

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

ERICK ALVAREZ, *Applicant*

vs.

**ELITE RICO MOVING AND DELIVERY, INC.; TRANSGUARD INSURANCE
COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ10680599
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and Removal, the contents of the Report and 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, which are both adopted and incorporated herein, we will deny reconsideration.

WCAB Rule 10955 provides that in seeking removal a petitioner must "demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award." (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020).) A "final" order has been defined as one that either "determines any substantive right or liability of those involved in the case" (*Rymer v. Hagler* (1989) 211 Cal.App.3d 1171, 1180; *Safeway Stores, Inc. v. Workers' Comp. Appeals Bd. (Pointer)* (1980) 104 Cal.App.3d 528, 534-535 [45 Cal.Comp.Cases 410, 413]; *Kaiser Foundation Hospitals v. Workers' Comp. Appeals Bd. (Kramer)* (1978) 82 Cal.App.3d 39, 45 [43 Cal.Comp.Cases 661, 665]) or determines a "threshold" issue that is fundamental to the claim for benefits. (*Maranian v. Workers' Comp. Appeals Bd.* (2000) 81 Cal.App.4th 1068, 1070, 1075 [65 Cal.Comp.Cases 650, 650-651, 655-656].) Here, the WCJ's decision makes findings as to causation of injury and permanent disability. These findings make the WCJ's decision a final order subject to reconsideration rather than removal.

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/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 27, 2021

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

**ERICK ALVAREZ
BENTLEY & MORE, LLP
KARASOFF ASSOCIATES**

PAG/pc

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

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OPINION ON DECISION

INTRODUCTION

Applicant, born 11/26, 1979, while employed on 01/21/2016 as a furniture worker at Los Angeles, California by Elite Rico Moving and Delivery, Inc., then insured by Transguard Insurance Company of America, sustained injury arising out of and occurring in the course of employment to left shoulder, left thumb, cervical spine, right wrist, bilateral elbows, head, face and right knee. The primary issues in dispute are parts of body injured, permanent disability, apportionment, Labor Code section 4660.1(c) and need for further medical treatment.

PARTS OF BODY INJURED

Defendant admits injury to left shoulder, left thumb, cervical spine, right wrist, bilateral elbows, head, face and right knee. Applicant also claims injury to psyche, traumatic brain injury and urological system.

No witness testimony was offered by either party. Instead, the parties stipulated to submit the matter on the present record for decision.

The medical record indicates that this injury occurred as a result of a motor vehicle accident. Applicant was sitting unrestrained in the front passenger seat of a company truck driven by a coworker traveling at highway speed when the truck was struck by another vehicle. The truck lost control, hit a center divider and then flipped over. Applicant was ejected through the windshield and landed face down partially pinned underneath the truck.

Court Exhibit's "EE" and "FF" consist of AME psychiatric medical reports from Dr. Joel Frank (Psychiatrist) dated 09/24/2019 and 07/16/2018, respectively.

In his initial report, dated 07/16/2018 Dr. Frank notes that applicant is complaining of the following symptoms: About ten episodes of altered mental states during the past year consisting of going from a normal state to an appearance as if he is sleeping. He does not remember what happens during those episodes but feels a little dizzy and sleepy afterwards; pain in his right knee, bilateral shoulders, bilateral clavicles, anterior chest area, including ribs, bilateral elbows, right wrist, left thumb, bilateral temporomandibular joints and left upper back or left scapular; daily headaches lasting one to two hours; difficulty going and staying asleep due to pain and nightmares about the accident. He has these nightmares nightly and sleeps six hours per night; excessive daytime sleepiness; feels self-conscious and embarrassed by scarring in multiple areas of his body, especially the right frontal parietal region of the head. Due to the scarring he tends to avoid interacting with people he does not know; sexual dysfunction; anxious if a passenger in a vehicle that is driven by

someone else on the freeway. He avoids driving on the freeways; Anxious and agitated when hears loud noises; and problems with memory and concentration.

In his second and final report dated 09/24/2019 Dr. Frank notes that applicant no longer has problems with altered mental states. Dr. Frank notes that applicant did report continuing to experience the following symptoms: Feeling sad and depressed about twice a week because he is not able to function the way he did before the injury; some improvement in anxiety; experiences repetitive intrusive thoughts of the motor vehicle accident daily or every other day. This is associated with feeling scared and nervous and anxious. Usually nothing triggers these thoughts but hearing screeching tires or watching television and seeing a news report of a motor vehicle accident causes him to experience these thoughts; erectile and sexual dysfunction; difficulty with memory and concentration; irritable mood; sometimes experiences anxiety when meeting new people because he is concerned that people sometimes stare at him due to the scarring he has from the injury. This is embarrassing and contributes to anxiety interacting with others and causes diminished self-esteem; difficulty staying asleep. He usually wakes up two to three times a night. He sleeps five to six hours a night; excessive daytime sleepiness; anxious daily and symptoms of anxiety consist of nervousness, sweatiness and worrying. The duration of these symptoms vary; Avoids driving long distances, near trucks or on the freeway due to nervousness and anxiety; daily headaches that rarely go away; pain in his left shoulder, left upper back, right knee, bilateral elbows with right worse than left, chest/rib causing difficulty sleeping at night or on his chest, neck, left hand, left thumb with decreased sensation and feeling of tightness and both clavicles. Applicant has difficulty gripping with the left hand; right wrist feels weak; and spots or shadows in left eye.

Dr. Frank lists his diagnosis as “Posttraumatic Stress Disorder, Chronic; and Depressive Disorder Not Otherwise Specified.”

Dr. Frank finds that it is reasonably medically probable these psychiatric conditions were predominately caused by the injury of 01/21/2016.

Court Exhibit “GG” consists of an AME neurologic medical report from Dr. Lawrence Richman (Neurology) dated 04/30/2019.

Dr. Richman notes that applicant reported the following symptoms: difficulty with memory and concentration; double and blurred vision in the left eye; headaches at a level 6; neck pain, level 6; Intermittent jaw pain, level 5; bilateral shoulder pain, level 7; frequent right arm pain, level 7; frequent bilateral forearm pain, level 6; frequent right hand pain, level 6; frequent upper back pain, level 6; frequent right leg pain, level 6; tingling and numbness in right upper and lower limbs and weakness of both hands and right knee.

Dr. Richman lists his diagnosis as follows:

- “1. Blunt head trauma and cephalohemtoma of left side of scalp, industrial causation.*
- 2. Cerebral concussion and posttraumatic head syndrome, industrial causation.*
- 3. Head/traumatic and cervicogenic headaches, industrial causation.*
- 4. Sleep disturbance due to pain, industrial causation.*
- 5. Recent blunt head injury while working at home, no industrial causation*
- 6. Bilateral clavicle fractures, industrial causation.*
- 7. Bilateral pneumothorax, industrial causation.*
- 8. Multiple rib fractures, industrial causation.*
- 9. Left scapular fracture, industrial causation.”*

Dr. Richman finds that as a result of the 01/21/2016 injury applicant sustained multiple musculoskeletal injuries, traumatic brain injury and posttraumatic and cervicogenic headaches and sleep disturbance.

Applicant’s Exhibit “1” consists of a urological medical report from Dr. Barton Wachs (Urology) dated 02/26/2020.

Dr. Wach’s notes that applicant reported he cannot maintain and sustain an erection. The doctor’s report does not discuss the history of injury, applicant’s medical history or the findings on physical examination.

Dr. Wachs lists his diagnosis as Erectile Dysfunction due to diseases classified elsewhere and Impotence. Dr. Wachs states he has reviewed the AME neurological report of from Dr. Lawrence Richman and AME report of Dr. Joel Frank dated 09/24/2019. There is no indication that Dr. Wachs reviewed any of the AME reports from Dr. Laura Wertheimer-Hatch (Orthopedic Surgeon) or Dr. Frank’s 09/24/2019 report or any of the other voluminous reports and records reviewed by the AMEs.

Dr. Wachs states that applicant suffers from sexual and erectile dysfunction partly based on an organic and physiologic basis. Dr. Wachs then states that he is sure that applicant has psychogenic erectile dysfunction and that the organic component is due to pain on a daily caused by his injury. Dr. Wach’s opinion on causation is conclusory.

