

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

NATALIA GARCIA CANO, *Applicant*

vs.

**RAMCO ENTERPRISES, permissibly self-insured, administered by INTERCARE
HOLDINGS INSURANCE SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11994125
Salinas District Office**

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

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on February 2, 2022, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her low back, left knee, and left ankle, and that the injury caused 52% permanent disability.

Applicant contends that her factors of disability should be added, not combined, resulting in a rating of 59%.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, 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&A except that we will amend the F&A to find that the injury caused 59% permanent disability (Finding of Fact 5), and based thereon we will amend the Award.

BACKGROUND

Applicant claimed injury to her low back, left knee, and left ankle while employed by defendant as a strawberry picker on June 14, 2018.

Chiropractic qualified medical examiner (QME) Edward E. Cremata, D.C., evaluated

applicant on January 29, 2019. (Joint Exh. J2, Dr. Cremata, February 20, 2019.) Dr. Cremata examined applicant, took a history, and reviewed the medical record. He diagnosed applicant as having segmental and somatic dysfunction of the lumbar spine with degenerative joint disease and radiculopathy; pain in left ankle and left foot; and left knee anterior cruciate ligament sprain with mild patellofemoral chondropathy [disease of the cartilage]. Dr. Cremata concluded that applicant's condition had not reached maximum medical improvement/permanent and stationary (MMI/P&S) status. (Joint Exh. J2, pp. 15 – 16.)

On February 07, 2020, Dr. Cremata re-evaluated applicant. After re-examining applicant and reviewing additional medical records Dr. Cremata found that applicant reached MMI/P&S status as of the day of the re-evaluation. (Joint Exh. J3, Dr. Cremata, March 5, 2020, p. 24.) He assigned 20% lumbar spine whole person impairment (WPI), 3% left knee WPI, and 6% left ankle WPI. (Joint Exh. J3, pp. 25- 26.) Regarding the issue of whether the factors of impairment should be combined or added, Dr. Cremata stated:

This patient's most significant lumbar impairments include very limited sitting, limited walking, sleep interferences and is the main cause of her lifting capacity losses due to the effects of these injuries. These activities of daily living losses from her lumbar spine and lower extremity neurological injuries may be unfairly reduced if they are combined with the very different lower extremity impairments described. Therefore, the combined left ankle and left knee impairments *should be added* to the lumbar impairment to obtain the most accurate impairment for this patient.

(Joint Exh. J3, p. 26, emphasis in original.)

Dr. Cremata's deposition was taken on August 14, 2020. (Joint Exh. J4, Dr. Cremata, August 14, 2020, deposition transcript.) Counsel's questions and the doctor's testimony regarding whether factors of disability should be combined or added included:

Q. Is it true that the activities of daily living or her ability to function concerning the left lower extremities are due to cumulative effects of the low back radicular symptoms?

A. No.

Q. No? Why not?

A. These are mechanical in nature. The MRI ankle pathology is clearly ankle pathology that has nothing to do with radiculopathy of the low back. ¶ Her inability to kneel on her knee is strictly a mechanical knee problem. That has nothing to do with the lumbar radiculopathy.

Q. Okay. Whether you use DRE or range of motion, wouldn't the rating subsume the ratings for the left knee and left ankle?

A. Wouldn't the ratings subsume the ratings? What do you mean by that?

Q. Wouldn't they already include or be taken into consideration, the ratings for the left knee or ankle?

A. No.

Q. Okay.

A. There are very different functions from different regions.

Q. Okay. Wouldn't there be overlapping with the lumbar spine slash radiculopathy, sensory impairment and pain down the left leg and into the foot?

A. I think the only thing I know of that causes pain into the left leg and foot would be the radiculopathy. I think the left ankle symptoms and the left knee symptoms are due to very specific pathology that's verified by MRI. So is it possible that there's a little bit of overlap? Sure. Is it possible that there's significant overlap that if you had too many ratings all described in the same ADLs, that you would be double dipping, if you will? That's always a possibility that I look at, which is why I felt that the knee and ankle ratings should be combined. I felt they're dissimilar.

