WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

HODA KHAMMASH, *Applicant*

vs.

STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION, LEGALLY UNINSURED, STATE COMPENSATION INSURANCE FUND, ADJUSTING AGENCY, *Defendants*

Adjudication Numbers: ADJ7358979; ADJ7183934; ADJ7358858; ADJ7358844
Santa Ana District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant seeks reconsideration of the July 19, 2023 Joint Findings and Award and Order (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a senior engineer by the State of California Department of Transportation (defendant) on April 22, 2009, December 1, 2007 to April 22, 2009, January 19, 2010, and March 23, 2010, sustained industrial injury resulting in permanent and total disability.

Defendant contends that the WCJ failed to designate which of the four claimed injuries caused applicant's permanent and total disability; that applicant's psychiatric disability should be combined with all other disabilities rather than added; that not all apportionment identified by the Agreed Medical Evaluators (AMEs) was reflected in the final Award of disability; that the opinion of the orthopedic AME with respect to gait disturbance is not substantial evidence; that the orthopedic permanent disability rating is incorrect; that the opinion of the neurology AME is not substantial evidence with respect to alleged sleep impairment; and that the reporting of applicant's vocational expert is not substantial evidence.

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be

granted, and that we amend the F&A to specify that applicant's permanent and total disability pertains to the April 22, 2009 date of injury.

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 discussed below, we will grant reconsideration and affirm the decision of July 19, 2023, except that we will amend the decision to clarify that applicant is entitled to a combined award pursuant to *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113] (*Benson*), and that the date of injury is April 22, 2009.

BACKGROUND

Applicant has alleged four injuries. In Case No. ADJ7358979, applicant claimed injury to the cervical spine, lumbar spine, psyche, internal-colon, chronic constipation, sleep, erectile dysfunction, complex regional pain syndrome, gait disturbance, and urological system, while employed as a senior engineer by defendant State of California Department of Transportation on April 22, 2009. Defendant admitted injury to the cervical spine, lumbar spine, psyche, internal-colon, and chronic constipation, and denied injury in the form of sleep disturbance, erectile dysfunction, chronic regional pain syndrome, gait disturbance, and urological system.

In Case No. ADJ7358844, applicant claimed injury to the cervical spine, lumbar spine, psyche, internal-lower GI, colon, sleep disturbance, urological system, in the form of chronic regional pain syndrome, and gait disturbance, while employed as a senior engineer by defendant from December 1, 2007 to April 22, 2009. Defendant denied liability for the injury as not arising out of and occurring in the course of employment (AOE/COE).

In Case No. ADJ7183934, applicant claimed injury to the cervical spine, lumbar spine, psyche, internal, sleep disorder, irritable bowel syndrome, colon, complex regional pain syndrome, gait disturbance, and urological system while employed as a senior engineer by defendant on January 19, 2010. Defendant admitted injury to the cervical and lumbar spine, and denied injury to the psyche, internal, sleep disorder, irritable bowel syndrome, colon, complex regional pain syndrome, gait disturbance, and urological system.

In Case No. ADJ7358858, applicant claimed injury to the cervical spine, lumbar spine, psyche, internal, IBS, colon, sleep, complex regional pain syndrome, gait disturbance, and

urological system, while employed as a senior engineer by defendant on March 23, 2010. Defendant admitted injury to the cervical and lumbar spine, and denied injury to the psyche, internal, IBS, colon, sleep, complex regional pain syndrome, gait disturbance, and urological system.

The parties have selected Lawrence Feiwell, M.D. to act as the orthopedic AME, Prakash Jay, M.D. as the internal medicine AME, Marc Nehorayan, M.D. as the psychiatric AME, and Robert Shorr, M.D. as the Qualified Medical Evaluator (QME) in neurology.

On January 12, 2023, the parties proceeded to trial, framing issues including permanent disability and apportionment. (Minutes of Hearing, January 12, 2023, at 3:7; 4:16; 5:17; 6:18.)

On July 19, 2023, the WCJ issued the F&A, determining in Case No. ADJ7358979, for the April 22, 2009 date of injury, that applicant sustained injury arising out of and in the course of employment to the cervical spine, lumbar spine, psyche, internal colon, sleep cycle, gait, and chronic constipation. (F&A, Findings of Fact No. 1.) In ADJ7358844, the cumulative injury of December 1, 2007 to April 22, 2009, the WCJ determined that applicant sustained injury arising out of and in the course of employment to the psyche. (Finding of Fact No.2.) In ADJ7183934, for date of injury January 19, 2010, the WCJ determined that applicant sustained injury to the cervical spine, lumbar spine, psyche, sleep disorder and gait. (Finding of Fact No. 3.) In ADJ7358858, for date of injury March 23, 2010, applicant sustained injury to the cervical spine, psyche, colon, sleep disorder and gait. (Finding of Fact No. 4.) The WCJ further determined that applicant did not sustain injury causing erectile dysfunction or irritable bowel syndrome. Based on the formal rating issued March 29, 2023, the WCJ determined that applicant sustained 100 percent permanent disability, with the need for future medical treatment. (Findings of Fact, Nos. 9, 11.)

Defendant's Petition for Reconsideration (Petition) avers the F&A does not designate which case resulted in the award of permanent and total disability. (Petition, at 3:13.) Defendant contends the psychiatric disability should have been combined with, rather than added to, the disabilities in other specialties because the stated rationale of the psychiatric AME merely relies on the term "synergistic" to justify the departure from the scheduled rating. (Petition, at 5:7.) Defendant contends the March 13, 2023 Rating Instructions omitted applicable apportionment of the lumbar spine disability, and that the orthopedic AME's rating for gait disturbance is not supported by substantial evidence, resulting in flawed orthopedic rating instructions. (Petition, at 6:6; 6:22; 8:10.) Defendant further contends that the reporting of the neurology QME

inappropriately rates sleep impairment and improperly adds a rating for pain, neither of which is supported in the record. (Petition, at 9:9.) Finally, defendant contends the reporting of applicant's vocational expert is not substantial evidence as it is based on an incomplete educational and vocational history. (Petition, at 10:15.)

Applicant's Answer avers the addition of the psychiatric disability to the combined non-psychiatric disability is well-supported in the record, and that the psychiatric AME's discussion of the issue is not merely conclusory. (Answer, at 5:22.) Applicant avers the issuance of a single award of disability is indicated because the psychiatric AME was unable to parcel out the respective percentages of causation attributable to the four injuries claimed by applicant. (*Id.* at p. 7:1.) Applicant also contends the identification and rating of a gait disturbance and sleep and pain ratings find ample support in the medical record. (*Id.* at p. 8:6; 10:4.) Finally, applicant contends the reporting of vocational expert Mr. Ramirez is substantial evidence that is consistent with the medical opinions expressed by the AMEs and the QME. (*Id.* at p. 11:10.)

The WCJ's Report recommends we amend the F&A to reflect April 22, 2009 as the date of injury for the permanent disability rating. (Report, at pp. 5-6.) With respect to the addition rather than combination of the psychiatric disability, the WCJ observes that the rationale provided by the AME is well supported in the record and constitutes substantial evidence. (*Id.* at p. 7.) With respect to apportionment as between the various claimed injuries, the WCJ noted that the psychiatric AME was unable to parcel out the respective percentages of disability attributable to the injuries, and that applicant is entitled to an unapportioned award as a result. (*Id.* at pp. 8-9.) The WCJ further notes that the neurology QME identified ratable gait impairment "because of moderate to high-grade cervical stenosis, compression of the spinal cord, and progression of myelopathy in the cervical spine," and that the resulting disability is supported in the medical record. (*Id.* at pp. 9-10.) The WCJ also explains that the reporting of applicant's vocational expert was more persuasive than the reporting offered by the defense, in part because defendant's expert opined to impermissible "vocational apportionment," in her analysis. (*Id.* at p. 11.)

DISCUSSION

Defendant avers the WCJ failed to apply the orthopedic apportionment identified by AME Dr. Feiwell. Defendant observes that in his December 5, 2017 report, Dr. Feiwell apportioned the permanent disability as between the four pending dates of injury. (Petition at 6:8, citing Ex. 101,

Report of Lawrence Feiwell, M.D., December 5, 2017, at p. 57.) Dr. Feiwell opined that, "[b]ased upon the above history, I would estimate that 25% of his neck complaints are due to preexisting condition including the automobile accident and 75% due to lifting incident on April 22, 2009. I would apportion 75% of his low back findings to the injury on April 22, 2009, 10% to the incident on January 19, 2010, and 15% to the incident on March 23, 2010." (*Ibid.*)

However, the parties' psychiatric AME Dr. Nehorayan has determined that while applicant has sustained psychiatric injury, apportionment as between the various injuries is not possible. Dr. Nehorayan states:

> While I am aware that the applicant has a recognition of specific injuries, as well as the continuous trauma claim, I cannot parcel one injury out from the other, based upon reasonable medical probability. There is an indication of synergistic impact from initially the continuous trauma, which appeared to be further exacerbated by the applicant's specific injuries, and to a point in which the applicant's issues of chronic pain and those associated with creating chronic stress and dysphoria could not be separated from the nature of the perceived harassment and hostilities he endured before that. As a result, there is no way, from a psychiatric standpoint, to be able to parcel out the specific injuries from the applicant's continuous trauma claim.
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> (Ex. 115, Report of Marc Nehorayan, M.D., July 31, 2019, p. 111.)

In *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535 [74 Cal.Comp.Cases 113] (*Benson*), the court held that under Labor Code[1] section 4663 and 4664, separate awards are required for each distinct injury that causes permanent disability. The court also recognized, however, that there may be circumstances where a combined award of permanent disability is appropriate.

> We also agree that there may be limited circumstances, not present here, when the evaluating physician cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the employee's overall permanent disability. In such limited circumstances, when the employer has failed to meet its burden of proof, a combined award of permanent disability may still be justified. (See § 4663, subd. (c); Kopping v. Workers' Comp. Appeals Bd., supra, 142 Cal.App.4th at p. 1115 ["the burden of proving apportionment falls on the employer because it is the employer that benefits from apportionment"].)

[1] All further statutory references are to the Labor Code unless otherwise stated.

(*Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1560.)

The reasoning of the Appeals Court in *Benson* was applied by the Appeals Board in *Fields v. City of Cathedral City*[2] (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 103 (Appeals Board panel decision), writ den. sub nom. *City of Cathedral City v. Workers' Comp. Appeals Bd.* (*Fields*) (2013) 78 Cal.Comp.Cases 696 (*Fields*), wherein both applicant's orthopedic and internal disability resulting from a specific injury and a cumulative injury were rated together in a joint award under *Benson* because the AME in internal medicine determined that the respective percentage of disability attributable to each injury could not reasonably be parceled out. Additionally, in *Dileva v. Northrop Grumman Systems Corp.* (2015) 2015 Cal. Wrk. Comp. P.D. LEXIS 99 (Appeals Board panel decision), writ den. sub nom. *Northrop Grumman Systems Corp. v. Workers' Comp. Appeals Bd.* (*Dileva*) (2015) 80 Cal.Comp.Cases 749, both applicant's orthopedic and psychiatric disability resulting from three separate dates of injury were rated together in a joint award under *Benson* because the treating psychiatrist found the psychiatric effects of the three injuries could not reasonably be parceled out, even though the orthopedic AME was able to apportion applicant's orthopedic disability among three dates of injury. And in *Herrera v. Maple Leaf Foods* (September 14, 2018, ADJ4258585; ADJ2220258) [2018 Cal. Wrk. Comp. P.D. LEXIS 430], we found that because some aspects of the industrially-caused permanent disability from two or more separate industrial injuries could be parceled out because the disability was inextricably intertwined, a combined permanent disability award must issue even though other aspects of the industrially-caused permanent disability from those injuries could be parceled out with reasonable medical probability. (*Id.* at *8-9.)

