

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

**FELIX AISUAN, *Applicant***

**vs.**

**TRISTAR INSURANCE GROUP; ACE AMERICAN INSURANCE COMPANY,  
administrated by GALLAGHER BASSETT, *Defendants***

**Adjudication Numbers: ADJ9419245 ADJ10435082  
Van Nuys District Office**

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

We have considered the allegations of the Petition for Reconsideration and 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, both of which we adopt and incorporate except as noted below, and for the reasons stated below, we will grant reconsideration, amend the WCJ's decision to find injury arising out of and occurring in the course of employment (AOE/COE) to applicant's lumbar and thoracic spine and in the form of GERD, hypertension, and sleep disorder. We will otherwise affirm the August 5, 2021 Findings, Award and Orders.

We do not adopt or incorporate the report's recommendation that we deny reconsideration. Rather, we grant reconsideration for the sole purpose of amending the WCJ's decision to find industrial injury to the lumbar and thoracic spine and industrial injury in the form of GERD, hypertension, and sleep disorder.

In his September 17, 2015 report, primary treating physician (PTP) Charles Sadler, M.D., found the September 10, 2012 injury to be responsible for 100% of applicant's upper and lower back disability. (Dr. Sadler's 9/17/15 report, at p. 19, applicant's Exhibit 6.) Injury to the thoracic spine is also documented in the medical history summarized by Dr. Sadler. It is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even

if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) While injury to the lumbar spine was raised as an issue at trial, the issue of injury to the thoracic spine was not. However, the WCAB's Rules permit pleadings to be amended to conform to proof. (See Cal. Code Regs., tit. 8, former § 10492, now § 10517 (eff. Jan. 1, 2020).)

The agreed medical examiner (AME) Timothy Reynolds, M.D., found industrial causation for the GERD, hypertension, and sleep disorder. (Dr. Reynolds' reports dated 9/25/20, at p.4, Exhibit Z1; & dated 8/4/20 at pp. 6-8, Exhibit Z2.) The WCJ properly relied upon the opinion of the AME, who the parties presumably chose because of the AME's expertise and neutrality. The WCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

For the reasons stated in the WCJ's report, we agree that the opinions of PTP Dr. Sadler and AME Dr. Reynolds are substantial medical evidence upon which the WCJ properly relied. To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Yeager Construction v. 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, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.); see also (See *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman III)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837] [an evaluating physician may deviate from a "strict" application of the AMA Guides in order to provide a rating within the four corners of the Guides that more accurately reflects the employee's impairment based on the physician's judgment, training and experience].)

For the foregoing reasons,

**IT IS ORDERED** that reconsideration of the August 5, 2021 Findings, Award and Orders is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the August 5, 2021 Findings, Award and Orders is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

**FINDINGS OF FACT**

1. Applicant Felix Aisuan, while employed on September 10, 2012 as a Claims Supervisor/Data Entry/Customer Service, Occupational Group No. 111, at Santa Ana, California, by TriStar Insurance Group, sustained injury arising out of and in the course of employment to his cervical spine, thoracic spine, lumbar spine, upper extremities, shoulders, and knees and injury in the form of GERD, hypertension, and sleep disorder.

\* \* \*

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**October 22, 2021**

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

**DORMAN & SUAREZ  
GLAUBER BERENSON VEGO  
FELIX AISUAN**

**PAG/oo**

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

**JOINT REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

**INTRODUCTION:**

On August 23, 2021, Defendant filed a timely verified joint petition for reconsideration of the award (ADJ9419245) and the findings of fact (ADJ10435082) issued on August 5, 2021. The petitioner contends: the award is inconsistent with the opinion on decision regarding the body parts injured; and, the undersigned WCJ should not have found the reports by Dr. Sadler more persuasive than the reports by PQME Dr. Mack on the grounds the reports are equally defective. The petitioner further contends the Findings of Fact in case number ADJ10435082 are perfect and should not be rescinded or modified, even though the petition for reconsideration is filed on both case numbers.

