

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

MARLENY CANAHUI DE BURAYE, *Applicant*

vs.

**SMITHFIELD FOODS, INC.; SAFETY NATIONAL CASUALTY, administered by ESIS,
*Defendants***

Adjudication Numbers: ADJ12447782

Los Angeles District Office

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

Applicant seeks reconsideration of the Findings and Award and Order (F&O) issued on March 1, 2023, wherein the workers' compensation administrative law judge (WCJ) found, as relevant, that (1) while employed as a meat worker on April 5, 2019, applicant sustained injury arising out of and in the course of employment to her right hand, right index finger, right middle finger, right ring finger, right elbow, right shoulder, and "psychological system"; (2) pursuant to the parties' stipulations, the employee's earnings were \$685.27 per week, warranting indemnity rates of \$456.85 for temporary disability, and \$290.00 for permanent disability; (3) applicant's April 5, 2019 injury caused permanent disability of forty percent, entitling applicant to 201 weeks of permanent disability, payable beginning September 16, 2020, at the rate of \$290.00 per week, in the total sum of \$58,290.00, less credit for permanent disability advances, and less fifteen percent as attorney's fees; (4) there is no valid, legal basis for apportionment of permanent disability; (5) applicant is entitled to further medical treatment to cure and/or be relieved from the effects of the industrial injury; (6) the reasonable value of the services rendered by applicant's attorney is \$8,743.5; and (7) applicant's exhibits 1 through 4 are admitted into evidence.

The WCJ awarded applicant permanent disability benefits, further medical care, and attorney's fees in accordance with these findings and ordered that the sum of \$8,743.50 be commuted from the far end of the award in order to pay the attorney fees.¹

¹ We note that after the WCJ issued the F&O, the parties submitted a stipulation that the attorney's fees be held in trust by defendant's attorney pending resolution as to how the fees should be distributed.

Applicant contends that the WCJ erroneously failed to find that she is entitled to an increased impairment rating for her psychological injury because the injury resulted from her being a victim of a violent act or direct exposure to a significant violent act or from a catastrophic injury.

We received an Answer from applicant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the Petition, the Answer, and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&O, except that we will amend it to change “psychological system” to psyche and to defer the issue of whether Labor Code section 4660.1 applies to applicant’s psychological injury and if so, whether applicant meets one of the exceptions in section 4660.1(2), and whether applicant is entitled to an increased impairment rating, and return this matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On February 6, 2023, the matter proceeded to trial as to the following issues:

1. Parts of body injured.
2. Permanent disability and apportionment.
3. The need for further medical treatment.
4. Attorney fees.

(Minutes of Hearing, February 6, 2023, p. 2:21-24.)

Applicant did not testify, and no other witness testimony was offered. The WCJ admitted the report of PQME Yassi Zarrin Psy.D., dated February 28, 2022, and the supplement report of PQME Yassi Zarrin, Psy.D., dated June 15, 2022, into evidence.

The February 28, 2022 report of Dr. Zarrin states:

On April 05, 2019, Ms. DeBuraye noted that she was working in her usual and customary capacity. She was with the company for only six months at that time. The claimant was cleaning machinery with her lead man. She noted that it was procedure that the machine needed to be in a locked position before it was to be cleaned. Ms. DeBuraye stated that the lead man forgot to lock the machine. They began cleaning it. The claimant stated that the machine began to run and the chain cut through her fingers. This ultimately led to an amputation in her right ring finger and lacerations on her middle finger and tendon. She also had a laceration on her index finger. Ms. DeBuraye described that her fingers got caught into the running machine. She immediately tried to pull her hand out but her fingers were already caught and lacerated. She screamed from pain and was in shock that this occurred.

She was devastated and terrified. Blood began gushing from her right hand and the claimant was immediately taken to the nurse's station.

...

[C]laimant was in shock and very devastated. She was ultimately taken to a company clinic and then a hand specialist. She had emergency surgery and the claimant noted that she ultimately had a partial amputation to her ring finger as well as lacerations on her middle and index finger. Ms. DeBuraye underwent a second procedure but could not recall the date. She remained off of work for approximately five and a half months. She recalled that her hand was bandaged and she could not use her hand for a prolonged period of time. She ultimately returned to work as the neutral examiner had indicated that she could return with particular modifications.

...

During today's evaluation, Ms. DeBuraye noted that she has experienced depression, anxiety, trauma, frustration, and desperation as a result of her work injury. It is not only extremely disappointing to live with a partial amputation and the laceration she has experienced she noted that the constant pain and functional limitations have been extremely upsetting and worrisome. Ms. DeBuraye is concerned about whether her circumstances will ever truly improve. She stated that she has challenges at work and feels nervous that she will get in trouble because she cannot work as efficiently as she used to. These concerns have been frustrating as the claimant stated that her employer has not been helpful since her injury occurred.

...