Here, the psychiatric AME has described in detail why he is unable to parcel out the approximate percentages to which each distinct industrial injury causally contributed to applicant's permanent disability. As was the case in *Herrera, Dileva,* and *Fields, supra*, where the AME's opinion constitutes substantial evidence, and the AME is unable to parcel out the disability attributable to each injury, a combined permanent disability award must issue even though other aspects of the permanent disability (here, the orthopedic disability described by Dr. Feiwell) can

[2] Panel decisions are not binding precedent (as are en banc decisions) on all Appeals Board panels and workers' compensation judges. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425 fn. 6 [118 Cal. Rptr. 2d 105, 67 Cal.Comp.Cases 236].) A California Compensation Cases digest of a "writ denied" case is also not binding precedent. (*MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 [Appeals Bd. en banc].) While not binding, the WCAB may consider panel decisions to the extent that it finds their reasoning persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Bd. en banc).)

be parceled out with reasonable medical probability. Accordingly, we concur with the WCJ's issuance of a combined award of permanent disability.

Defendant asserts that notwithstanding the issuance of a combined award, a date of injury must be identified, a contention with which the WCJ agrees. (Petition, at 3:15; Report, at p. 6.) We note that the WCJ determined applicant to have sustained psychiatric injury arising out of all four claimed injuries. (Findings of Fact Nos. 1, 3 & 4.) The WCJ's Report observes that "it is apparent from the AME Reports, vocational evidence, and rating instructions that the permanent total disability is based on the 4/22/2009 specific date of injury." (Report, at p. 6.) Following our review of the record, we are persuaded that the WCJ's recommendation is supported in the evidentiary record, and we will amend the F&A to reflect that the date of injury is April 22, 2009, accordingly.

Defendant contends the WCJ erred in finding injury and disability arising out of applicant's alleged sleep disturbance. Defendant avers the reporting of AME Dr. Shorr relies on the opinions of the prior AME in psychiatry Dr. Nehamen, who diagnosed the sleep disturbance, but who was ultimately replaced by another AME in psychiatry. The reporting of Dr. Nehamen has not been lodged in evidence. (Petition, at 10:6.) However, the WCJ's Report observes that the sleep impairment identified by Dr. Shorr "coincides with the findings of AME Dr. Marc Nehorayan, who also indicates Applicant has a sleep disorder secondary to a general medical condition, orthopedic condition, and insomnia," and that the reporting of Dr. Shorr confirms applicant's ongoing symptomatology. (Report, at p. 10.) We further note that Dr. Shorr discussed the sleep rating in deposition, and confirmed that former AME Dr. Nehamen's assessment of Class I sleep disturbance was consistent with Dr. Shorr's clinical findings and assessment of applicant. (Ex. 118, Transcript of the Deposition of Robert Shorr, M.D., December 6, 2021, at p. 18:9.) Accordingly, we concur with the WCJ's findings of injury and disability regarding the alleged sleep disturbance.

Defendant contends the WCJ erred in finding injury and disability in the form of gait disturbance. Defendant asserts that orthopedic AME Dr. Feiwell identified a gait disturbance as derivative of a possible diagnosis of cervical myelopathy, and deferred the issue of myelopathy to Dr. Shorr. (Petition, at 7:8.) Defendant states that Dr. Shorr did not diagnose cervical myelopathy, and that it was error for WCJ to awarding disability for gait disturbance. (*Id.* at 7:24.) Defendant concludes, "[i]f there is no evidence of myelopathy, there can be no rating of gait disturbance based on myelopathy." (*Id.* at 8:8.)

However, the parties discussed this issue at length at the deposition of Dr. Shorr, who opined in pertinent part:

> Q. So with regard to the gait derangement, is that - I think you testified earlier that could be due to a combination of the cervical and the lumbar -
> A. Yes.
> Q. -- condition?
> A. In a general way. In a general way. But obviously in this case I don't have a way to really - I can't say that with any certainty in this case. In other words, when you have moderate to high grade cervical stenosis, which he has and already had back in 2010, the main concern is compression of the spinal cord and the development of a slow, slow progression of myelopathy in the cervical spine. But I just don't have the evidence for it. I don't know if you really developed it or not. I can't -- I can't determine that based on what I have.
> Q. But he does have the gait derangement?
> A. Yeah. But his gait is deranged.
> Q. Do we need to see then a -- a current MRI of the cervical spine or are you comfortable finding industrial causation to the gait derangement without it?
> A. I think I would be okay finding it without it because he has such severe problems in his low back. And as I said earlier, if sometimes the - the - even myelopathy could be so submerged in lumbar spine problems that you might not even see it clinically. And as long as there's not an issue of apportionment to the two areas, then it's not really necessary to do his rating.
> Q. Right. Okay. That makes perfect sense. And so the gait derangement, would you find that to be 100 percent industrial in this case?
> A. I don't believe I found any other nonindustrial factors on that.
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> (Ex. 118, Transcript of the Deposition of Robert Shorr, M.D., December 6, 2021, at p. 26:4.)

