

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

RHONDA ROBINSON, *Applicant*

vs.

**UNIVERSITY OF CALIFORNIA AT BERKELEY;
SEDGWICK CMS, *Defendants***

**Adjudication Numbers: ADJ8222844; ADJ10843970; ADJ8827855; ADJ8971975
Oakland 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/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 9, 2022

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

**RHONDA ROBINSON
LAW OFFICES OF ROBERT WOOD
LAUGHLIN, FALBO, LEVY & MORESI**

AH/cs

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 RECON

I. INTRODUCTION

Dates of Injury:

- **ADJ8222844**: DOI 11-27-2007 injury to back, neck, bilateral knees, and shoulders, accepted injury.
- **ADJ10843970**: DOI 09-08-2011, injury to right groin/thigh, accepted injury.
- **ADJ8827855**: cumulative trauma to 12-10-2012, for the bilateral wrists, accepted injury.
- **ADJ8971975**: cumulative trauma psychiatric injury ending 12-07-2012, injury denied.

Occupation: financial analyst III, occupation group number 111
Petitioner: Defendant, University of California at Berkeley, p.s.i.
Timeliness: The petition, filed on 06-10-2022, is timely
Verification: The petition is verified

Petitioner's Contention: Defendant contends the QME Dr. Allan Kipperman's opinion that he cannot apportion causation of disability between multiple injuries because applicant's various causes of disability are "inextricably intertwined" is conclusory and not substantial medical evidence.

II. BACKGROUND

Applicant suffered four injuries and a joint Findings and Award and Opinion on Decision issued on 05-19-2022 awarding applicant 100% permanent disability overall for all four cases. Applicant's three orthopedic claims case numbers ADJ8222844, ADJ10843970, and ADJ8827855 were accepted and not contested at trial. The fourth claim, case number ADJ8971975 is a cumulative trauma psychiatric injury ending 12-07-2012, wherein Dr. Allan L.Kipperman was selected as QME when applicant was unrepresented. Dr. Kipperman reported extensively on the facts of applicant's environment of harassment, including bullying and documented disparate treatment while she was working for capital projects department through the date of injury. Based on extensive records review, testing results, evaluation and reevaluation, Dr. Kipperman concluded that applicant sustained psychiatric injury due to the work environment. Dr. Kipperman also felt applicant's psychiatric impairment was the result of both emotional psychological ramifications of the work environment and sequela from the orthopedic injuries as well as compensable consequence conditions that are all intertwined. In the decision, 33 separate situations of harassment are found. Any contention by defendant that any of the incidents is a good faith

personnel action is rejected based on applicant's uncontroverted testimony and documentation admitted at trial. Despite full opportunity to question the QME, the QME's deposition testimony and his supplemental reports explain why the injuries are "inextricably intertwined." As the record and the Petition for Reconsideration contains no viable theory of apportionment, there is no basis for further development of the record.

This report highlights the QME's report of 07-23-2021, admitted as Joint Exhibit 102, which addressed the "inextricably intertwined" opinion. To ensure that all the important factors of this complex trial are considered, I also include my entire Opinion on Decision and implore the Appeals Board to deny defendant's petition without delay.

No answer has been filed.

III. DISCUSSION

QME Dr. Kipperman reported on this case from 2013 to 2021. The QME issued eight reports, joint exhibits 101 to 108. There are two deposition transcripts for Dr. Kipperman dated 08-04-2020 admitted as exhibit I and 02-25-2021 admitted as exhibit J. There is no doubt that Dr. Kipperman performed thorough records review and evaluation of applicant. Dr. Kipperman found applicant credible and she was deemed very credible at trial.

In the initial report of 09-19-2013, exhibit 108, Dr. Kipperman finds psychiatric injury AOE/COE and impairment due to both psychiatric injury and the orthopedic injuries. (Ex. 108 at 64-65. There is no apportionment to non-industrial factors. (Ex. 108 at 20.) During the first deposition, the QME reiterates the disability due to both orthopedic and psychiatric injuries. (Ex. I at 20.) He states he cannot apportion between the injuries. (Ex. I at 21.)

