petition for Reconsideration: "When the medical evidence suggests that the applicant could return to work and no effort or indication is made that applicant attempted to work I do not believe a finding can be found that applicant demonstrated the employee is not amenable to rehabilitation. Based on this I believe the most accurate representation is the AMA guides as determined by the three qualified medical examiners and not Mr. Diaz. Further Mr. Gonzales' conclusion is that there are no jobs in the open labor market for a worker who is limited to sedentary work with no overhead reaching. I find this assertion dubious at best." Counsel's personal beliefs are not evidence.

program and that she had lost her capacity to return to gainful employment. He noted that applicant's psychiatric symptoms and limitations exacerbate her physical injuries in a synergistic fashion. He also noted that an increase in applicant's activity results in an increase of pain and symptoms, as evidenced by the FCE report and his vocational testing.

Defendant, citing *Meza v. Perma Steel* 2013 Cal. Wrk. Comp. P.D. LEXIS 441, a panel decision adopting a WCJ's Report and Recommendation on Petition for Reconsideration, further argues that applicant's vocational expert's opinion that there are no jobs available to accommodate applicant's work restriction to sedentary work is insufficient to prove applicant's permanent total disability, since the AMEs and the FCE found applicant could perform sedentary work.

In *Meza*, the WCJ found the opinion of a vocational expert unpersuasive as she lacked credentials from any vocational expert associations and had no prior experience testifying about vocational evaluation reports. Here, in contrast to the vocational expert in *Meza*, according to the Curriculum Vitae applicant's vocational expert attached to his report, Mr. Gonzales obtained a Master's degree in 1976, in social work with an emphasis in "Macromanagement and Vocational Rehabilitation," after he had been employed as a Qualified Rehabilitation Counselor by the California Department of Rehabilitation. He has been a vocational consultant since 1976, and founded his own business in 1988. He has been an expert witness in vocational rehabilitation before the Workers' Compensation Appeals Board and California Superior Courts. He is also a member of several professional vocational rehabilitation organizations.

While *Meza* recognizes the authority of a WCJ to determine which expert evidence is most persuasive (see *Jones v. Workers' Comp. Appeals Bd.* (1968) 86 Cal.2d 476 [33 Cal.Comp.Cases 221]), the factors cited there for rejecting the opinion of a vocational expert are not relevant to these proceedings. Mr. Gonzales is qualified to offer his expert vocational opinion, upon which the WCJ reasonably relied.

Defendant further argues that the finding that applicant is 100% permanently disabled failed to address the apportionment of applicant's shoulder impairment found by Dr. Mandell. Defendant further asserts that Mr. Gonzales improperly ignored the impairment findings of Dr. Ng, though Dr. Ng found applicant's non-industrial hypertension resulted in no work restrictions.

The WCJ properly relied upon Mr. Gonzales's expert opinion to conclude that her non-amenability to vocational rehabilitation, and her inability to return to gainful employment, was solely due to the effects of her industrial injury, and not to any non-industrial factors. Dr. Ng's

findings do not require a different result in view of his opinion that applicant is not precluded from returning to her prior occupation due to her non-industrial hypertension.

Accordingly, we affirm the WCJ's finding that applicant is permanently totally disabled and will deny defendant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the May 12, 2021 Findings, Award and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 26, 2021

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

**DEBRA FLEURAT
SPRENKLE, GEORGARIOU & DILLES
FLOYD SKEREN MANUKIAN LANGEVIN**

SV/pc

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