(Joint Exh. J4, pp. 40 – 41.)

The parties proceeded to trial on October 27, 2021. The issues submitted for decision included permanent disability and apportionment. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 27, 2021, p. 2.)

DISCUSSION

Pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (2001) (AMA Guides):

A scientific formula has not been established to indicate the best way to combine multiple impairments. Given the diversity of impairments and great variability inherent in combining multiple impairments, it is difficult to establish a formula that accounts for all situations. A combination of some impairments could decrease overall functioning more than suggested by just adding the impairment ratings for the separate impairments (e.g. blindness and inability to use both hands). When other multiple impairments are combined, a less than additive approach may be more appropriate.

(AMA Guides, p. 10.)

The AMA Guides describe several methods of combining impairments and rigid application of CVC is not mandated. (*Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)*)

(2013) 78 Cal.Comp.Cases 213 [2013 Cal. Wrk. Comp. LEXIS 34] (writ den.).) The disability values of multiple impairments may be added instead of combined using the combined values chart (CVC) if adding the impairments provides an accurate rating of the injured worker's disability, particularly when there is no overlap, and when the synergistic or additive effect of the multiple disabilities support that method of combination. (*Bookout v. Workers' Comp. Appeals Bd.* (1976) 62 Cal.App.3d 214 [41 Cal.Comp.Cases 595]; *De La Cerda v. Martin Selko & Co.* (2017) 83 Cal.Comp.Cases 567 (writ den.); *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)*, *supra.*)

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500].) Medical proof is required on issues such as diagnosis, prognosis, disability, and treatment that are beyond the bounds of ordinary knowledge. (See *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988, 996 [42 Cal.Comp.Cases 114].) When a physician's report is well-reasoned, is not speculative, is based on an adequate history and examination, and sets forth the reasoning behind the physician's opinion, not merely his or her conclusions; the report constitutes substantial evidence. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, in his March 5, 2020 report, QME Dr. Cremata said that the limitations on applicant's activities of daily living caused by the lumbar spine injury are "very different" than the limitations caused by the lower extremity injuries. He then stated that the "combined left ankle and left knee impairments should be added to the lumbar impairment to obtain the most accurate impairment for this patient." (Joint Exh. J3, p. 26, emphasis omitted.) During his deposition, as quoted above, Dr. Cremata gave a detailed explanation as to the differences in the impairments caused by applicant's low back and left leg/foot injuries. He also testified that he had considered the issue of overlap and he explained why there was no overlap of the impairment caused by the low back and left leg/foot injuries. (Joint Exh. J4, pp. 40 – 41.) Dr. Cremata's opinions were based on his examinations of applicant, the history he was given, and his review of the extensive medical record. His opinions,

as stated in his reports and deposition testimony, are well reasoned and constitute substantial evidence regarding the proper rating of applicant's disability caused by her June 14, 2018 injury.

Based on Dr. Cremata's reports and deposition testimony, as discussed above, applicant's disability is rated as follows:

Lumbar – Soft Tissue Lesion
15.03.02.02 - 18 - [1.4] 25 - 491H – 30 – 33

Lumbar – Nerve Root/Spinal Cord Sensory
15.03.02.05 – 3 – [1.4] 4 – 491H – 6 – 7

Left Knee
17.05.10.04 – 3 – [1.4] 4 – 491H – 6 – 7

Left Ankle
17.07.06.00 – 6 – [1.4] 8 – 491H 11 – 13

Lumbar = 33 + 7 = 40
Left Knee & Left Ankle = 13 C 7 = 19
Lumbar + Left Knee/Ankle = 40 + 19 = 59% PD

Accordingly, we grant reconsideration, and affirm the F&A except that we amend the F&A to find that the injury caused 59% permanent disability (Finding of Fact 5), and based thereon we amend the Award.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued by the WCJ on February 2, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 2, 2022 Findings and Award is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