Defendant requested further clarification as to why the QME could not apportion and Dr. Kipperman issued the report of 07-23-2021, admitted as exhibit 102. Defendant's advocacy letter is partially summarized in exhibit 102 and defendant notes that the orthopedic AME Dr. Warbritton found apportionment of 10% for the low back disability and 50% apportionment for the bilateral knees. In response, Dr. Kipperman explained:

"Ms. Robinson's permanent psychiatric impairment flowed out of emotional, psychological ramifications and sequelae to the **aggregate of her orthopedic infirmities as well her compromised activities of daily living**.

"Additionally, psychiatric **compensable consequences** of Ms. Robinson's psycho-physiological manifestations of anxiety and depression include chest pain, hypertension, shortness of breath, tachycardia, dizziness, gastrointestinal problems,

urinary incontinence, eczema, sleep apnea, and sexual dysfunction. These psycho-physiological manifestations of Ms. Robinson's anxiety and depression are also contributory factors in the pathogenesis as well as the etiological basis of her permanent psychiatric disability.

"Mr. Robinson's psychiatric impairment is in fact so inextricably intertwined that I am unable to parcel out with reasonable medical certainty the approximate percentages to which her initial industrial injury or each successive injury casually contributed to her overall residual permanent partial psychiatric impairment and in fact my medical-legal analysis of apportionment is not commensurate with Dr. Warbritton." (Ex. 102 at 2, emphasis added.)

Each of these incidents and injuries contributed to the manifestation or manner of development ("pathogenesis") of applicant's psycho-physiological symptoms which forms the basis for her impairment and resulting 100% permanent total disability. Dr. Kipperman finds a "severe chronic pain syndrome," compromised activities of daily living (ADL's) and neurocognitive deficits rendering applicant unable to work. (Ex. 102 at 3-4.) The symptoms forming the basis for the impairment include: anxiety, depression, chest pain, hypertension, shortness of breath, tachycardia, dizziness, gastrointestinal problems, urinary incontinence, eczema, sleep apnea, and sexual dysfunction. (Id.) Moreover, as applicant has not received treatment despite the passage of eight years from the first evaluation to the last report, Dr. Kipperman states there is "no way of knowing whether or not treatment will make a vocational rehabilitation effort viable." (Ex. 102 at 4.)

In sum, the facts and factors involved in this case are numerous and complex. There are two specific injuries involving the neck, bilateral knees, shoulders, and right lower extremity and there is a cumulative injury involving applicant's bilateral wrists. Applicant never fully recovered from any of these injuries. Subsequently, applicant endured no less than 33 forms of injurious stressful incidents, many of which spanned several months or years. In addition, there are compensable consequence conditions. The sum of all of these factors is greater than the parts.

The burden of proof on apportionment is borne by defendant. As noted above, the record and the Petition for Reconsideration contains no viable theory of apportionment. There is no indication that another physician would be able to separate out the specific injuries from the cumulative injuries from the compensable consequence conditions. There is only one defendant for these cases which result in 100% total disability for this long-term employee. There is no basis for further development of the record. As such, the findings below should be affirmed:

OPINION ON DECISION

The cases at issue involve claims for orthopedic and psychiatric injuries filed by Applicant Rhonda Robinson against Employer University of California, Berkeley. By way of background, Applicant began her employment with the employer in 2002 in the procurement group as an administrator of the Visa card used across the campus by different departments to purchase items. She then moved to the Center for Transportation Studies in an administrative position. She became a financial analyst in the budget and finance group and worked for the help desk servicing the entire campus.

In 2007, applicant started working for the capital projects department as a financial analyst. John Zilber was the hiring manager and applicant's direct supervisor. Applicant worked for capital projects until 2014. Ultimately, applicant stopped working for U.C. in February of 2016.