The QME thus correlates his diagnostic impressions with his clinical findings, and notes that irrespective of an independent diagnosis of cervical myelopathy, applicant's clinical presentation is that of gait disturbance resulting in impairment. We discern no error in the QME's exercise of his independent medical judgment to diagnose and assess impairment, and to provide corresponding ratings as utilized by the WCJ in the determination of permanent disability. (See *Milpitas Unified School District v. Workers' Comp. Appeals Bd.* (2010) 187 Cal.App.4th 808, [75 Cal.Comp.Cases 837, 839].) Accordingly, we concur with the WCJ's application of the opinions of the QME to identify gait disturbance and award resulting disability.

Defendant contends that it was error for the WCJ to add rather than to combine the psychiatric disability identified in the record. In *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 [78 Cal.Comp.Cases 213] (writ den.), we held that

adding, rather than combining, two different impairments better reflected a worker's impairment when substantial medical evidence supported the notion that the two impairments had a synergistic effect where, in effect, the resultant impairment was more than the sum of the two impairments. Here, the WCJ determined that applicant's psychiatric disability should be added rather than combined with non-psychiatric disabilities. (Rating Instructions, March 13, 2023, p. 1.) Defendant avers that AME Dr. Nehorayan has not sufficiently explained the rationale for adding, rather than combining, the psychiatric and non-psychiatric disabilities. Citing to the WCAB panel decision in *Johnson v. Wayman Ranches*[3] (May 12, 2016, ADJ1330130] (2016 Cal. Wrk. Comp. P.D. LEXIS 235), defendant observes that "[s]imply using the work 'synergistic does not suffice," but that "this is exactly what psychiatric Agreed Medical Evaluator Marc Nehorayan MD does in this case." (Petition, at 5:7.)

However, we find defendant's argument to be unpersuasive because the psychiatric AME is not confining his analysis to an assertion of "synergy." Dr. Nehorayan opines:

> The combined value chart is based upon a reductive algorithm in order to actually depict the extent of conditions that overlap. It is critical in understanding the nature of the applicant's psychological compromise is separate and independent of these other physical conditions. Moderate conditions can create major psychological difficulties. The converse may also be true. It is also recognized that the basis of the applicant's depressive response is an additive component to all of his conditions. In fact, multiple areas of the brain are affected by chronic pain. The chronic pain is modulated to the descending inhibitory pathways that increase afferent firing, channeling it to the hypothalamus, the anterior cingulate cortex, the orbital-frontal cortex, as well as the dorsa, as well as pons. Having pain and not wanting, for example, to pick up an object is different than not wanting to pick up the object because of lack of initiation or motivation, due to a depressive state. This is a simple example that recognizes a lack of overlap, and why the reductive algorithm does not apply.
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> (Ex. 115, Report of Marc Nehorayan, M.D., July 31, 2019, pp. 111-112.)

Moreover, the existence of a "synergistic effect" is not a prerequisite to using the additive method, provided substantial medical evidence supports the physician's opinion. (*University of California, Berkeley v. Workers' Compensation Appeals Board* (*Sedlack*) (2020) 85 Cal.Comp.Cases 311 [2020 Cal. Wrk. Comp. LEXIS 17] (writ denied); *De La Cerda v. Martin Selko & Co.* (November 21, 2017, ADJ2970937) [2017 Cal. Wrk. Comp. P.D. LEXIS 533]; *Casias*

[3] See footnote 2, ante.