**PERTINENT HISTORY:**

On November 5, 2019, the parties appeared for trial, documentary evidence was admitted, testimony was taken and completed and the matter submitted. On January 14, 2020, the submission was vacated to develop the record. On June 23, 2021, the parties appeared at a status conference and agreed to submit on the existing record supplemented by the reports of the agreed medical examiner obtained after the submission was vacated. On August 5, 2021, the Court issued a Finding of Fact in case number ADJ10435082 and an Award in case number ADJ9419245. The Award was in part based on the findings of Charles Sadler, M.D., which gave the Applicant a life pension. It is from this Award that Defendant seeks relief.

**DISCUSSION:**

CHARLES SADLER, M.D. FOUND INJURY TO BOTH KNEES, THE AWARD IS CORRECT, THE ERROR EXISTS ONLY IN THE OPINION ON DECISION

Any defect contained in the Opinion on Decision under Labor Code section 5313 is cured by the herein WCJ's Report and Recommendation on Reconsideration. (*Smales v. Workers' Comp. Appeals Bd.* (1980) 45 Cal. Comp. Cases 1026 (writ denied)). In the Findings, Award and Orders dated August 5, 2021, finding number one, the undersigned WCJ finds the Applicant sustained injury arising out of and in the course of employment to his cervical spine, upper extremists, shoulders and knees. In the Joint Opinion on Decision dated August 4, 2021, at page 4, it states

“Pursuant to the report by Charles Sadler M.D. dated September 17, 2015, the industrial injury on September 10, 2021 caused injury to Applicant’s Cervical Spine, Upper Extremities and Right Knee.” The left knee injury was not in dispute and the undersigned WCJ omitted the body part when discussing disputed body parts, which caused the confusion. Dr. Sadler, M.D. did find industrial injury to the left knee. (Exhibit 6 at p. 17-18.)

THE REPORTS BY CHARLES SADLER, M.D. ARE MORE PERSUASIVE THAN THE REPORTS BY PANEL QUALIFIED MEDICAL EXAMINER ROBERT MACK, M.D.

The Petitioner contends that the report of Dr. Mack is dismissed for not finalizing his conclusion regarding apportionment. That is incorrect. Dr. Mack’s report was found less persuasive because the conclusions are not supported by the body of the report. Dr. Mack documented numbness and tingling in the hands, which is non-verified radiculopathy, if the DRE method is used, it is a category II. If the ROM method is used, Dr. Mack’s measurements show between a 2 and 3 WPI. (Exhibit A at p. 3) (AMA Guides, table 15-12.) Dr. Mack concludes a zero whole person impairment to the cervical spine and the body of the report should be interpreted between 2 and 5 WPI. The undersigned WCJ’s finding that Dr. Mack’s report is less persuasive had nothing to do with apportionment.

**RECOMMENDATION:**

The undersigned WCJ respectfully recommends that Defendant’s Petition for Reconsideration dated August 23, 2021 be denied.

Dated: August 30, 2021

M. Victor Bushin  
Workers’ Compensation  
Administrative Law Judge

## **JOINT OPINION ON DECISION**

Case Number ADJ9419245 (MF)

### **BACKGROUND**

Applicant Felix Aisuan, while employed on September 10, 2012, as a Claims Supervisor/Data Entry/Customer Service, Occupational Group No. 111, at Santa Ana, California, by TriStar Insurance Group, sustained injury arising out of and in the course of employment to his shoulders and left knee. He claims to have sustained injury arising out of and in the course of employment to his cervical spine, upper extremities, right knee, sleep, hypertension, gastrointestinal system, erectile dysfunction, and psyche. (Minutes of Hearing and Summary of Evidence dated November 5, 2019, hereinafter MOH, page 2:12.)

At the time of injury, the workers' compensation carrier was Ace American Insurance Company, administrated by Gallagher Bassett. (MOH, page 2:17.) At the time of injury, the employee's earnings were \$1,611.96 per week, warranting an indemnity rate of \$1,074.64 for temporary disability. (MOH, page 2:19.)

The carrier has paid the following compensation: TD at the rate of \$1,074.64 per week for the period March 5, 2014, to March 1, 2015. No permanent disability has been paid. (MOH, page 2:21.)

