

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

LORI BUCCHIONI, *Applicant*

vs.

**SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, permissibly self-insured,
and adjusted by SCHOOLS INSURANCE AUTHORITY, *Defendants***

**Adjudication Number: ADJ7054381
Sacramento 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.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 30, 2022

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

**LORI BUCCHIONI
MARCUS, REGALADO, MARCUS & PULLEY, LLP
CUNEO, BLACK, WARD & MISSLER**

PAG/ara

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I

| | |
|---------------------------------|--|
| <u>Date of Injury:</u> | February 4, 2008 |
| <u>Age on DOI:</u> | 48 years old |
| <u>Occupation:</u> | School bus driver |
| <u>Parts of Body Injured:</u> | Right knee, right hip, left knee, lumbar spine |
| <u>Identity of Petitioners:</u> | Defendant |
| <u>Timeliness:</u> | Petition was filed timely |
| <u>Verification:</u> | Petition was verified |
| <u>Date of Order:</u> | June 3, 2022 (served June 10, 2022) |
| <u>Petitioners Contentions:</u> | Defendant contends the evidence does not justify the findings regarding the permanent and stationary date of February 15, 2018, the permanent disability of 51% after appointment, a 15% increase per Labor Code section 4658, the need to development to determine whether the Sacramento City Unified School District has less than 50 employees, and entitlement to the supplemental job displacement voucher. Defendant contends those findings do not support the order, decision or award, and the WCJ acted without or in excess of powers by those findings. |

II
FACTS

The parties stipulated that Applicant sustained an industrial injury on February 4, 2008 to the right knee, right hip, left knee, and lumbar spine. The parties further stipulated that there is a need for future medical treatment and there was no offer of return to work.

After trial, it was found that Applicant became permanent and stationary on February 15, 2018 and sustained permanent disability of 51% after apportionment. In addition, it was found that a reasonable attorney fee is 15% of the permanent disability. It was found that Applicant is entitled to the 15% increase per Labor Code section 4658 unless the Sacramento City Unified School District has less than 50 employees, and the record requires further development to determine whether the Sacramento City Unified School District has less than 50 employees. Finally, it was found that Applicant is entitled to a supplemental job displacement voucher.

Defendant filed a Petition for Reconsideration. Applicant filed an answer.

III DISCUSSION

PERMANENT AND STATIONARY DATE

Applicant claims she reached permanent and stationary status on February 15, 2018 and Defendant contends it happened on January 7, 2020.

In his report dated December 14, 2017, Dr. Isono opined Applicant had reached maximum medical improvement for the right knee on January 7, 2014, the lumbar spine on December 18, 2015, and the right hip on December 20, 2016. Dr. Isono further opined that Applicant had not reached maximum medical improvement for the left knee considering Applicant's desire to have a total knee replacement and the upcoming appointment with Dr. Greene. (Defendant Exhibit D)

In the following report dated February 15, 2018, Dr. Isono addressed permanent impairment for the left knee. Dr. Isono found permanent impairment and a need for future medical care. (Joint Exhibit DD) Dr. Isono had found permanent impairment for all of the body parts at issue at that point. Furthermore, there is no evidence to suggest Applicant is not permanent and stationary as to all conditions. The record supports a finding that Applicant became permanent and stationary on February 15, 2018.

Subsequently, Dr. Isono provided the Physician's Return-to-Work & Voucher Report for Injuries On or after 1/1/13 form dated January 6, 2020, wherein he checked the box at the top indicating that Applicant is permanent and stationary. Dr. Isono did not address the topic of permanent and stationary status any further at that time. (Defendant Exhibit F) In the cover letter attached to the form, Dr. Isono indicated he provided a form in response to the inquiry about Applicant's work restrictions. The reference to permanent and stationary status on the form appears to be an incidental reiteration of Applicant's permanent and stationary status rather than a new finding.

PERMANENT DISABILITY AND APPORTIONMENT

The factors of permanent disability are based upon the reports of Dr. Isono. The basis for apportionment must be clear; the medical-legal report must "describe in detail the exact nature of the apportionable disability, and set forth the basis for the opinion." *Escobedo v. Marshalls* (2007) 70 Cal. Comp. Cases 604, 621 (en banc).