v. KF Howell Electric, Inc. (May 20, 2019, AJD7623043) [2019 Cal. Wrk. Comp. P.D. LEXIS 181]; *Barry v. Dept. of Food & Agric.* (May 20, 2019, ADJ9525033) [2019 Cal. Wrk. Comp. P.D. LEXIS 165].) Here, we are persuaded that the AME has adequately explained the rationale for why applicant's significant and persistent psychiatric disability should be added to the non-psychiatric disabilities, and how the psychiatric injuries affect applicant's functional capacity differently than non-psychiatric injuries. We also observe that the WCJ relied upon the opinion of the agreed medical evaluator (AME), who the parties presumably chose because of the AME's expertise and neutrality, and that the defendant declined to challenge the AME's opinion in deposition or request for supplemental reporting. Accordingly, the WCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

Defendant further contends that the reporting of applicant's vocational expert Mr. Ramirez is not substantial evidence for failure to report that applicant attended a year of law school, and because the reporting erroneously assumes that applicant did not have any work restrictions or limitations prior to the instant injuries. (Petition, at 10:17.) However, as is discussed above, we concur with the WCJ's underlying ratings instructions, including his decision to add the psychiatric disability to the combined disabilities arising out of applicant's orthopedic, internal medicine, and neurological injuries. The resulting Formal Rating, in and of itself, reflects 100 percent disability based on the impairment identified by the evaluation physicians, without resort to vocational evidence. (Formal Rating, March 29, 2023, p. 2.)

We also concur with the WCJ's analysis of the relative weight of the vocational reporting. (See generally, Report, at pp. 11-12.) The WCJ carefully reviewed and weighed the respective vocational reporting, and deemed applicant's expert's reporting to be the more persuasive and thorough. (Report, at p. 12.) Contrary to defendant's assertions, Mr. Ramirez' report clearly reflects awareness of applicant's legal blindness and hearing loss. (Ex. 1, Report of Steve Ramirez, January 5, 2022, p. 5, "[s]he informed [me] she is legally blind and has congenital hearing loss [non-industrial]; p. 9, "[n]on-industrial visual/ophthalmological condition;" p. 14, "she was additional determined to have pre-existing/nonindustrial hearing impairment, visual impairment….") We further agree with the WCJ's determination that the reporting of defendant's vocational witness substitutes "vocational apportionment" in place of otherwise valid medical apportionment, in contravention of Labor Code section 4663. (See *Nunes v. State of Calif. Dept.*

of Motor Vehicles (2023) 88 Cal.Comp.Cases 741, 743 [2023 Cal. Wrk. Comp. LEXIS 30] (Appeals Bd. en banc).) Accordingly, we concur with the WCJ's assessment that the vocational reporting of Mr. Ramirez constitutes substantial evidence and further supports the determination that applicant has sustained permanent and total disability.

In summary, we concur with the WCJ's analysis that because the psychiatric Agreed Medical Evaluator was unable to parcel out the causation of applicant's disability as between the four pending claims of injury, applicant is entitled to a combined award. We will grant reconsideration and affirm the WCJ's decision, except that we will amend the Award to specifically reflect applicant's entitlement to a combined award pursuant to *Benson v. Workers' Comp. Appeals Bd., supra,* 170 Cal.App.4th 1535. In light of this finding, we will also amend the decision to reflect April 22, 2009 as the date of injury.

We concur with the WCJ's assessment that the disability arising out of applicant's gait and sleep disturbance is supported in the evidentiary record. We also concur with the WCJ's assessment that the addition of the psychiatric disability to the combined orthopedic, internal medicine and neurological disability is likewise supported in the record. Finally, while we acknowledge that the rating of the AMEs and QME in this matter standing alone yields permanent and total disability, we agree with the WCJ that the reporting of Mr. Ramirez is the more well-reasoned and persuasive, and serves to further substantiate applicant's permanent and total disability.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 19, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 19, 2023 is **AFFIRMED, EXCEPT** that it is **AMENDED** as follows:

FINDINGS OF FACT

* * * * *

8a. The evaluating physicians cannot parcel out, with reasonable medical probability, the approximate percentages to which each distinct industrial injury causally contributed to the employee's overall permanent disability, and applicant is therefore entitled to a

combined award pursuant to *Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal.App.4th 1535, 1560 [74 Cal.Comp.Cases 113].

8b. The date of injury herein for purposes of establishing entitlement to benefits is April 22, 2009.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 28, 2023

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

HODA KHAMMASH
LARSON, LARSON & DAUER
STATE COMPENSATION INSURANCE FUND

SAR/abs

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