The employer has furnished some medical treatment. The primary treating physician is Dr. Sadler. (MOH, page 2:23.)

### **ISSUES**

1. Parts of body injured, with the Applicant claiming cervical and lumbar spine, upper extremities, right knee, sleep, hypertension, gastrointestinal, erectile dysfunction, and psyche.
2. Permanent and Stationary date, with the employee claiming September 17, 2015, based on Dr. Sadler, and the employer claiming February 20, 2015, based on Dr. Mack.
3. Permanent disability.
4. Apportionment.
5. Need for further medical treatment.
6. Liability for self-procured medical treatment.
7. Liens.
8. Attorney fees.

**BACKGROUND**

Applicant Felix Aisuan, while employed during the period April 15, 2015, to April 15, 2016, as a Claims Supervisor/Data Entry/Customer Service, Occupational Group No. 111, at Santa Ana, California, by TriStar Insurance Group, claims to have sustained injury arising out of and in the course of employment to his cervical spine, shoulders, upper extremities, knees, sleep, hypertension, gastrointestinal, erectile dysfunction, and psyche. (MOH, page 3:20.)

At the time of injury, the workers' compensation carrier was Ace American Insurance Company, administrated by Gallagher Bassett. (MOH, page 3:24.)

At the time of injury, the employee's earnings were \$1,611.96 per week, warranting an indemnity rate of \$1,074.64 for temporary disability. (MOH, page 4:1.)

The employer has furnished some medical treatment. The primary treating physician is Dr. Sadler. (MOH, page 4:3.)

**ISSUES**

1. Injury arising out of and in the course of employment.
2. Permanent and Stationary date, with the employee claiming September 17, 2015, based on Dr. Sadler, and the carrier claiming February 20, 2015, based on Dr. Mack.
3. Permanent disability.
4. Apportionment.
5. Need for further medical treatment.
6. Liability for self-procured medical treatment.
7. Liens.
8. Attorney fees.

**DISCUSSION**

THE REPORT BY CHARLES SADLER M.D. DATED SEPTEMBER 17, 2015 IS DEEMED MORE PERSUASIVE

The trier of fact is empowered to choose among conflicting medical reports and rely on that which he deems most persuasive (*Jones v. WCAB* (1968) 68 Cal. 2d 476). In this case, the report by panel qualified medical examiner Robert Mack, M.D. dated February 20, 2015 is not

substantial medical evidence for two reasons. First, on page 3, the report documents that the applicant has numbness and tingling in the hands, which, if the DRE method for the spine is used, a category II. The non-verified radiculopathy should cause the ROM method to be used. At page 15 Dr. Mack measures 45° for Flexion and 50° for Extension. Pursuant to the AMA Guides, table 15-12, this should be WPI between 2 and 3. Dr. Mack finds 0 WPI, which is not supported by the DRE or ROM. The conclusions of Dr. Mack are not supported in the body of his report. Furthermore, the doctor deferred apportionment until he receives more medical records, leaving the report incomplete. For those reasons, this court deems the report by Charles Sadler M.D. dated September 17, 2015 more persuasive.

ARISE OUT OF AND IN THE COURSE OF EMPLOYMENT TO HIS CERVICAL SPINE,  
UPPER EXTREMITIES, RIGHT KNEE, GERD, HYPERTENSION AND SLEEP.

Pursuant to the report by Charles Sadler M.D. dated September 17, 2015, the industrial injury on September 10, 2012 caused injury to Applicant's Cervical Spine, Upper Extremities, and Right Knee.

Pursuant to the report by agreed medical examiner Timothy C. Reynolds, M.D. dated September 25, 2020, there is an industrial component to Applicant's GERD, hypertension and sleep disorder.