Dr. Wachs states that applicant's condition is permanent and stationary and that applicant has a Class I 10% whole person impairment. Dr. Wachs does not state the page and table or chart in the Guides to the Evaluation of Permanent Impairment (Fifth edition) he relies on or an explanation why the applicant has this type and level of permanent impairment. Therefore, Dr. Wachs' report does not constitute substantial medical evidence.

Based on review of the AME medical reports of Dr., Joel Frank dated 09/24/2019 and 07/17/2018 and Dr. Lawrence Richman dated 04/30/2019, it is found that applicant did sustain injury to psyche and traumatic brain injury as a result of the injury of 01/21/2016 while employed for Elite Rico Moving and Delivery, Inc.

It is ordered that the issue of injury to urological system is deferred for further development of the record with jurisdiction reserved. Specifically, the parties are to send Dr. Barton Wachs all medical reports and records, except the AME reports of Dr. Richman 04/30/2019 and Dr. Frank dated 09/24/2019 for his review and comment in a supplemental report. The parties are also to have Dr. Wachs include in his supplemental report a discussion of history of injury, applicant's medical history, the findings on physical examination, an explanation for the basis for finding psychogenic erectile dysfunction and the organic component that is due to pain and the page and table or chart in the Guides to the Evaluation of Permanent Impairment (Fifth edition) he relies on as well as an explanation why the applicant has this type and level of permanent impairment. If after obtaining a supplemental report from Dr. Wachs, the parties wish the Court to take further action either party may file a declaration of readiness to proceed.

PERMANENT DISABILITY

Defendant claims that applicant is not entitled to receive an increase in permanent impairment ratings to psyche, traumatic brain injury and urological system pursuant to Labor Code section 4660.1(c) (1). Applicant claims that section 4660.1(c) (1) does not apply because the injury was the result of a violent act or catastrophic injury pursuant to Labor Code section 4660.1(c) (2).

Labor Code section 4660.1(c) (1) and (2) state:

'(c) (1) Except as provided in paragraph (2), the impairment ratings for sleep dysfunction, sexual dysfunction, or psychiatric disorder, or any combination thereof, arising out of a compensable physical injury shall not increase. This section does not limit the ability of an injured employee to obtain treatment for sleep dysfunction, sexual dysfunction, or psychiatric disorder, if any, that are a consequence of an industrial injury.'

(2) *An increased impairment rating for psychiatric disorder is not subject to paragraph (1) if the compensable psychiatric injury resulted from either of the following:*

(A) *Being a victim of a violent act or direct exposure to a significant violent act within the meaning of Section 3208.3.*

(B) *A catastrophic injury, including, but not limited to, loss of a limb, paralysis, severe burn, or severe head injury.” (Emphasis added.)*

Section 4660.1(c) (1) does apply to traumatic brain injury.

The WCAB en banc held in the case of *Wilson v. State Of California Cal Fire* (1029) 84 Cal. Comp. Case 393, 403 and 404 that:

“Section 4660.1(c) does not bar an employee from claiming a psychiatric injury or obtaining treatment or temporary disability for a psychiatric disorder that is a compensable consequence of a physical injury occurring on or after January 1, 2013. Additionally, section 4660.1(c) does not apply to psychiatric injuries directly caused by events of employment. Section 4660.1(c)(1) only bars an increase in the employee's permanent impairment rating for a psychiatric injury that is a compensable consequence of a physical injury occurring on or after January 1, 2013. However, the employee may receive an increased impairment rating for a compensable consequence psychiatric injury if the injury falls under one of the statutory exceptions outlined in section 4660.1(c)(2) . . .

An injury must be proximately caused by the employment in order to be compensable. (Lab. Code, § 3600(a)(3); see also Clark, supra, 61 Cal. 4th at pp. 297–298.) Proximate cause in workers' compensation requires the employment be a contributing cause of the injury. (Clark, supra, 61 Cal. 4th at pp. 297–298 [outlining this standard and analyzing the difference between causation in tort law and causation in workers' compensation].) Causation of an injury may be either direct or as a compensable consequence of a prior injury. More precisely, an injury may be directly caused by the employment. Alternatively, a subsequent injury is a compensable consequence of the first injury where it “is not a new and independent injury but rather the direct and natural consequence of the” first injury. (Carter v. County of Los Angeles (1986) 51 Cal. Comp. Cases 255, 258 (Appeals Board en banc).) The “first injury need not be the exclusive cause of the second but only a contributing factor to it ... So long as the original injury operates even in part as a contributing factor it establishes

liability.” (State Compensation Ins. Fund v. Industrial Acc. Com. (Wallin) (1959) 176 Cal. App. 2d 10, 17 [24 Cal. Comp. Cases 302].) In other words, if the first injury is a contributing cause of the second injury, the second injury is a compensable consequence of the first injury. Whereas the first injury is directly caused by the employment, a compensable consequence injury is indirectly caused by the employment via the first injury.”

Applicant’s entitlement to an increase in permanent impairment rating for his psyche injury is not barred by section 4660.1(c) (1) because it was directly caused by the injury itself and not as a compensable consequences of the injury. Dr. Frank finds that applicant sustained Posttraumatic Stress Disorder, Chronic; and Depressive Disorder Not Otherwise Specified due to the injury of 01/21/2016. On page of five (5) of the psychological testing portion of his 09/24/2019 report Dr. Frank states:

“This man reports having been confronted with an event or events in which he was exposed to a severe threat to his life, a traumatic experience that precipitated intense fear of horror on his part. Currently, the residual of this event may appear to be persistently reexperienced with recurrent and distressing recollections, such as in cues that resemble or symbolize an aspect of the traumatic event. Where possible he seeks to avoid such cues and recollections. Where they cannot be anticipated and actively avoided, as in dreams or nightmares, he may become terrified, exhibiting a number of symptoms of intense anxiety. Other signs of distress might include difficulty falling asleep, outbursts of anger, panic attacks, hypervigilance, exaggerated startle response, or a subjective sense of numbing and detachment.”

Based on review of the entire record, it is found that applicant’s entitlement to receive an increase in permanent impairment ratings for psyche and traumatic brain injury that occurred as a result of the injury of 01/21/2016 is not barred by Labor Code section 4660.1(c) (1).

The issue of whether the injury to the psyche was the result of a violent act or catastrophic injury pursuant to Labor Code section 4660.1(c) (2) is moot.

The issues of whether applicant is entitle to receive an increase in permanent impairment rating for sexual dysfunction injury pursuant to Labor Code section 4660.1(c), permanent disability, apportionment and attorney fees are deferred for further development of the record with jurisdiction reserve.

NEED FOR FURTHER MEDICAL TREATMENT

Based on the AME medical reports of Dr. Laura Wertheimer-Hatch dated 10/30/2019 and 09/25/2017 (Court Exhibits “BB” and “DD””, respectively) and Dr. Lawrence Richman dated 04/30/2019, It is found that applicant is in need of further medical treatment left shoulder, left thumb, cervical spine, right wrist, bilateral elbows, head, face, right knee and traumatic brain injury to cure or relieve him from the effects of the injury herein.

Based on the AME medical report of Dr. Joel Frank dated 09/24/2019, it is found that applicant is not in need of further medical treatment to his psyche to cure or relieve him from the effects of the injury herein.

The issue of applicant’s entitlement to further medical treatment for urological system is deferred for further development of the record with jurisdiction reserved.

**REPORT AND RECOMMENDATION ON RECONSIDERATION AND
REMOVAL**

**I
INTRODUCTION**

Defendant has filed a timely and verified petition for reconsideration and removal wherein they dispute the Findings and Order dated 02/01/2021 finding that applicant is entitled to increased impairment for psyche, traumatic brain injury and sexual dysfunction and disallowing apportionment to compensable consequence for psyche and sexual dysfunction. Defendant also disputes the order requiring the parties to further develop the record on the issues of injury and whether applicant is entitled to an increase in permanent impairment rating for sexual impairment.

Defendant contends that applicant is not entitled to an increase in impairment for psyche and traumatic brain injury because it will result in duplication of cerebral impairment which is prohibited by the AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition.); that applicant is not entitled to increased impairment for sexual dysfunction because it is barred by Labor Doe section 4660.1(c) (1) and would result in duplication of cerebral impairment; that it is improper to disallow apportionment to the portion of the impairment for the psyche and sexual dysfunction that is attributable to compensable consequences pursuant to Labor Code section 4660.1(c); and that defendant will suffer significant prejudice and/or irreparable harm if required to conduct discovery to further develop the record regarding the issues of injury to sexual dysfunction and whether applicant is entitled to an increase in permanent impairment rating for sexual impairment.

**II
STATEMENT OF FACTS**

Applicant, born __, while employed on 01/21/2016 as a furniture worker at Los Angeles, California by Elite Rico Moving and Delivery, Inc., then insured by Transguard Insurance Company of America, sustained injury arising out of and occurring in the course of employment to left shoulder, left thumb, cervical spine, right wrist, bilateral elbows, head, face and right knee.

A trial was held in this matter on 01/05/2021. No witness testimony was offered by either party. Instead, the parties stipulated to submit the matter on the present record for decision. Following review of the medical reports of all the physicians in this matter, the Court issued a Findings and Order finding that Applicant sustained injury to left shoulder, left thumb, cervical spine, right wrist, bilateral elbows, head, face, right knee, psyche and traumatic brain injury; that applicant's entitlement to receive an increase in permanent impairment ratings for psyche and traumatic brain injury is not barred by Labor Code section

4660.1(c) (1); that the issue of whether the injury to the psyche was the result of a violent act or catastrophic injury pursuant to Labor Code section 4660.1(c) (2) is moot; that applicant is in need of further medical treatment to the left shoulder, left thumb, cervical spine, right wrist, bilateral elbows, head, face, right knee and traumatic brain injury to cure or relieve him from the effects of the injury herein; and that applicant is not in need of further medical treatment to his psyche to cure or relieve him from the effects of the injury herein.

It was ordered that that the issues of nature and extent of injury, specifically injury to urological system, whether applicant is entitled to receive an increase in permanent impairment rating for sexual dysfunction injury pursuant to Labor Code section 4660.1(c), permanent disability, apportionment and attorney fees are deferred for further development of the record with jurisdiction reserved. The parties are to send Dr. Barton Wachs all medical reports and records, except the AME reports of Dr. Richman 04/30/2019 and Dr. Frank dated 09/24/2019 for his review and comment in a supplemental report. The parties are also to have Dr. Wachs include in his supplemental report a discussion of history of injury, applicant's medical history, the findings on physical examination, an explanation for the basis for finding psychogenic erectile dysfunction and the organic component that is due to pain and the page and table or chart in the Guides to the Evaluation of Permanent Impairment (Fifth edition) he relies on as well as an explanation why the applicant has this type and level of permanent impairment. If after obtaining a supplemental report from Dr. Wachs, the parties wish the Court to take further action either party may file a declaration of readiness to proceed.

III DISCUSSION

Defendant contends that applicant is not entitled to increased impairment for psyche and traumatic brain injury because the permanent impairment set forth in the AME reports of Dr. Joel Frank (Psychiatrist) dated 09/24/2019 (Court Exhibit "EE") and Dr. Lawrence Richman (Neurologist) dated 04/30/2019 (Court Exhibit "GG") for cerebral impairment cannot be combined pursuant to the AMA Guides to the Evaluation of Permanent Impairment (Fifth Edition) and that the AMA Guides require that applicant is only entitled to the most severe cerebral impairment. This contention lacks merit.

As discussed above, the Court found that applicant's entitlement to receive an increase in permanent impairment ratings for psyche and traumatic brain injury is not barred by Labor Code section 4660.1(c) (1). The Court did not issue a finding of permanent disability for either applicant's psyche or traumatic brain injury. Instead, permanent disability was one of the issues the Court deferred pending further development of the record.

Defendant contends that applicant is not entitled to an increase in impairment for sexual dysfunction pursuant to Labor Code section 4660.1(c) because there is no evidence that applicant's sexual dysfunction was directly caused by the injury of 01/21/2016. Applicant also contends that pursuant to the AMA Guides cerebral impairment for the psyche, traumatic brain injury and sexual dysfunction cannot be combined and that applicant is only entitled to the most severe cerebral impairment. These contentions lack merit.

The Court did not issue a finding of injury or permanent disability regarding sexual dysfunction. As discussed above, neither party offered witness testimony. Instead, the parties stipulated to submit the matter on the present record for decision. Applicant's Exhibit "1" consists of a medical report of Dr. Barton Wachs (Urologist) dated 02/26/2020. Defendant did not offer any medical reports or other evidence regarding the issues of injury or permanent disability regarding sexual dysfunction. On page six and seven its opinion on decision the Court determined that Dr. Wach's report did not constitute substantial medical evidence because the report did not discuss the history of injury applicant's medical history or findings on physical examination, did not review of all of the AME medical reports or the voluminous reports and records reviewed by the AMEs, that this opinion on the issue of causation was conclusory and that his discussion of permanent disability did not state the page and table or chart in the AMA Guides he relied on or explain the basis for the finding permanent disability. Therefore, it was ordered that issues of nature and extent of injury, specifically injury to urological system, whether applicant is entitled to receive an increase in permanent impairment rating for sexual dysfunction injury pursuant to Labor Code section 4660.1(c), permanent disability, apportionment and attorney fees are deferred for further development of the record with jurisdiction reserved.

Defendant contends that ". . . *the WCJ erred in his Findings and Order to the extent it disallows impairment apportionable to compensable consequence impairments for psych and sexual dysfunction that are barred by section 4660(c)(1).*" (Pet. For Recon., at 6:14-16.) This contention lacks merit.

The Court did not issue a finding of on the issues of injury to sexual dysfunction, permanent disability or apportionment. As discussed above, the Court ordered that the issues of injury to sexual dysfunction, permanent disability and apportionment deferred pending further development of the record.

Defendant contends that they will suffer significant prejudice and/or irreparable harm by being required to conduct further discovery to further develop the record by sending Dr. Barton Wachs all medical reports and records, except the AME reports of Dr. Richman 04/30/2019 and Dr. Frank dated 09/24/2019 for his review and comment in a supplemental report and to include in his supplemental report a discussion of history of injury, applicant's medical

history, the findings on physical examination, an explanation for the basis for finding psychogenic erectile dysfunction and the organic component that is due to pain and the page and table or chart in the Guides to the Evaluation of Permanent Impairment (Fifth Edition) he relies on as well as an explanation why the applicant has this type and level of permanent impairment.

Cal Code of Regs., tit. 8, section 10955 (a) states:

“(a) At any time within 20 days after the service of the order or decision, or of the occurrence of the action in issue, any party may petition for removal based upon one or more of the following grounds:

- (1) The order, decision or action will result in significant prejudice.*
- (2) The order, decision or action will result in irreparable harm.*

The petitioner must also demonstrate that reconsideration will not be an adequate remedy after the issuance of a final order, decision or award. Failure to file the petition to remove timely shall constitute valid ground for dismissing the petition for removal.”

Defendant contends that applicant has had more than ample time to secure discovery to prove that he sustained sexual dysfunction as the direct result of the injury of 01/21/2016 to avoid being precluded from being entitled to an increase in permanent disability for sexual dysfunction. Defendant further contends that if applicant is allowed to seek to further develop the record regarding the issues relating to his claim of injury and permanent disability and apportionment regarding sexual dysfunction, then they should be allowed to seek a QME/AME in the specialty in rebuttal. These contentions lack merit.

As discussed above, the only evidence presented at trial regarding the applicant's claim of injury and permanent disability regarding sexual dysfunction was a report offered by applicant from Dr. Wachs. It is unclear whether defendant conducted any discovery regarding applicant's sexual dysfunction claim. Pursuant to Cal. Code of Regs., tit. 8, section 10109 defendant has a duty to conduct a good faith investigation regarding applicant's claim of injury and permanent disability regarding sexual dysfunction. The report of Dr. Wachs indicates that he has been treating applicant for Sexual and Erectile Dysfunction and that the doctor did review some of the AME reports. Since the Court found that Dr. Wachs' report does not constitute substantial medical evidence further discovery is necessary by having Dr. Wachs issue a supplemental report. (*McDuffie v. Los Angeles County Metropolitan Authority* (2002) 67 Cal. Comp. Cases (appeals board en banc.)

In addition, defendant has failed to show how reconsideration will not be an adequate remedy after the issuance of a final order, decision or award

regarding the issues of injury and permanent disability regarding sexual dysfunction

IV
RECOMMENDATION

The petition for reconsideration and removal should be denied.

DATE: March 15, 2021

Howard Lemberg

WORKERS' COMPENSATION JUDGE