

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

PETER MARTINEZ, *Applicant*

vs.

SOUSA TIRE SERVICE; STATE COMPENSATION INSURANCE FUND, *Defendants*

**Adjudication Number: ADJ9163216
Oxnard District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of December 21, 2021 wherein it was found that, while employed "during the period of August 28, 2017 through August 28, 2018"¹ as a mechanic, applicant sustained industrial injury to his arms, hands, shoulders, neck, psyche and in the form of complex regional pain syndrome (CRPS), causing permanent total (100%) disability. In finding permanent total disability, it was found that applicant had 77% orthopedic disability, 62% CRPS disability and 26% psyche disability. The orthopedic and the CRPS permanent disabilities combined to produce 91% permanent disability utilizing the Combined Values Chart. (2005 Schedule for Rating Permanent Disabilities on p. 8-4.) The psychiatric permanent disability was added to the combined orthopedic and CRPS permanent disabilities, rather than combined utilizing the Combined Values Chart, to find permanent total disability.

Defendant contends that the WCJ erred in finding permanent total disability. Defendant argues that the psychiatric permanent disability should have been combined with the other permanent disabilities utilizing the Combined Values Chart. We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

¹ It appears that this finding is in error, since it was stipulated that the applicant sustained a specific injury on May 20, 2013.

As explained below, we will grant reconsideration, and amend the decision to defer the issue of permanent disability and attorneys' fees so that the permanent disability may be rerated utilizing the Combined Values Chart.

The WCJ based his decision to add the psyche permanent disability to the remainder of the permanent disability on the April 29, 2021 report of treating psychologist Kristyn Fowkes-Muto, PhD, which reads, in its entirety, as follows:

To Whom It May Concern:

I am writing this letter on behalf of my patient, Mr. Peter Martinez [date of birth retracted]. I have been seeing Mr. Martinez to address psychological impairments that resulted from an on-the-job injury he experienced in 2013.

Mr. David Holzman, Mr. Martinez's attorney, sent me a report from [agreed medical evaluator psychiatrist Sherry] Mendelson [M.D.] which I read and reviewed. Mr. Holzman [sic] asked for my professional opinion regarding Dr. Mendelson's findings, as I have provided ongoing psychotherapy to Mr. Martinez or several years and am very familiar with his mental health issues, the impairments they cause, and the impact of those impairments on his daily living.

I strongly agree with Dr. Mendelson's findings that Mr. Martinez's psychiatric impairments are permanent and stationary. I agree with the Global Assessment of Functioning score of 58 that Mr. Martinez was given at the time of his evaluation with Dr. Mendelson.

I also agree with Dr. Mendelson's findings that 100% of Mr. Martinez's psychiatric impairment resulted from the industrial orthopedic injury he sustained in 2013, and that it has impacted his life in negative ways.

I believe that adding his psychiatric Impairment to his orthopedic Impairment would be the most accurate way to rate his injuries, given that the psychiatric impairment does not overlap with his orthopedic impairment. Compressing these two impairment ratings would not present an accurate picture of his overall impairment resulting from his work injury in 2013.

Thank you for your consideration.

Kristyn Fowkes-Muto, Ph.D

This report was the only report by Dr. Fowkes-Muto in the evidentiary record.

Dr. Fowkes-Muto's report is not substantial medical evidence sufficient to rebut the use of the Combined Values Chart. An overlapping or duplicative disability is not included in a

permanent disability rating, and is usually not pertinent to the issue of whether permanent disabilities should be combined or added. Under the 2005 Schedule and the AMA Guides, impairments that are used as a basis for ratings are tied to a specific condition or body part, and thus do not usually overlap with any other condition or body part. The Guides contain instructions regarding which impairments overlap with others, and these duplicative impairments are generally not utilized unless a medical evaluator states that they do not overlap in a particular case.

In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 (writ den.), we held that adding, rather than combining, two different impairments better reflected a worker's impairment when substantial medical evidence supported the notion that the two impairments had a synergistic effect where, in effect, the resultant impairment was more than the sum of the two impairments. In *Kite*, the evaluator explained why the disparate impairments were not actually disparate, and the impairments in question were all under the physician's expertise. In contrast, here one specialist is suggesting that we add impairments found by her in her own specialty to impairments in completely different body systems found by a different specialists. Dr. Fowkes-Muto incorporated Dr. Mendelson's GAF score and does not explain how this GAF score does not adequately reflect the applicant's psychiatric permanent impairment. Dr. Fowkes-Muto did not give any compelling reason why these separate impairments should be added, and questions beyond applicant's psychological impairment are beyond Dr. Fowkes-Muto's expertise. (*Applied Materials v. Workers' Comp. Appeals Bd. (D.C.)* (2021) 64 Cal.App.5th 1042, 1097 [86 Cal.Comp.Cases 331].) Dr. Fowkes-Muto did not explain how the GAF score of 58, combined to whole person impairment, adjusted into a permanent disability rating, and combined with the other permanent disability ratings was inadequate.

In his Answer, applicant cites previous panel decisions purportedly standing for the proposition that we may base the decision to add rather than combine disabilities on one specialist stating that a disability in his or her specialty should be added to the disability in a completely distinct specialty because the ratings do not "overlap." We do not find the reasoning in the cited cases persuasive, and all of the cited cases predate the Court of Appeal's decision in *Applied Materials* which makes clear that a physician may only make disability determinations within their own specialty.

Accordingly, we will grant reconsideration, and amend the WCJ's decision to reflect a proper date of injury (see note 1, *ante*) and to defer the issues of permanent disability and attorneys' fees so that the WCJ may re-rate the applicant's disability utilizing the Combined Values Chart.

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Award of December 21, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of December 21, 2021 is **AMENDED** as follows:

FINDINGS OF FACT

1. Peter Martinez, while employed during on May 20, 2013 as a mechanic, occupational group number 460, at Lompoc, California by Sousa Tire Service, sustained injury arising out of and in the course of employment to his bilateral arms, hands, shoulders, neck, psych and CRPS.
2. At the time of the injury, the employer was insured for workers' compensation by State Compensation Insurance Fund.
3. At the time of the injury, the employee's earnings were \$575.22 per week warranting indemnity rates of \$383.48 for temporary disability and statutory for permanent disability.
4. No attorney fees have been paid and no attorney fee arrangements have been made.
5. Sherry Mendelsohn, M.D. retired in 2015.
6. The issue of permanent disability is deferred, with jurisdiction reserved.
7. It is found there is no legal basis for apportionment.
8. It is found there is a need for further medical treatment to sure or relieve the effects of the industrial injury.
9. The issue of attorneys' fees is deferred, with jurisdiction reserved.
10. It is found applicant is entitled to permanent disability for psychiatric impairment pursuant to the violent act exception in L.C. 4660.1 (c) (1).

AWARD

AWARD IS MADE in favor of PETER MARTINEZ and against STATE COMPENSATION INSURANCE FUND as follows:

- a. All further medical treatment reasonably required to cure or relieve from the effects of the injury herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

KATHERINE WILLIAMS DODD, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 14, 2022

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

**PETER MARTINEZ
HOURIGAN, HOLZMAN & SPRAGUE
STATE COMPENSATION INSURANCE FUND**

DW/oo

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