

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

JUAN ANGUIANO, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants*

**Adjudication Number: ADJ11107890
Santa Barbara District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Subsequent Injuries Benefits Trust Fund (SIBTF) seeks reconsideration of our August 15, 2023 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration, wherein we concluded that the workers' compensation administrative law judge (WCJ) erroneously considered apportionment in evaluating whether applicant Juan Anguiano met the 35% eligibility threshold but, nevertheless, agreed with the WCJ that applicant met the 35% SIBTF eligibility threshold.¹

SIBTF contends that our conclusion to not consider apportionment when calculating the 35% eligibility threshold is contrary to the plain meaning of Labor Code,² section 4751, as well as the Legislative intent of that statute. SIBTF further contends that our reliance on *Bookout v. Workers' Comp. Appeals Bd.* (1976) 62 Cal.App.3d 214 [41 Cal.Comp.Cases 595] is misplaced.

We have received an answer from applicant. Applicant contends that the law on apportionment has always been about limiting the employer's liability, not the liability of SIBTF. Applicant further urges that the 35% eligibility threshold be liberally construed to extend benefits whenever possible as mandated by section 3202.

We have considered the Petition for Reconsideration, the Answer, and we have reviewed the record in this matter. For the reasons discussed below, we deny reconsideration.

¹ Commissioner Dodd, who was on the original panel, was not available to participate. Another Commissioner was appointed in her place.

² All further statutory references are to the Labor Code unless otherwise indicated.

“Under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense.” (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.) The Court of Appeal in *Bookout v. Workers’ Comp. Appeals Bd.* (1976) 62 Cal.App.3d 214, 228 [41 Cal.Comp.Cases 595], a court exercising superior jurisdiction, held that the permanent disability attributable to applicant’s subsequent injury for the purpose of meeting the 35% threshold requirement under section 4751 excludes apportionment. As we explained in our en banc³ decision in *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 583 (Appeals Board En Banc):

In *Bookout*, applicant was employed as an oil refinery operator and sustained a compensable injury to his back, which was rated at 65% permanent disability. (*Bookout, supra*, 62 Cal. App. 3d at pp. 219–220.) The back disability included a limitation to semi-sedentary work. (*Id.* at p. 219.) Prior to his industrial injury, applicant had a nonindustrial heart condition. (*Ibid.*) The heart condition contained two work preclusions: preclusion of heavy work activity and preclusion from excessive emotional stress. (*Id.* at pp. 220–221.) The preclusion of heavy work activity was rated at 34.5% permanent disability. (*Id.* at p. 220.) The preclusion from excessive emotional stress was rated at 12% permanent disability. (*Id.* at pp. 220–221.)

At the trial level, the referee concluded that the heart condition precluding heavy work activity completely overlapped with the back disability limitation to semi-sedentary work. (*Bookout, supra*, 62 Cal. App. 3d at p. 224.) The referee, thus, subtracted the preclusion of heavy work activity of 34.5% permanent disability from the 65% unapportioned permanent back disability and awarded applicant permanent disability of 30.5% for the industrial back injury. (*Id.* at pp. 219–221.) The referee then found that applicant was not eligible for SIBTF benefits based on the finding of 30.5% after apportionment, which was less than the requisite minimum of 35% for a subsequent disability under section 4751. (*Id.* at p. 221.) The Appeals Board affirmed both the 30.5% permanent disability award for the industrial back injury and the finding that applicant was not eligible for SIBTF benefits. (*Id.* at pp. 218–219.)

³ “En banc decisions of the Appeals Board are assigned by the chairperson on a majority vote of the commissioners and are binding on panels of the Appeals Board and workers' compensation judges as legal precedent under the principle of *stare decisis*.” (Cal. Code Regs., tit. 8, § 10325; *City of Long Beach v. Workers’ Comp. Appeals Bd. (Garcia)* (2005) 126 Cal.App.4th 298, 316, fn. 5 [70 Cal.Comp.Cases 109]; *Gee v. Workers’ Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1424, fn. 6 [67 Cal.Comp.Cases 236].)

The Court of Appeal concluded that the Appeals Board had properly determined applicant's permanent disability rating of 30.5% as a result of his compensable back injury, and that the disability resulting from the subsequent injury was compensable to the extent that it caused a decrease in applicant's earning capacity, citing former section 4750 and *State Compensation Ins. Fund v. Industrial Acci. Com. (Hutchinson)* (1963) 59 Cal. 2d 45, 48–49 [27 Cal. Rptr. 702, 377 P.2d 902] (an employer is only liable for the portion of disability caused by the subsequent industrial injury) and *Mercier v. Workers' Comp. Appeals Bd.* (1976) 16 Cal. 3d 711, 715–716 [129 Cal. Rptr. 161, 548 P.2d 361, 41 Cal. Comp. Cases 205] (the fact that injuries are to two different parts of the body does not in itself preclude apportionment). (*Bookout, supra*, 62 Cal.App.3d at pp. 222–227.)

The court, however, found that applicant was erroneously denied SIBTF benefits under section 4751. (*Bookout, supra*, 62 Cal. App. 3d at p. 228.) It explained that the referee incorrectly instructed the rating specialist to apportion 34.5% for the preexisting nonindustrial heart disability (based on a standard rating of 30%) from the total subsequent injury disability of 65% (based on a standard rating of 60%), rather than utilizing the total disability for the subsequent injury “standing alone and without regard to or adjustment for the occupation or age of the employee” as required by section 4751. (*Ibid.*; § 4751, subd. (b).) It interpreted the language of this requirement as excluding apportionment. Thus, the court held that the permanent disability attributable to applicant's subsequent injury for the purpose of meeting the 35% threshold requirement under the statute was the standard rating of 60%. (*Bookout, supra*, 62 Cal. App. 3d at p. 228; § 4751, subd. (b).)

(*Todd, supra*, 85 Cal. Comp. Cases at pp. 582-583, 2020.)

SIBTF’s citations to *Reina v. Workers Compensation Appeals Bd.* (1997) 63 Cal.Comp.Cases 101 [1997 Cal. Wrk. Comp. LEXIS 6050], *McMahan v. Workers Compensation Appeals Bd. of California & Subsequent Injuries Fund* (1984) 49 Cal. Comp. Cases 95 [1984 Cal. Wrk. Comp. LEXIS 3217], and *Earley v. Workers Compensation Appeals Bd. of California & California Subsequent Injuries Fund* (1975) 40 Cal.Comp.Cases 741 [1975 Cal. Wrk. Comp. LEXIS 2304], are not binding authority. *Reina*, *McMahan*, and *Earley* are all panel decisions that have been writ denied. Panel decisions are not binding precedent (as are en banc decisions) on all other Appeals Board panels and workers’ compensation judges. (See *Gee, supra*, 96 Cal.App.4th at p. 1425, fn. 6.) Further, a California Compensation Cases digest of a “writ denied” case is also not binding precedent. (*Farmers Ins. Group of Companies v. Workers' Comp. Appeals Bd.* (2002)

104 Cal.App.4th 684, 689, fn. 4 [writ denied opinions have no *stare decisis* effect]; *MacDonald v. Western Asbestos Co.* (1982) 47 Cal.Comp.Cases 365, 366 (Appeals Board en banc.)

Accordingly, for these reasons, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that Subsequent Injuries Benefits Trust Fund's Petition for Reconsideration of our August 15, 2023 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 7, 2023

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

**JUAN ANGUIANO
GHITTERMAN, GHITTERMAN & FELD
DIR – OD LEGAL, LOS ANGELES**

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