

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

REFUGIO ANGUIANO, *Applicant*

vs.

**SECURITAS SECURITY SERVICES, Permissibly Self-Insured, Administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ7678058 (MF), ADJ7678033
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We granted reconsideration to further study the factual and legal issues presented in this case. We now issue our Opinion and Decision After 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 rescind the WCJ's decision as recommended in the Report, and return the matter to the WCJ for further proceedings consistent with this opinion. When the WCJ issues a new decision, any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the WCJ's decision of February 21, 2020 is **RESCINDED** and this matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 25, 2022

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

**REFUGIO ANGUIANO
GORDON, EDELSTEIN, KREPACK, GRANT, FELTON & GOLDSTEIN
THE OAKS LAW GROUP, INC.**

AS/ara

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

Under ADJ7678058, defendants admit injury to heart, neuro/stroke, psych and gastrointestinal with no dispute regarding any body parts at the time of Trial. Disputed issues at Trial were temporary disability, permanent disability and apportionment, occupation group number and attorney's fees. On January 21, 2020, Formal Rating Instructions and ratings were served. On January 28, 2020, applicant timely submitted Motion to Strike Recommended Rating. On February 3, 2020, Amended Formal Rating Instructions and ratings were served.

On February 21, 2020, this WCJ issued Findings of Fact & Award, and Opinion on Decision on ADJ7678058.

On February 26, 2020, this WCJ went out on disability to undergo left hand surgeries.

On March 12, 2020, applicant filed a Petition for Reconsideration appealing this WCJ's findings regarding permanent disability and apportionment only. On March 26, 2020, defendants submitted Defendant's Answer to Applicant's Attorney's Petition for Reconsideration.

On May 8, 2020, this WCJ was released to modified duties, hence the delay in submit this Report and Recommendation.

III. **DISCUSSION**

The parties presumably choose an AME because of the AME's expertise and neutrality. (Power v. Workers' Comp. Appeals Bd. (1986) 179 Cal. App. 3d 775, 782; 51 Cal. Comp. Cases 114) Ordinarily, we will follow the opinions of the AME unless good cause exists to find the AME's opinion unpersuasive. (*Ibid.*)

In this case, after review of applicant's Petition for Reconsideration and further review of the evidence, this WCJ agrees that the opinions of Richard Hyman, M.D., the AME in the field of internal medicine, are in fact not substantial evidence.

Furthermore, Dr. Richman, in his May 1, 2017 report (Joint Exhibit V), apportioned 100% of applicant's neurologic impairment to the stroke on July 10, 2015. At the time of his cross-examination on December 4, 2017 (Joint Exhibit X), he confirmed that the stroke was related to the atrial fibrillation due to its embolic nature but he refused to address apportionment of applicant's neurologic disability independent from Dr. Hyman's opinions. Based on the medical evidence, there is no doubt that the stroke was the causation of applicant's neurologic injury but Dr. Richman must address causation of applicant's neurologic disability, which he kept on punting to either the Trier-of-Fact or Dr. Hyman. Dr. Richman's opinions regarding causation of disability are not substantial medical evidence either.

As this WCJ was on disability when applicant's well-reasoned and persuasive Petition for Reconsideration, dated March 12, 2020, was filed, this WCJ did not have an opportunity to rescind the Findings of Fact & Award.

IV.
RECOMMENDATION

It is respectfully recommended that applicant's Petition for Reconsideration be granted, that the Findings of Fact & Award, dated February 21, 2020, be rescinded, and that the matter be remanded to the Trial level for further determination and/or development of the record, if necessary.

Dated: 5/13/2020

IVY W. MI
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE