

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

MOHAMED MADOW, *Applicant*

vs.

**HERTZ CORPORATION and ACE AMERICAN INSURANCE COMPANY administered
by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ4345384 (SDO 0356830)
San Diego District Office**

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

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on June 16, 2022, wherein the WCJ found in pertinent part that as a result of the July 2, 2006 industrial injury, applicant is permanently totally (100%) disabled.

Defendant contends that the reports of Vocational Expert Mark Remas are not substantial evidence and do not rebut the rating schedule, that the award for future medical treatment for applicant's back and bilateral below the knee amputations is not supported by the findings, that the F&A needs to be clarified regarding commutation of the attorney fees awarded, that the parties stipulated that applicant's earnings were \$535.31 per week, and that the previous Appeals Board rule 10075 has been re-numbered as rule 10844.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be granted for the limited purpose of amending the Findings to correct various clerical errors.¹ We received an Answer from applicant.

¹ We note that some of the clerical errors are in the Opinion on Decision. However, statements in an Opinion on Decision are not findings of fact, their purpose is to explain the basis for the decision. (See Lab. Code § 5313; *Twentieth Century-Fox Film Corp. v. Workers' Comp. Appeals Bd.*, (1983) 41 Cal.App.3d 778 [48 Cal.Comp.Cases 275].) Therefore, those clerical errors will not be amended or otherwise addressed herein.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will grant reconsideration, rescind the F&A and substitute a new Findings and Award, whereby we will affirm the finding of 100% permanent disability and we will correct the clerical errors identified by the WCJ.

BACKGROUND

Applicant initially claimed injury to his left elbow while employed by defendant as an auto detailer on July 2, 2006, and subsequently claimed injury to his neck, left shoulder, left forearm, left wrist, right shoulder, psyche, heart, upper and lower gastrointestinal system, and in the form of dermatitis, all as a consequence of his left elbow injury.

Applicant was evaluated by psychology qualified medical examiner (QME) Haim Belzer, Ph.D., internal medicine QME Ira Fishman, M.D., chiropractic QME Wayne M. Whalen, D.C., and dermatology QME John F. Sheba, M.D. Applicant was also evaluated by two vocational consultants, Mark Remas for applicant and Kelly Winn for defendant.

The parties proceeded to trial on March 23, 2022. The parties stipulated that applicant received injury arising out of and occurring in the course of employment (AOE/COE) his neck, left shoulder, elbow, forearm, wrist, right shoulder, psyche, heart, upper and lower gastrointestinal system, and in the form of dermatitis. Minutes of Hearing and Summary of Evidence (MOH/SOE), March 23, 2022, p. 2.) The WCJ's summary of applicant's testimony includes:

Mr. Madow has pain in his left arm all the way to the thumb. It is there all the time, and the pain goes from a 7 to a 10. He could only lift a cup of coffee or a glass of water with his left hand. He has weakness in his hand. He is unable to do repetitive activity with his hand. He also has pain in his neck. The pain is there all the time. It goes from a 6 to a 10. It causes headaches, and he also has restricted range of motion, and he has to turn his entire body to see behind him or to either side. Reading the paper hurts his neck also. His right shoulder hurts because he has to do all the work with his right side. The pain goes and comes but is not as bad as the left. He feels pain every day. He does not really avoid activities, but he uses his right arm for pretty much everything. He does not put a limitation on the use of his right arm. ¶ ... He has a lot of pain, and he takes medications for pain, and these include hydrocodone with acetaminophen, 325 milligrams per tablet. He takes two pills three times a day. The drugs make him sleepy and tired. He takes two pills at a time: The a.m., at noon, and at night. He also takes meloxicam for pain.

(MOH/SOE, March 23, 2022, pp. 5 – 6.)

Mr. Madow clarified that he does not believe that he could be retrained at this time because of his pain, his headaches, and his dizziness, but if he did not have those problems, he would be willing to be rehabilitated.
(MOH/SOE, p. 8.)

DISCUSSION

We first note that the WCJ's finding that applicant was permanently totally disabled was based on "the fully credible and unrebutted testimony of the applicant and the reports of Mark Remas, Vocational Expert..." (F&A, p. 6, Opinion on Decision; see also Report, p. 4.) It has long been established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358].) Also, having reviewed the reports from Mark Remas it is clear that Mr. Remas reviewed the medical-legal reports that were subsequently admitted into evidence, he reviewed the reports from defendant's vocational consultant Kelly Winn, and he explained his reasoning and analysis in reaching his conclusion that applicant has a "100% loss of his future earning capacity" and "he meets the criteria of total permanent disability." (App. Exh. 1, Mark Remas, August, 24, 2017, p. 21.) Further, we agree with the WCJ that in her reports defendant's vocational consultant, Kelly Winn appears to minimize the "severe limitations" described in the various QME medical-legal reports. Therefore the reports of Ms. Winn are not substantial evidence upon which a finding could be based. (F&A, p. 6, Opinion on Decision; see also Report, p. 6.) Based on our review of the trial record, including the reports from Mr. Remas and Ms. Winn, as well as the medical-legal reports from Drs. Belzer, Fishman, Whalen, and Sheba, we see no error in the WCJ's analysis regarding the issues submitted for decision, and in turn there is no basis for disturbing her decision.