Applicant suffered four injuries addressed at trial. Applicant's three orthopedic claims were accepted and are not contested. The contested claim is case number ADJ8971975, a cumulative trauma psychiatric injury ending 12-07-2012 based on an environment of harassment, bullying, and disparate treatment while working for capital projects department. This claim is denied and remains disputed by the employer.

1. Accepted Orthopedic Injuries

In case number ADJ8222844, for date of injury 11-27-2007, applicant sustained injury to the back, neck, bilateral knees and shoulders. She was coming from a meeting regarding Doe Library when a student on a bicycle hit her from behind. It was an extremely hard impact, as he was coming downhill on Oxford Street with quite a bit of speed. The bike wheel went between her legs, the pedal was in her knee, and the handlebars hit her. The bike picked her up, and it was like a hit and then whiplash. She injured her knees, legs, spine meaning her back including the lower and upper, neck, and shoulders. This injury and all the body parts are accepted. The parties agree that based on AME Dr. John Warbritton, the back rates 18% permanent disability, the neck rates 3% permanent disability and the knees each rate 1%, for a combined permanent disability rating of 22%.

In case number ADJ10843970, for date of injury 09-08-2011, the right groin/thigh is accepted. On the date of injury, applicant slipped and fell due to water on the bathroom floor,

which was a known problem. She ended up doing the splits and injured her groin. According to AME Dr. Warbritton, the rating is 5% permanent disability.

In case number ADJ8827855, applicant sustained a cumulative trauma injury ending 12-10-2012 to the bilateral wrists. This injury was due to daily keyboarding and mousing, and because of extra work assignments. She first started noticing symptoms prior to filing a claim, as she was having problems with the mouse. The ergonomics department assisted her and advised to start using the mouse with her left hand. The parties stipulated that according to AME Dr. Warbritton, the left wrist rates 2% and the right wrist rates 16% and the combined permanent disability is 34%.

For all of the orthopedic injuries, the parties stipulated to a permanent and stationary date of 05-17-2013 based on Dr. Warbritton.

As the result of the orthopedic injuries, applicant lost time from work intermittently and also attended a chronic pain clinic at Kaiser for five weeks. (MOH/SOE 02-01-2022 at 13: lines 43-45; 14: lines 37-33.)

There is a need for medical treatment as the result of the orthopedic injuries.

2. Psychiatric Injury AOE/COE

Applicant also alleges psychiatric injury from the orthopedic injuries and psychiatric injury from a hostile work environment. Applicant was initially unrepresented and the QME is Dr. Allan L. Kipperman. In December of 2012, applicant filed a claim for psychiatric injury and the cause of this claim was her work at capital projects when there was a “change in attitude” toward her at the behest of supervisor Mr. John Zilber. (MOH/SOE 02-01-2022 at 15: lines 17-24.) The period of injurious exposure is 2008 through 2012. (Id. at 15: lines 34-47.) The QME first evaluated applicant on 09-09-2013 when she was in pro per and then proceeded to issue eight reports plus sat for two depositions until the last report in 2021.

QME Dr. Kipperman developed “rapport” with applicant and described her sincere and ashamed, embarrassed, and self-conscious about revealing her emotional state. (Ex. 108 at 36, 62; Ex. 104 at 4.) There is no doubt that Dr. Kipperman found applicant credible and her testimony over two days of trial is consistent with the extensive reporting of Dr. Kipperman. Applicant was an extremely credible witness at trial.

As the result of the initial examination in 2013, Dr. Kipperman opines that actual events in the workplace meet the predominant cause threshold requirement; this includes both the workplace environment and the orthopedic injuries. (Ex. 108 at 63.) Applicant’s initial GAF score was 51.

(Ex. 108 at 61.) At the time of the report, applicant was deemed temporarily disabled. (Ex. 108 at 63.) Dr. Kipperman's permanent and stationary report is as of 07-19-2019 and his final GAF score is 41. (Ex. 104 at 16.)

Defendant argues a denial of this case based on a good faith personnel action. However, defendant does not specify which particular acts would qualify for the good faith personnel defense. In his first report, Dr. Kipperman describes an extensive list of hostile situations while applicant worked in capital projects. Dr. Kipperman found applicant credible on her own behalf, and this is evident from her presentation at trial. The situations upon which Dr. Kipperman bases his findings are as follows:

1. When applicant started under Mr. Zilber, she did not receive training. (Ex. 108 at 5.)
2. Applicant spoke to Sue who had previously worked in applicant's position and Sue reported that the culture in the department was hostile, she was treated badly and felt depressed, cried all the time and was fortunate to find another job. (Ex. 108 at 5.)
3. There was a hostility between the accounting group and the analyst group. (Ex. 108 at 6.)
4. There was conflict working with the contract office, where the incumbent employees were long-term and "territorial" and did not like analysts asking questions. (Ex. 108 at 6.)
5. Ongoing problems with Pam Sashagawa, a senior contract administrator who was a long-term employee who took charge of applicant's job duties and then bad mouthed applicant as ignorant of her job and would not speak or look at applicant resulting in applicant's feelings of isolation and humiliation. (Ex. 108 at 7-9; Ex. 15 at 1-2.)
6. Mr. Zilber's refusal to address Ms. Sashagawa's assumption of applicant's job duties. (Ex. 108 at 9.)
7. Applicant having to clean up /reconcile/fix Ms. Sashagawa's mistakes. (Ex. 108 at 9.)
8. Being instructed by supervisor Zilber to "grovel" in an effort to build a relationship with her peers. (Ex. 23; Ex. 28.)
9. Comments from a new hire in accounting named Annette asking applicant, "Why do they all hate you so much" and stating all the employees do "is sit here and talk bad about you." (Ex. 108 at 10.)
10. Comments from coworker Sally McGarrahn that Mr. Zilber was "foaming at the mouth" to have Ms. McGarrahn choose another analyst by stating bad things about applicant and asking applicant "Why does he hate you so much?" (Ex. 108 at 10, 18-19.)
11. Applicant's further isolation because some coworkers have never spoken to her, despite her being a senior analyst. (Ex. 108 at 11.)
12. A 2009 performance evaluation wherein Mr. Zilber told applicant "No one likes you" and warned her to stay away from others and subsequently did not provide any supervision to applicant. (Ex. 108 at 11, 15, 17; Ex. 25; MOH/SOE 03-28-2022 at p. 6: 30-32; p. 6: 41 to 7:4; 10:20-27.)
13. Having a very heavy workload and a comment by a project manager that Mr. Zilber "thinks he's going to load you up with all this work so you can't succeed." (Ex. 108 at 12.)
14. An incident in 2011 when Mr. Zilber shoved applicant in the shoulder, even after she was moving to get out of his way and subsequent feedback from Human Resources that she had

- no remedy, as he denied the incident and there were no witnesses. (Ex. 108 at 13; Ex. 15 at 2.)
15. Being assigned to a cold, drafty cubicle with a sloped floor after a physical injury, and the employer taking three years to address this problems and being required to provide doctor's notes. (Ex. 108 at 13; (MOH/SOE 03-28-2022 at 7:22-41; Ex. 15 at 2.)
 16. Having to fill out a form to request a new chair to replace an ancient chair when another co-worker Gerald only had to verbally ask for a new chair. (Ex. 108 at 14.)
 17. Being denied telework on a casual basis and filing a complaint resulting in formal resolution and a telecommute contract. (Ex. 108 at 14, 20; Ex. 22; MOH/SOE 03-28-2022 at 7:43 to 8:21; 11:7-16.)
 18. Disparate salary compared to a co-worker with no degrees and no experience; complaint about salary discrepancy which was ultimately resolved in applicant's favor. (Ex.108 at 15; Ex. 19; Ex. 21; Ex. 24; Ex. 26; Ex. 27)
 19. Accounting manager Shavani yelling at applicant over the phone in 2010. (Ex. 108 at 15; MOH/SOE 03-28-2022 at 10:29-38.)
 20. Being told by co-workers Janine Stewart and Yolanda Aguilar that the accounting manager Shavani Bhatia instructed her staff during a staff meeting not to work with applicant and not to answer applicant's questions. (Ex. 108 at 17; Ex. 15 at 2.)
 21. Being uninvited by Mr. Zilber to monthly staff meetings. (Ex. 108 at 17; Ex. 15 at 2.)
 22. Being told by supervisor Robert Bluhm in 2013 that the contracts manager complained about applicant's tone and that applicant was a bully. (Ex. 108 at 18, 24-25.)
 23. Being pushed in the bathroom in August 2010 to Dorothy Costello. (Ex. 108 at 19; Ex. 15 at 3.)
 24. Being touched in the bathroom by Maria Fong-Pedro and raising a complaint about this. (Ex. 20.)
 25. Assisting accountant Sanae in November 2010 then having Sanae comment, "If I were you, I would cry all the time" as the result of applicant's situation. (Ex. 108 at 19; Ex. 15 at 3.)
 26. An HR employee named Faith told applicant she was on a "black list" and could not get another job. (Ex. 108 at 26; MOH/SOE 02-01-2022 at 18: lines 17-20.) In fact, applicant interviewed for fifty jobs without success. (MOH/SOE 02-01-2022 at 18: lines 17-20.)
 27. A hostile environment where co-workers actively avoided applicant. (MOH/SOE 03-28-2022 at 11:26-35; Ex. 15.)
 28. Being pushed by Donna Glover, the accountant just after applicant returned from a five-week leave for chronic pain. (Ex. 108 at 19; Ex. 15 at 3.)
 29. Comments from her boss including "you think you're smarter than everybody" and "you will never be like Jay Chaves" and "I decided not to have anything to do with you." (Ex. 108 at 21; Ex. 15 at 3.)
 30. Not receiving investigation results or reports from Human Resources regarding telecommute as a reasonable accommodation and salary equity. (Ex. 108 at 22; MOH/SOE 03-28-2022 at 11: lines 7-16; Ex. 18.)
 31. Being told by Gale Allen, secretary, to hold her head up so people do not see how sad she (applicant) is. (Ex. 15 at 3.)
 32. Staff being told by Associate Director Sandra Beck that, "I will yell at you" and "I might yell at you later" because "that's just how I communicate." (Ex. 16 and 17.)
 33. The lunch in the break room as applicant was eating salad from her garden and co-worker Gale Allen started taunting applicant about her food. Applicant's request for Ms. Allen to

stop were ignored and when applicant attempted to leave the table, Ms. Allen said to come back because “I’m not done with you” in a strong tone. Applicant flung her water on Ms. Allen. As a result, the department called the police who questioned applicant and she was suspended without pay. Sometime later, Ms. Allen apologized to applicant. (Ex. 108 at 12; MOH/SOE of 02-01-2022 at 18:lines 30 –19:3.)

Exhibits 14 and 15 are applicant’s email notice of 01-10-2014 and 4-page letter to the Office for the Prevention of Harassment and Discrimination dated 01-10-2014 notifying the employer of a harassment and discrimination complaint comprised of the facts above, and reviewed by Dr. Kipperman. (Ex. 108 at 46-58.)

Dr. Kipperman opines that applicant’s psychiatric injury is compensable due to the actual events delineated by applicant which caused cumulative stress and strain in addition to her orthopedic injuries. (Ex. 108 at 63, 66.) Dr. Kipperman opines that applicant “could not repeatedly experience these types of events without feeling profoundly violated and abused.” (Ex. 108 at 65.) As the result of the emotional injury, applicant reports depressed mood, crying spells, social isolation and withdrawal, malaise and fatigue, anhedonia, diminished self-confidence and self-esteem, passive suicidal ideation, feeling of helplessness, loss of libido, anxiety, mood lability, agitation, short-temperedness and irritability, low frustration tolerance, angry outbursts, interruptions in eating and sleeping patterns, worries about the future, cognitive dysfunction in form of short-term memory, diminished ability to concentrate or focus or multitask, in addition to physical manifestations including hypertension, chest pain, eczema, sexual dysfunction, digestive issues, sleep apnea, and urinary incontinence. (Ex. 108 at 62.)