APPLICANT DID NOT SUSTAIN AN INDUSTRIAL INJURY IN THE FORM OF A  
CONTINUOUS TRAUMA DURING THE PERIOD APRIL 15, 2015 TO APRIL 15, 2016  
WHILE EMPLOYED TRISTAR INSURANCE GROUP

The employee has the burden of proof to prove injury arising out of and in the course of employment with substantial evidence (California Labor Code §3202.5, *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317 319). In this case, Pursuant to the reports by Charles Sadler, M.D. and the final report by agreed medical examiner Timothy C. Reynolds, M.D. the entirety of the industrial injuries fall on the specific injury and not on the continuous trauma. Applicant failed to meet his burden of showing a continuous trauma.

APPLICANT, WHILE EMPLOYED ON SEPTEMBER 10, 2012 DID NOT SUSTAIN A  
COMPENSABLE CONSEQUENCE TO HIS PSYCHE AND IN THE FORM OF ERECTILE  
DYSFUNCTION

There is no medical evidence admitted that shows industrial causation for Applicant's psyche and erectile dysfunction injuries.

## APPLICANT BECAME PERMANENT AND STATIONARY ON APRIL 6, 2020

In cases of an injury involving multiple body parts, the disability from the injury is not permanent and stationary until the disability in all affected body parts are permanent and stationary (CEB, California Workers' Compensation Practice, Fourth Edition, Section 5.2, citing *American Ins. Co. v. WCAB (Mathat)*(2003) 68 Cal. Comp. Cases 926 (writ denied)). In this case, the last affected body parts to become permanent and stationary was Applicant's hypertension, GERD and sleep disorder. Agreed medical examiner Timothy C. Reynolds, M.D., in his report dated April 6, 2020, found Applicant reached maximum medical improvement on April 6, 2020. (Exhibit Z4 at p. 30.)

## **PERMANENT DISABILITY**

The factors of permanent disability set forth in the rating instructions are based upon applicant's testimony with due consideration to his credibility and demeanor as a witness, the range of medical evidence in the record, and the reports of Charles Sadler M.D. and agreed medical examiner Timothy C. Reynolds, M.D..

There having been neither objection to the recommended rating nor a timely request for cross-examination of the disability evaluation specialist (rater), and in accordance with the rater's recommendation, it is found that applicant is entitled to a permanent disability award (after apportionment) of seventy-four percent, equivalent to 497.25 weeks of indemnity payable at the rate of \$270.00 per week, starting on March 2, 2015, less credit for amounts paid by defendant on account thereof heretofore, continuing until the commutation date of September 4, 2021, when applicant's weekly rate will be reduced by \$131.96 per week, in conformity with the attached DEU commutation calculations which are incorporated herein by reference, to account for commutation of attorney fees associated with permanent disability benefits before life pension (see below), and thereafter a life pension of an estimated initial rate of \$108.23 per week for life, subject to statutory L.C. §4659(c) SAWW COLA adjustments, less 15% reasonable attorney fees from the present value of the life pension portion of the award calculated at the time of its communication, with said attorney's fee to be commuted laterally off using the Uniform Rate Reduction Method, each payment remaining to be paid following the date of commutation, causing a weekly life pension reduction after life pension benefit commutation of \$24.21.

## FURTHER MEDICAL TREATMENT

Based upon the reports Charles Sadler M.D. and agreed medical examiner Timothy C. Reynolds, M.D., it is found that applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein.

**SELF-PROCURED MEDICAL TREATMENT AND MEDICAL LEGAL COSTS:**

Jurisdiction is reserved over any outstanding medical-legal and/or self-procured treatment lien claims with the parties to attempt informal resolution of the same, or to be determined in supplemental proceedings upon the filing of a Declaration of Readiness to Proceed.

**ATTORNEY FEES**

Based on the WCAB Rules of Practice and Procedure §10775 and the guidelines for awarding attorney fees found in Policy and Procedure Manual Index Number 1.140, a reasonable attorney fee related to applicant's award of life pension is found to be \$34,965.50.

Attorney fees shall be commuted laterally, commencing September 4, 2021 from the remaining permanent disability benefits and life pension benefits pursuant to the attached DEU commutation calculations dated August 4, 2021 which is incorporated herein by reference.

DATED: August 5, 2021

M. VICTOR BUSHIN  
WORKERS COMPENSATION JUDGE