For the left knee, Dr. Isono provided impairment based on the strict rating. This would be 10% WPI for arthritis and 4% WPI for DRE partial medial and lateral meniscectomies. Then he used *Almaraz/Guzman* and found 17% WPI considering arthritis and DRE as well as an average of gait derangement, muscle atrophy, and muscle strength. Dr. Isono indicated this was the most accurate assessment of the total level of impairment. Dr. Isono reasoned that from a biomechanical and anatomic standpoint these impairments are interrelated but not subsumed by each other. Dr. Isono found apportionment and attributed 25% of the disability to preexisting degenerative joint disease and 75% to the industrial injury. Dr. Isono explained the degenerative joint disease was shown on the-rays in July 2014 and severe medial compartment degenerative joint disease was shown on the MRI in May 2015. Dr. Isono explained there was arthritis was in all three compartments and opined that degenerative joint disease is non-industrial condition related to aging. (Joint Exhibit DD)

For the right knee, Dr. Isono found impairment of 20% WPI based on a fair result from a total knee replacement. Dr. Isono found apportionment and attributed 30% to preexisting chondromalacia of the medial and patellofemoral compartments and 70% to the industrial injury. Dr. Isono explained that x-rays in April 2009 revealed degenerative joint disease of the medial compartment and operative findings in December 2011 noted patellofemoral chondromalacia requiring chondroplasty of the patellofemoral and medial compartments. Dr. Isono opined that chondromalacia is due to aging rather than a specific incident particularly considering the timeframe of the industrial injury. (Joint Exhibit AA)

For the lumbar spine, Dr. Isono provided impairment based on the strict rating. This would be 6% for range of motion and 12% for specific spine disorders which is to be used in conjunction with range of motion method. Dr. Isono found apportionment and attributed 40% to preexisting the condition and 60% to the industrial injury. Dr. Isono explained that radiographic evidence revealed an old compression fracture at L2 with multilevel degenerative disease that contributed to the symptoms and disability. (Joint Exhibit BB)

For the right hip, Dr. Isono found 8% WPI due to arthritis for a strict rating. Dr. Isono noted the pathology, surgery, residual problems, and exam findings then used *Almaraz/Guzman* to determine the most accurate assessment of the total impairment. He found 11% WPI considering gait derangement, muscle atrophy, muscle strength, and range of motion. Dr. Isono reasoned that from a biomechanical and anatomic standpoint these impairments are interrelated but not subsumed by each other. Dr. Isono found apportionment and attributed 10% to preexisting femoral acetabular impingement and 90% to the industrial injury. Dr. Isono explained that femoral acetabular impingement is a developmental issue of morphology unrelated to an injury, which can lead to a painful hip condition. Dr. Isono opined that the industrial injury aggravated the preexisting condition and necessitated surgery. (Joint Exhibit CC)

The findings of Dr. Isono rate as follows:

| | | |
|----------------|-------------------------|---|
| Left knee | .75 | (17.05.06.00 - 17 [2] 19 - 250F - 19 - 22) 17 |
| Right knee | .70 | (17.05.10.08 - 20 [2] 23 - 250F - 23 - 26) 18 |
| Lumbar spine | .60 | (15.03.02.01 - 18 [5] 23 - 250F - 23 - 26) 16 |
| Right hip | .90 | (17.03.06.00 - 11 [5] 14 - 250F - 14 - 16) 14 |
| Combined value | 18 c 17 c 16 c 14 = 51% | |

The record supports a finding that Applicant is entitled to a permanent disability award of 51%.

PERMANENT DISABILITY ADJUSTMENT

An injured employee is entitled to an increase in permanent disability by 15% after the first 60 days, if the injury causes permanent disability and the employer fails to make an offer of regular, modified, or alternative work, and the employer has at least 50 employees. Labor Code section 4658(d).

The parties stipulated that there was no offer of return to work. Applicant suffered permanent disability as a result of the industrial injury as described above. The record supports a finding that

Applicant is entitled to the 15% increase unless the Sacramento City Unified School District has fewer than 50 employees. The parties submitted no evidence regarding the number of employees.

Defendant contends Applicant was retired and therefore not entitled to the 15% increase. However, the record contains no evidence that Applicant retired. Furthermore, if Applicant made herself unavailable due to the industrial injury, she is still entitled to the 15% increase. In his report dated December 18, 2015, Dr. Isono indicates Applicant stopped working in July 2015 because of symptoms in her lumbar spine, right hip, and left knee. (Joint Exhibit BB)

Further development of the record is needed to determine whether the Sacramento City Unified School District has fewer than 50 employees.

SUPPLEMENTAL JOB DISPLACEMENT VOUCHER

An injured employee is entitled to a supplemental job displacement benefit if the injury causes permanent partial disability and the employer fails to make an offer of regular, modified, or alternative work. Labor Code section 4658.7(b).

The parties stipulated that there was no offer of return to work. Applicant suffered permanent disability as a result of the industrial injury as described above. The record supports a finding that Applicant is entitled to the supplemental job displacement voucher. For entitlement to this benefit, whether the Applicant had retired is inconsequential.

ATTORNEY FEES

Based on the California Code of Regulations section 10844 and the guidelines for awarding attorney fees found in the Policy and Procedural Manual, it is found that a reasonable attorney fee is 15% of the permanent disability.

IV RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATE: July 12, 2022

Ariel Aldrich
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE