

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

ADRIENNE REYES, *Applicant*

vs.

**COUNTY OF ORANGE;
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ8506752
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report 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, which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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 determination. (*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/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 12, 2022

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

**ADRIENNE REYES
LAW OFFICES OF JEFFERY M. KLEIN
CHOU LAW GROUP**

PAG/abs

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

**REPORT & RECOMMENDATION ON PETITION
FOR RECONSIDERATION**

**I.
INTRODUCTION**

Applicant – Adrienne Reyes
Employer – County of Orange, now administered by Sedgwick CMS
Date of Injury – 12/23/2009
Age – 31 on date of injury. Currently – 43
Occupation- Attorney Clerk II
Earnings - \$842.40 per week

The most recent decision is dated 6/24/2022. Defense counsel filed a timely verified Petition for Reconsideration on 7/14/2022 alleging that I acted without, or in excess of my powers as a Workers Compensation Judge, that the evidence does not justify the Findings and Award, and that the Findings and Award is against public policy.

The petition is in response to the finding that the applicant’s 12/23/2009 injury resulted in 100% permanent disability.

**II.
FACTS**

The applicant’s worked for the Orange County District Attorney’s Office in the Orange County courthouse working on the second floor. The applicant’s industrial injury occurred on 12/23/2009 when she was asked to take some rap sheets up to a third floor courtroom. Ms. Reyes entered an elevator to go up a floor. The elevator rose until almost the third floor and then dropped until it rested about one foot higher than the first floor. She was alone in the elevator.

The case initially proceeded to trial on 5/8/2018 as an admitted injury with the nature and extent at issue, based on the representation of the parties that discovery was complete. After a review of the record, it was determined that the record needed to be developed. There have been multiple decisions as additional evidence was provided.

On 7/24/2019, I appointed Dr. Gary Stewart as a regular [physician] pursuant to Labor Code §5701 to address applicant’s internal complaints, including heart. Dr. Stewart examined the applicant and was deposed. A sleep study was finally provided. The court was then able to address the remaining issues as to the body parts injured. Petitioner has not challenged the court’s findings as to the nature and extent of the parts of the body injured on 12/23/2009 in the 6/24/2022 Findings Award & Order.

I ultimately found, through multiple decisions, that the applicant sustained injury arising out of and in the course of her employment to her neck, back, both legs, lumbar spine, knees, and psyche, weight gain aggravating preexisting diabetes, gastroesophageal reflux disease, sleep apnea, and right ventricular outflow tract ventricular tachycardia. The nature and extent of her injuries did not extend to headaches or her shoulders.

III. **DISCUSSION**

Petitioner relies, in part, on *Applied Materials v. WCAB* (2021) 86 CCC 331, 6th District Court of Appeals. The *Applied Materials* case consisted of an award of permanent disability solely as to the applicant's psychiatric injury. The Global Assessment Function (GAF) score for the applicant resulted in 68 or 70 percent permanent disability using the 2005 rating schedule. The court's award of 100% permanent disability for post-traumatic stress disorder was annulled as the medical opinion of the Agreed Medical Examiner was not substantial evidence as to diminish earning capacity.

Labor Code §4660 (a) provides: "In determining the percentages of permanent disability, account shall be taken of the nature of the physical injury or disfigurement, the occupation of the injured employee, and his or her age at the time of the injury, consideration being given to an employee's diminished earning capacity."

Petitioner alleges that this court awarded 100% permanent disability based on Dr. Gary Stewart's opinion that the applicant cannot cope with everyday life. The determination of permanent disability was not solely based on that conclusion, although it supported the opinion of vocational evaluator, Laura Wilson. After examining the applicant and reviewing the medical records, Dr. Stewart described applicant on page 51, line 19 of his 1/14/2020 deposition as extremely sensitive and anxious. (Court Exhibit YY). He didn't think she can cope with the demands of everyday life. That assessment is reasonable based on this record.

Petitioner does not challenge the opinion of orthopedic Panel QME, Dr. Mark A. Silver who found a total of 18% whole person impairment (WPI) for all applicant's orthopedic injuries, meaning the neck, lumbar spine and knees. All orthopedic permanent disability is attributed to this industrial injury except for 20% of the disability to the lumbar spine.

The applicant was evaluated for a Panel QME in psyche by Dr. Diane Weiss whose 1/11/2015 report is marked and admitted as Defendant's Exhibit H. Dr. Weiss described the applicant's life as quite chaotic (page 133). She further describes on page 138 "As for Ms. Reyes' concurrent, non-industrial, psychosocial stressors, they included those which were pre-existing." These stressors were also described as "not only numerous, but they were severe and significant."

At page 142 of her report, Dr. Weiss diagnosis adjustment disorder with mixed anxiety and depression. Her psychiatric illness was primarily caused by this work injury. A GAF score of 60 is recommended. She apportioned 55% of the applicant's psychiatric disability to her industrial injury.

Applicant's primary treating physician, Dr. Stanley Majcher found that applicant's industrial injury aggravated her preexisting diabetes. Applicant had now gained additional weight. In his 10/16/2016 treating doctor's report, Dr. Majcher described the applicant as overeating due to stress. He also finds 9% WPI due to applicant's gastroesophageal reflux disease. Only 40% is attributed to this industrial injury. The diabetes has 5% WPI with 60% attributable to her underlying non-industrial condition.

Both Dr. Stanley Majcher and Dr. Linda Cocchiarella had struggled with whether applicant's elevated heart rate was due this industrial injury or some other mechanism. Dr. Majcher's opinion could not be relied upon as to whether the heart was additionally injured due to his opinion that the applicant had some type of underlying heart abnormality that contributed to applicant's arrhythmia, even though he could not identify an abnormality. I also didn't feel comfortable relying on the opinion of Dr. Linda Cocchiarella who initially found the applicant's ventricular tachycardia at least partly caused by the 12/23/2009 injury. After receiving and reviewing additional applicant medical reports, she changed her mind and found no heart abnormality or injury.

I appointed Dr. Gary Stewart as an Independent Medical Examiner pursuant to Labor Code §5701 on 7/24/2019. Defense counsel does not challenge Dr. Stewart's opinion as to the cause of the arrhythmia. Dr. Stewart found no underlying defect in the applicant's heart although her emotions caused right ventricular outflow tract ventricular tachycardia on 3/10/2010. He also found that the applicant's injury extended to sleep apnea but that it was well controlled and did not result in permanent disability. He recommended the applicant continue to take Flecainide as she has not experienced right ventricular tachycardia since that date.

In his 1/14/2020 deposition at page 15, Dr. Stewart testified that after studies and repeated cardiac monitoring, echocardiograms, and numerous emergency room visits, no episode of tachycardia has been found. On page 26, he testified that the applicant tends to have a higher than normal heart rate "So it's more properly referred to as a sign. Symptoms are what the person feels. Signs are what you find." (Lines 14-15).

In his deposition, Dr. Stewart testified at page 17 that the applicant was taking meclizine, the transderm scopolamine, clonazepam, promethazine, and centriline describing all of them as causing "some degree of tiredness and sedation."

Applicant testified at the 5/8/2018 trial that she continued to work after her 12/23/2009 work injury. She described her pain as not getting any better. On 3/9/2010, she went to get a shot to relieve her pain. The next day, 3/10/2010, she worked but then experienced her heart racing in the evening. She also experienced having difficulty breathing.

An ambulance was called that transported her to the hospital. At St. Joseph's Hospital she was advised she was experiencing ventricular tachycardia brought on by a panic attack. The hospital recommended an ablation with a known specialist, Dr. Jay Lee. Dr. Jay later tried to perform an ablation but was unsuccessful as he couldn't induce an abnormality.

Ms. Reyes testified that the cardiologist she saw at St. Joseph's Hospital on 3/10/2010, Dr. Maged Azer, told her she only had two to five years to live and then "it is in god's hands." After being off of work for four weeks, she returned to work with lifting restrictions taking medication. Ms. Reyes described vomiting, dizziness, and palpitations but continued to work until August 29, 2014. Dr. Lee had prescribed Flecainide Acetate but advised that she would need to follow up with Dr. Azer who was now treating her for the arrhythmia. There was a mix up with Dr. Azer's office denying a refill request which led to her not having the Flecainide for 5 or 6 days. During

this time, she experienced vomiting, “pooping on herself, and body aches.” She also described her panic attacks causing an inability to control feces or urine.

As argued by defense counsel, the opinion of a physician is not substantial evidence on the issue of whether the applicant is employable in the open labor market. The defendant had the applicant evaluated by Kelly Winn. The applicant had the applicant evaluated by Laura Wilson.

On page 16, of Kelly Winn’s 12/27/2017 report, marked and admitted as Defense Exhibit I, the applicant is described as taking her youngest children to school in the morning. She described having no friends, does not date, or go to church. She just stays home in the summer. Ms. Reyes told Ms. Winn that she has no money “and no desire to do anything anymore.” She described herself as “knowing” she can’t work. When she drives her children to the market, she just stays in the vehicle while the children do the shopping. Applicant described herself as “living on borrowed time.”

In the transferable skills section of Ms. Winn’s report beginning at page 17, she finds the applicant to have the transferable skills of a general clerk and a data entry clerk. The applicant is a high school graduate. Ms. Winn opines that the applicant can use a computer to enter information and prepare documents such as statements, bills, and receipts. She is also able to verify the accuracy of entries.

The vocational reports by Laura Wilson are marked and admitted as Applicant’s Exhibits 13 and 14. In her 3/20/2020 report, marked and admitted as applicant’s Exhibit 14, on pages 2 and 3, Ms. Wilson describes applicant’s difficulties with activities of daily living, such as driving. Ms. Reyes told Ms. Wilson that “she has chronic pain caused by impairments and she experiences loss of concentration, memory difficulties, low energy levels, sadness, and agitation on a constant basis.” (See page 3, first paragraph). Applicant described to her only being able to walk 15 to 20 minutes and then “needs to stop and rest because of hip pain, leg pain, dry mouth, “and at times a limp.

Ms. Wilson describes the applicant as sleeping 22 hours a day (page 5 second paragraph). Ms. Wilson concludes that the applicant is not amenable to rehabilitation and not able to sustain gainful employment.

In looking at the record as a whole, including the fact that the applicant has been extensively tested and evaluated over more than a decade after this injury, I concluded that the applicant’s 12/23/2009 injury resulted in 100% permanent disability. While Ms. Winn identified those occupations within the applicant’s training and experience, also taking into account her 30lb. lifting limitation, I concluded that the opinion of Laura Wilson best reflected the effect that the applicant’s mental outlook on life and psychiatric symptoms on her ability to compete in the open labor market.

Defense counsel argues that such a finding is against public policy. No physician or evaluator has opined that the applicant has lingered for secondary gain. This is also reflected in her not even seeking medical treatment until 3/9/2010, and then continuing to work until 8/29/2014 except for missing a few weeks from work. I observed the applicant in person for her

trial testimony and did not observe any evidence of trying to misrepresent her condition. She clearly feels overwhelmed which has led to her giving up on life.

IV.
RECOMMENDATION

For the reasons set forth above, it is recommended that the Petition for Reconsideration be denied.

DATED: July 28, 2022

Nancy M. Gordon
WORKERS' COMPENSATION JUDGE