Regarding defendant's arguments: The fact that Mr. Remas performed a remote interview of applicant and did not meet him personally, has no legal effect. Defendant cites no legal authority for its argument and we note that the trial was conducted via videoconference, with no objection from defendant. The argument that there was no Somali interpreter present when Mr. Remas interviewed applicant appears to ignore the fact that there was no interpreter for any of the DWC hearings including the March 26, 2022 trial. As noted by the WCJ ... "[A]pplicant did not need an interpreter and his linguistic skills are not a factor to be considered for vocational non-feasibility." (Report, p. 3.) As to applicant's prior training in computer repair and electronic assembly,

applicant testified that, “In 1995, he trained to be an electronic assembler. ... It included radio and computer repair.” (MOH/SOE, p. 8) Neither of the vocational consultants suggest that in the context of his current physical and mental symptoms, applicant’s training in 1995 would enable him to perform work in electronic assembly or computer repair. Again, there is no legal or factual support for defendant’s argument.

Finally, the term “clerical error” includes all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. The Appeals Board may correct a clerical error at any time without the need for further hearings, even after the statutory time for reconsideration is passed. (*Toccalino v. Workers’ Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543 [47 Cal.Comp.Cases 145].)

Accordingly, we grant reconsideration, rescind the F&A and substitute a new Findings and Award, whereby we affirm the finding of 100% permanent disability and correct the clerical errors as recommended by the WCJ.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on June 16, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 16, 2022 Findings and Award is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant MOHAMED MADO, while employed as an auto detailer on or about July 2, 2006, at San Diego, California, by HERTZ CORPORATION sustained injury arising out of and occurring in the course of employment to his neck, left shoulder, left elbow, left forearm, left wrist, right shoulder, psyche, heart, upper gastrointestinal system, lower gastrointestinal system and in the form of dermatitis; applicant did not sustain injury arising out of and in the course of employment to his back, and/or bilateral legs in the form of below the knee amputations.
2. At the time of the injury, the employer's workers' compensation carrier was ACE AMERICAN INSURANCE COMPANY administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC.
3. At the time of injury, applicant's earnings were \$535.31 per week warranting indemnity rates of \$356.87 for temporary disability and the maximum rate under the law for permanent partial disability.
4. Applicant has been adequately compensated for all periods of temporary disability.
5. The employer/carrier has furnished some medical treatment.
6. No attorney fees have been paid, and no attorney fee arrangements have been made.
7. Defendant's last payment of temporary disability indemnity was made on April 2, 2009; applicant's condition became permanent and stationary on July 21, 2015.
8. Applicant is entitled to the 15% increase in the weekly permanent disability indemnity rate pursuant to Labor Code section 4650(b).
9. Applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein.

10. The July 2, 2006 injury caused 100% permanent disability.
11. The permanent total disability indemnity payments at the weekly rate of \$356.87 commence as of April 3, 2009, subject to the application of the State Average Wage COLA adjustments, less credit for any sums heretofore paid on account thereof, and less attorney fees as awarded herein.
12. Applicant's attorney has performed services with a reasonable value in the amount equal to 15% of the amount awarded as permanent disability indemnity; said attorney fee is to be commuted pursuant to a DEU Uniformly Increasing Reduction Method commutation to be requested by the parties; jurisdiction is reserved.
13. Applicant's Amended Petition for Costs sets forth an adequate basis and constitutes good cause for reimbursement in the amount of \$4,050.00.

AWARD

AWARD IS MADE in favor of MOHAMED MADDO and against ACE AMERICAN INSURANCE COMPANY administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., as follows:

- (A) Permanent disability indemnity at the rate of \$356.87, subject to the application of the State Average Wage COLA adjustments, beginning April 3, 2009, and continuing thereafter for the duration of applicant's life, said rate will be reduced based on the commutation of attorney fees in the amount equal to 15% of the permanent disability indemnity awarded herein.
- (B) All further medical treatment reasonably required to cure or relieve from the effects of the injury to applicant's neck, left shoulder, elbow, forearm, wrist, right shoulder, psyche, heart, upper and lower gastrointestinal system, and skin for treatment of the dermatitis.

(C) Reimbursement of costs of litigation in the amount of \$4,050.00 to be paid directly to applicant's attorney, Kiwan Chambers.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 6, 2022

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

**MOHAMED MADOW
KIWAN & CHAMBERS
LAUGHLIN, FALBO, LEVY & MORESI**

TLH/pc

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