5. The injury caused 59% permanent partial disability.

* * *

AWARD

* * *

- (A) Permanent disability indemnity in the total amount of \$67,953.20 payable at the rate of \$197.97 per week commencing 11/22/19 and continuing for 343.25 weeks, or until fully paid; less credit for permanent disability advances and less the sum of \$10,192.00 payable to Applicant's attorney in satisfaction of his lien for legal services.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

I DISSENT,

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 18, 2022

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

**NATALIA GARCIA CANO
SPRENKLE & GEORGARIOU
BAVA & ASSOCIATES**

TLH/pc

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

DISSENTING OPINION OF COMMISSIONER JOSÉ H. RAZO

For the reasons discussed below it is my opinion that the WCJ properly rated applicant's permanent disability by using the Combined Values Chart (CVC), instead of adding the factors of disability. Based thereon, I respectfully dissent.

In his February 20, 2019 report QME Dr. Cremata described the limitations on applicant's daily activities caused by her June 14, 2018 injury. He noted that because of her lumbar spine condition applicant had difficulty mopping, sitting, walking, sleeping, and with repetitive activities such as housecleaning, lifting and bending. (Joint Exh. J2, Dr. Cremata, February 20, 2019, pp. 3 - 4.) He then noted that the left knee condition caused limitations in applicant's lifting, walking, and kneeling. (Joint Exh. J2, p. 4.) As to applicant's left ankle, Dr. Cremata stated that applicant had problems walking, going up and down stairs, and lifting. (Joint Exh. J2, p. 4.)

At his deposition Dr. Cremata testified that applicant's walking and lifting are affected by her left ankle condition, and that walking and house cleaning activities bothers her back. (Joint Exh. J4, pp 37 – 38.) He also testified that applicant's lifting capacity was affected by her ankle, "...but certainly the low back also has some affect." (Joint Exh. J4, p. 39.) Dr. Cremata's conclusion that the limitations of sleep, mopping and house cleaning activities were unique to the low back and the radiculopathy symptoms and these activities were not affected by the ankle and knee pain simply makes no sense and more importantly it is inconsistent with applicant's trial testimony:

As a result of her industrial injury, she has pain in her back, left ankle, and left knee. The back pain goes down the left leg. The pain begins in the vicinity of the left knee and goes down to the ankle. Her pain starts in her back and goes down to the ankle when she extends her leg. ¶ Her sleep is disturbed because of pain in the back, left knee, and left ankle. Her walking is limited because of pain in the back, left ankle, and left knee. ¶ She has problems standing because of pain in her back, left knee, and left ankle. She has problems doing housecleaning due to pain in those three body parts. This includes mopping.
(MOH/SOE, p. 4.)

I agree with the WCJ's opinion that although the WCJ, "... agreed with Dr. Cremata's basis for employing the Combined Values Chart for combining the two lower extremity disabilities; but [he] found that his [Dr. Cremata's} description of the effects of the lumbar spine impairments substantially overlapped those created by the two lower extremity impairments. Nor

did he [Dr. Cremata] describe the kind of synergistic effect that impressed the Board in *Athens Administrators v. WCAB (Kite)* 78 CCC 213.” (Report, p. 2.)

Although the use of the CVC is the preferred method for combining multiple disabilities caused by a single injury, as the Appeals Board noted in *Athens Administrators v. Workers’ Comp. Appeals Bd. (Kite)* [cited above by the majority], the additive approach may be appropriate if there is no overlap in the impairments. However, in this matter the limitations on applicant’s daily activities as a result of the lumbar spine impairments clearly overlap with those caused by the left knee and left ankle impairments. Therefore, applicant did not submit medical evidence effectively rebutting the use of the CVC, and her disability must be rated by combining the factors of disability, not by adding them.

For these reasons, I would affirm the Findings and Award. Therefore, I dissent.



WORKERS’ COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 18, 2022

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

**NATALIA GARCIA CANO
SPRENKLE & GEORGARIOU
BAVA & ASSOCIATES**

TLH/pc

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