

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

**MARK PEREZ, *Applicant***

**vs.**

**RALEY'S FINE FOODS, *Permissibly Self-Insured, Defendant***

**Adjudication Number: ADJ10274049  
Salinas District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings of Fact and Orders of May 3, 2022, wherein it was found that, while employed as a night crew manager during a cumulative period ending August 4, 2014, applicant sustained industrial injury to his knees, lumbar spine, psyche, and in the forms of hypertension, gastroesophageal reflux disorder, and sleep disturbance. As relevant to the instant Petition for Reconsideration it was found that "Good cause has not been established to order an additional QME panel in the specialty of psychiatry to address applicant's residual psychiatric impairment as a result of his work injury," and "Applicant is not entitled to a psych panel based on Labor Code Section 4660.1(c)(2)(B) as applicant did not sustain a catastrophic injury."

Applicant contends that the WCJ erred in finding that applicant did not sustain a catastrophic injury for purposes of Labor Code section 4660.1(c)(2)(B) and in not allowing applicant to be evaluated by a psychiatric panel qualified evaluator. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will grant reconsideration and amend the WCJ's decision to find that applicant is entitled to a panel qualified medical evaluator in psychiatry and to defer the issue of whether applicant has sustained a catastrophic injury for purposes of Labor Code section 4660.1(c)(2)(B).

Labor Code section 4660.1(c) states:

- (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.

Applicant contends he has a “catastrophic injury” pursuant to subdivision (c)(2)(B). In *Wilson v. State of California* (2019) 84 Cal.Comp.Cases 393 (Appeals Bd. en banc), we enumerated certain factors that the trier of fact could consider in determining whether an injury was catastrophic. Among the factors was “The ultimate outcome when the employee’s physical injury is permanent and stationary.” (*Id.* at p. 415.)

Here, the issue of permanent disability has been deferred, and thus it is premature to consider the issue of catastrophic injury, given that the “ultimate outcome” of the injury has not yet been determined. We therefore defer the issue of whether applicant’s injury was catastrophic until applicant’s permanent disability is ripe for determination.

While the issue of catastrophic injury remains pending, we find the applicant entitled to a psychiatric panel qualified evaluation. “Discovery is permissible if the requested information is ‘not privileged,’ ‘is relevant to the subject matter involved in the pending action,’ and ‘appears reasonably calculated to lead to the discovery of admissible evidence.’ [Citations.] ‘In *Pacific Tel. & Tel. Co. v. Superior Court* (1970) 2 Cal. 3d 161, 173, it was stated: “... the relevance of the subject matter standard must be reasonably applied; in accordance with the liberal policies underlying the discovery procedures, doubts as to relevance should generally be resolved in favor of permitting discovery [citation].”” (*Ameri-Medical Corp. v. Workers’ Comp. Appeals Bd. (Lizzi)* (1996) 42 Cal.App.4th 1260, 1287 [61 Cal.Comp.Cases 149].)

While, as the WCJ states in the Report, there is currently no dispute regarding compensability of the psychiatric injury or any allegation of psychiatric temporary disability, given the liberal scope of discovery, a psychiatric panel could shed light on the issue of whether applicant has sustained a direct psychiatric injury or whether he has sustained any psychiatric temporary

disability. Additionally, to the extent that it is determined that applicant has sustained a catastrophic injury after the “ultimate outcome” of his physical injury is known, any psychiatric permanent disability would be ready to be rated.

We therefore grant reconsideration and amend the Findings of Fact and Orders of May 3, 2022 to reflect that applicant is entitled to a psychiatric qualified medical evaluation and to defer the issue of whether applicant has sustained a catastrophic injury for the purposes of Labor Code section 4660.1(c)(2)(B). We express no opinion regarding the ultimate resolution of this or any other issue.

For the foregoing reasons,

**IT IS ORDERED** that that Defendant’s Petition for Reconsideration of the Findings of Fact and Orders of May 3, 2022 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers’ Compensation Appeals Board that the Findings of Fact and Orders of May 3, 2022 is **AMENDED** as follows:

**FINDINGS OF FACT BASED ON STIPULATIONS**

1. MARK PEREZ, while employed during the period 08-27-1987 through 08-04-2015 as a Night Crew Manager at Scotts Valley, California, by RALEYS FINE FOODS, PSI, administered by CORVEL CORPORATION sustained injury arising out of and occurring in the course of employment to his left knee, right knee, lumbar spine and psyche as a compensable consequence of the orthopedic injuries and claims to have sustained injury arising out of and in the course of employment in the form of hypertension, GERD, and sleep disturbance.
2. The issues of earnings, temporary disability rate and permanent disability rate are deferred.
3. The issue of temporary disability is deferred.
4. The issue of permanent disability is deferred.
5. The employer has furnished some medical treatment.
6. The primary treating physician is Dr. Panchal.
7. No attorney fees have been paid and no attorney fee arrangements have been made.

**FINDINGS OF FACT BASED ON EVIDENCE**

8. Applicant sustained further injury as a compensable consequence of his orthopedic injury in the forms of hypertension, GERD, and sleep disturbance.

9. Applicant is entitled to an additional QME panel in the specialty of psychiatry.

10. The issue of whether applicant has sustained a catastrophic injury for the purposes of Labor Code Section 4660.1(c)(2)(B) is deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ MARGUERITE SWEENEY, COMMISSIONER**

**I CONCUR,**

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

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**July 25, 2022**

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

**MARK PEREZ  
SPRENKLE & GEORGARIOU  
LAUGHLIN, FALBO, LEVY & MORESI**

**DW/oo**

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