Based on the QME and affirmed during uncontroverted and credible testimony at trial, applicant has met her initial burden of proof under Labor Code section 3208.3 to show by a preponderance of evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. The cause of the psychological impairment is a combination of the effects of the accepted orthopedic injuries and the hostile work environment outlined above.

The psychiatric injury remains denied under Section 3208.3(h) on the premise that the injury was substantially caused by lawful, non-discriminatory good faith personnel action. Labor Code section 3208.3 defines a substantial cause as 35-40% of the sources combined. Defendant does not clearly delineate which of the incidents above constitutes good faith personnel actions. Applicant testified credibly under oath and without rebuttal evidence. The personnel actions

numbers 1 to 32 above constitute actual events of employment and do not involve any plausible good faith personnel actions by the employer.

Assuming *arguendo* that incident number 33 above involved a personnel action by way of suspension for applicant throwing water on a co-worker, the uncontroverted facts show that applicant was provoked and received an apology by the offending party. Applicant was suspended from work but there is nothing in the record to show that that the suspension caused stress in excess of any other personnel incident in the record. If anything, applicant was traumatized by the employer's act of calling the police to question her. Nothing in the record warrants police involvement and there is nothing in the record to show this was appropriate under the circumstances. Against the multitude of incidents, this one incident does not constitute a substantial portion of applicant's impairment as required to invoke the good faith personnel defense.

On 06-23-2021, defendant requested that Dr. Kipperman address the issue of apportionment found by Dr. Warbritton as well as apportionment on a psychiatric basis between the multiple distinct orthopedic injuries to different body parts and the hostile work environment injury. Dr. Kipperman declined to find any apportionment on the basis that applicant's "permanent psychiatric impairment flowed out of the emotional as well as psychological ramifications and sequelae to the aggregate of her orthopedic infirmities as well as her compromised activities of daily living as well as her neurocognitive deficits." (Ex. 102 at 3.) In fact, applicant "psychiatric impairment is in fact so inextricably intertwined that I am unable to parcel out with reasonable medical certainty the approximate percentages to which her initial industrial injury or each successive injury causally contributed to her overall residual permanent partial psychiatric impairment." (Ex. 102 at 3.) On a psychological basis, there is no apportionment to other factors and this is credible in light of applicant's professional technical positions held and length of tenure with the employer. Where the acts of employment and industrial injuries are the sole source of psychological impairment as is the case here, there is substantial medical evidence to form the basis for an award.

3. Temporary Disability Due to Psychiatric Injury, Need for Medical Treatment, and Permanent Disability Rating

Dr. Kipperman reevaluated applicant and issued a supplemental report dated 10-12-2016 with a GAF score of 45. (Ex. 107 at 32.) However, she is was not deemed to have reached a chronic plateau or maximal medical improvement. (Ex. 107 at 33-34.) At this time, Dr. Kipperman stated that he “cannot in good conscience find Ms. Robinson to be permanent and stationary on a psychiatric basis currently” but offered ratings for settlement purposes. (Ex. 107 at 34.) Applicant was ultimately deemed permanent and stationary with a GAF rating of 41, indicating a major depressive disorder, on 07-09-2019 as noted above, despite not receiving adequate treatment. (Ex. 104.) Based on the reporting of Dr. Kipperman, applicant is entitled to the maximum of 104 weeks of temporary disability for her psychiatric injury.

The QME opines that the GAF rating of 41 does not accurately represent applicant’s disability in this case. (Ex. 104 at 31.) In the final report, the QME states that applicant psychiatric and neurocognitive impairments are consistent with her award of Social Security Disability benefits as well as long-term disability which is “certainly consistent with my own disability formulations.” (Ex. 104 at 7, 31.) She is unable to work under the federal benefit scheme and should be viewed as being 100% disabled within the workers’ compensation disability rating guidelines. (Ex. 104 at 31.) In addition, to a neurocognitive rating, the QME provides a rating of 69% WPI for sleep disorder. As a result:

“When one steps back and takes an overview of Ms. Robinson’s residual impairments, both medical and physical, it becomes abundantly clear that she could not function in a work setting on a realistic and dependable basis.

“I do not believe that Ms. Robinson can return to gainful employment or compete in the open labor market with her current level of impairments. Ms. Robinson is currently limited to volunteer work or shelter employment.

“Ms. Robinson can live independently and she can marginally take care of her basic daily needs with assistance. However, this does not carry over into the realm of negotiating gainful employment. A vocational expert will be hard-pressed to find any employment situation that would be congenial to Ms. Robinson’s permanent disability impairments.

“I remain convinced that the extent and scope of Ms. Robinson’s current psychiatric, neurocognitive and medical impairments, preclude her from rising each morning, dressing, commuting to work, and working all day on a reliable and dependable basis. Given the severity of Ms. Robinson’s orthopedic infirmities, chronic pain, and neurocognitive deficits, any workplace environment is likely to be a source of stress and discouragement, which can easily undermine her stability and likely cause further deterioration of her self-esteem, rather than be therapeutic.

“Appearances can be deceptive and Ms. Robinson can certainly present herself at times in favorable light. However, the evaluations to date present a very unfortunate and tragic picture of a woman whose industrial exposure and whose industrial injuries have left her with severe impairments that make employment not feasible.

“With further evaluation and treatment as recommended in my prior reports as well as this report, it is certainly possible that Ms. Robinson will one day return to part-time limited work. The jury is out, so to speak, on where things go from here.

“For now, what is a certainty is the reality that Ms. Robinson is completely incapacitated from returning to gainful employment or from competing in the open labor market.”

(Ex. 104 at 32-33.)

In the alternative, Dr. Kipperman’s reporting supports the contention that applicant is not vocationally feasible. As the result of lack of psychological treatment, the QME states “referral to a vocational specialist will be misguided” unless she receives medical support for this outcome. (Ex. 102 at 4.) Applicant’s testimony corroborates that she did not receive necessary treatment. (MOH/SOE 03-28-2022 at p. 4: lines 7-22 and 35-36.) Since she has not had medically necessary treatment, the QME had “no way of knowing whether or not treatment will make a vocational rehabilitation effort viable.” (Ex. 102 at 4.) Applicant’s rehabilitation expert Mr. Scott Simon is in agreement with Dr. Kipperman. (Ex. 4, report of 03-13-2020 at 28-29; Ex. 4 report of 08-11-2021 at 1.)

Defense vocational expert Linda Stevenson offers a more positive assessment of applicant’s vocational possibilities based largely on applicant’s interview on 07-23-2020 and testing by Dr. Paul Good, Ph.D., whose findings were incorporated and interpreted by Dr. Kipperman. (Ex. P.) Ms. Stevenson opines that based on the orthopedic limitations and Dr. Good’s testing, applicant would be eligible for direct placement, on the job training, and self-employment. However, the defense expert lists no tangible job opportunities. Moreover, the expert concedes that applicant cannot succeed in any of these options based on the psychological issues and limitations described by Dr. Kipperman. (Ex. P at 12.) The extensive and detailed reporting by Dr. Kipperman occurring over the course of several years constitutes substantial medical evidence.

Clearly, there is a need for future medical care for the psychiatric injury.

Based on Dr. Kipperman's opinion that the effects of the orthopedic and psychiatric injuries are inextricably intertwined, separate awards should not issue. Applicant is entitled to a joint award of 100% permanent disability for all cases set for trial.

Applicant's attorney has performed valuable services in these complex cases resulting in an award of 100%. The parties agreed to defer the issue of earnings. As such, the parties are directed to meet and confer with regard to permanent disability indemnity, retroactive temporary disability, and attorney fees.

IV. RECOMMENDATION

It is respectfully requested that no further study be granted and the Petition for Reconsideration be **DENIED**.

DATE: 06-27-2022

Therese Da Silva
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE