

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

**CLAUDIA HART, *Applicant***

**vs.**

**KAISER FOUNDATION HOSPITALS, permissibly self-insured, administered by  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ12651825  
Van Nuys District Office**

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

Applicant seeks reconsideration of the Findings of Fact & Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on June 15, 2022, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and in the course of employment (AOE/COE) to her hands, both knees and right ankle; that applicant did not sustain injury AOE/COE to her neurological system in the form of tremors or her circadian system in the form of a sleep disorder; and that there was insufficient medical evidence to determine whether applicant sustained an industrial injury to her psychiatric system with resulting temporary total disability. The WCJ ordered that the disputed issues of an industrial injury to applicant's psychiatric system and her entitlement to temporary disability indemnity were deferred pending further development of the medical record.

Applicant contends that WCJ Jacobson stated she would issue an Order for a Replacement Panel of Dr. Modell so the report and the deposition testimony of Jan H. Merman, M.D., were not a proper basis for concluding that the Applicant did not sustain an industrial injury to her neurological system in the form of tremors; that Dr. Merman was a consultant, not a treating doctor, an AME, or a QME, so his opinions are not an appropriate basis for finding no neurological industrial injury; that based on Dr. Merman's deposition testimony, his opinions are not substantial evidence; that Dr. Merman found there was an aggravation of applicant's underlying tremor condition and apportioned 10% to the cumulative trauma injury, and he talked about the 10%

industrial causation in his deposition; that the opinions of Douglas W. Larson, Ph.D., are substantial evidence that applicant sustained a psychiatric injury AOE/COE and is temporarily totally disabled; and that applicant's claim of industrial injury to her circadian system in the form of a sleep disorder should have been deferred.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&O, except that we will amend the F&O to defer the issues of whether applicant sustained injury AOE/COE to her neurological system in the form of tremors, and/or to her circadian system in the form of a sleep disorder (Finding of Fact #1); based thereon the Order will be amended and we will return the matter to the WCJ for further proceedings consistent with this opinion.

## **BACKGROUND**

Applicant claimed injury to her hands, knees, right ankle, psychiatric system, neurological system in the form of tremors, and circadian system in the form of a sleep disorder, while employed by defendant as a registered nurse during the period from August 18, 1980, through November 17, 2019.

The parties proceeded to an expedited hearing on June 14, 2022. They stipulated that applicant sustained injury AOE/COE to her hands, knees and right ankle and deferred the issues of injury to applicant's upper and lower extremities and injury to her cardiovascular system in the form of hypertension. (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 14, 2022, p. 2.) The issues submitted for decision included parts of body injured, applicant claiming: neurological system in the form of tremors, psychiatric system and circadian system in the form of a sleep disorder; and applicant's entitlement to temporary disability indemnity benefits for the period from November 4, 2020, to the present and continuing. (MOH/SOE, p. 2.)

## **DISCUSSION**

We must first note that Labor Code section 5502 limits the issues to be tried and submitted for decision at an expedited hearing to the following:

- (1) The employee's entitlement to medical treatment pursuant to Section 4600, except for treatment issues determined pursuant to Sections 4610 and 4610.5.
- (2) Whether the injured employee is required to obtain treatment within a medical provider network.
- (3) A medical treatment appointment or medical-legal examination.
- (4) The employee's entitlement to, or the amount of, temporary disability indemnity payments.
- (5) The employee's entitlement to compensation from one or more responsible employers when two or more employers dispute liability as among themselves.
- (6) Any other issues requiring an expedited hearing and determination as prescribed in rules and regulations of the administrative director.  
(Lab. Code, § 5502(b).)

Based on our review of the Electronic Adjudication Management System (EAMS) ADJ file, applicant's May 18, 2022 Declaration of Readiness to Proceed to Expedited Hearing (DOR) states that defendant terminated payment of temporary disability indemnity benefits based only on applicant's orthopedic injury, but applicant was still temporarily totally disabled as a result of her psychiatric, internal and neurological conditions. Defendant's June 3, 2022 Objection to applicant's DOR states that the claim was only admitted for applicant's bilateral knees, right ankle and bilateral hands, and that all other claims remained denied. As noted above, the issues submitted for decision at the expedited hearing included parts of body injured.

If a matter is set for an expedited hearing, a WCJ has the discretion to:

...re-designate the expedited hearing as a mandatory settlement conference, receive a Pre-Trial Conference Statement pursuant to Labor Code section 5502, close discovery and schedule the case for trial on the issues presented, if the workers' compensation judge determines that the case is not appropriate for expedited determination.  
(Cal. Code Regs., tit. 8, § 10782(c).)

Here, the issues submitted for decision included parts of body injured. (MOH/SOE, p. 2.) If the WCJ had determined that discovery had been completed as to that issue, and it was otherwise appropriate for that issue to be tried, the expedited hearing could have been "re-designated" as a mandatory settlement conference (MSC), and the matter could have been set for trial. In the alternative, the WCJ could have continued the matter for an MSC.

In light of the fact that the issues submitted for decision included issues not properly tried at an expedited hearing, it is appropriate that the issues of whether applicant sustained an industrial injury to her neurological system in the form of tremors and/or to her circadian system in the form of a sleep disorder be deferred.

Accordingly, we affirm the F&O except that we amend the F&O to defer the issues of whether applicant sustained injury AOE/COE to her neurological system in the form of tremors, and/or to her circadian system in the form of a sleep disorder (Finding of Fact #1), based thereon the Order is amended; and the matter is returned to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings of Fact & Order issued by the WCJ on June 15, 2022, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 15, 2022 Findings of Fact & Order is **AFFIRMED**, except that it is **AMENDED** as follows:

#### **FINDINGS OF FACT**

Applicant, Claudia Hart, while employed during the period August 18, 1980, through September 17, 2019, as a registered nurse, occupational group number: 311, at Panorama City, California, by Kaiser Foundation Hospitals, sustained injury arising out of and in the course of employment to her hands, both knees and right ankle; the issues of whether applicant sustained injury arising out of and in the course of employment to her neurological system in the form of tremors and/or her circadian system in the form of a sleep disorder are deferred.

\* \* \*

#### **ORDER**

The disputed issues of compensability of injury to the psychiatric system and entitlement to temporary disability based thereon is deferred pending further medical reporting from both Marcia G. Lamm, Ph.D., and Douglas W. Larson, Ph.D., for discussion of causation in accordance with *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal. Comp. Cases 241, 247 (Appeals Board en banc); the issues of whether applicant sustained compensable injuries to her neurological system and/or her circadian system are deferred.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**I CONCUR,**

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

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



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

**AUGUST 19, 2022**

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

**CLAUDIA HART  
LAW OFFICES OF DENNIS J. HERSHEWE  
MICHAEL SULLIVAN & ASSOCIATES**

***TLH/pc***

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

CS