In my opinion, the predominant cause (over 50%) of Ms. DeBuraye's Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic is related to the April 5, 2019 work injury which led to ongoing symptoms of depression and anxiety that she sustained in the course of her employment with Smithfield. The determination of predominant cause is based on the examination of the development and course of her reactive psychological symptoms on the one hand and the industrial psychological injury as well as all other known stressors on the other. Moreover, the industrial stressor of orthopedic injuries better accounts for the development of her mental disorder than any other stressor. Consequently, in my opinion, Ms. DeBuraye has sustained an industrial injury to her psyche related to the specific injury of April 5, 2019.

Ms. DeBuraye reported that she suffered symptoms of apathy, irritability, despondency, and problems with sleep as a result of her work injury. She experienced ongoing pain, headaches and problems with sleep. She had experienced these symptoms as a result of her employment with Smithfield. It was after her lacerations and partial amputation that the claimant has experienced ongoing emotional difficulties as she continues to try to adjust to her limited functioning, living with pain and the general disappointment she has experienced since her injury occurred. She denied experiencing such symptoms prior to her employment with Smithfield. As a result, I opine that Ms. DeBuraye's current mood disorder is predominantly related to the work events that occurred on April 5, 2019.

It is noted that the evaluating expert in orthopedics have deemed her injuries of April 5, 2019 industrially related. Her ongoing emotional difficulties are a sequellae of her specific orthopedic injury.

I have considered alternative explanations for the development of Ms. DeBuraye's Adjustment Disorder with Mixed Anxiety and Depressed Mood. Ms. DeBuraye denied any ongoing problems or difficulties in her personal life. She denied any other health issues or stressors within the family. As a result, I do not feel that there are not any nonindustrial stressors that would be contributing or related to Ms. DeBuraye's current mood disorder.

My opinion is that the specific injury of April 5, 2019 reaches and exceeds (greater than) 50% of predominant cause in the development of her clinically significant mental disorder.

(Ex. 1, PQME PSYD Report, Yassi Zarrin Psy.D. February 28, 2022, pp. 13, 28, 29, 30, 31.)

The June 15, 2022 supplemental report of PQME Yassi Zarrin, Psy.D., states:

Ms. De Buraye had commenced employment with Smithfield Corporation in September 2018. At the time of my initial evaluation, I conducted a thorough clinical interview, administered psychological testing, and reviewed records that were provided to my office. Based on this information, I opined that the claimant met criteria for diagnosis of an Adjustment Disorder with Mixed Anxiety and Depressed Mood Chronic. I assigned a GAF of 62, which equated to a Whole Person Impairment of 12%. Ms. De Buraye was referred to the office of Dr. Nelson Flores for psychotherapy. At the time of my evaluation, Ms. De Buraye had returned to work in full capacity. She was living an active and productive lifestyle. While she had been affected emotionally by her work injury he claimant stated that she was trying to focus on moving forward and improve her future.

With regard to causation, I opined that the predominant cause over 50% of Ms. De Buraye's Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic was related to the April 05, 2019 work injury and in my report that the claimant's ongoing emotional difficulties were the sequelae of her specific orthopedic injury. I noted that the claimant had reached maximum medical improvement on a psychological basis and had recommended further mental health treatment. Ms. De Buraye was considered to have reached maximum medical improvement as of the date of my initial evaluation and my first opportunity to meet with her, which was on February 03, 2022. I had noted that the claimant had been temporarily partially disabled from a psychological basis from April 05, 2019 through March 09, 2021 when she was deemed permanent and stationary from her treating psychologist, Dr. Nelson Flores. With regard to apportionment, I opined that 100% was apportioned to the specific injury of April 05, 2019 while Ms. De Buraye was employed with Smithfield.

I am now in receipt of defense attorney's cover letter dated May 02, 2022. In the cover letter, it is noted that under comments on causation on page 31 and 32 of my report, I had indicated that the applicant's mood disorder was predominantly related to the work events that occurred on April 05, 2019. Page 32 first full paragraph indicates that the orthopedic specialist found the applicant's injury to be work related. Her ongoing emotional difficulties are a sequelae of her specific orthopedic injury. Please advise the parties if it is within the realm of medical probability that the applicant's mood disorder is a compensable consequence of her orthopedic injury. The answer to this is yes.

...

It appears based on her reporting and records I had received at the time of my initial evaluation that the claimant had no other qualms or issues prior to her specific injury. She experienced an unfortunate isolated incident in which she suffered orthopedic injuries to her upper extremity. This led to laceration and an amputation of her finger. As a result of this, the claimant developed anxiety and depression from these orthopedic injuries. She reported that her symptoms of anxiety, depression, and ultimately diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, Chronic was related to the specific orthopedic injury of April 05, 2019.

As such, this examiner opines that it is within the realm of medical probability that the applicant's mood disorder is a compensable consequence of her orthopedic injury. Her mood disorder is a sequelae of the orthopedic injury she sustained while employed with Smithfield Foods on April 05, 2019.
(Ex. 2, PQME Supplemental Report, Yassi Zarrin, Psy.D., June 15, 2022, pp. 3-5.)

In the Report, the WCJ states:

Date of Injury:	April 5, 2019
Parts of Body Injured:	right hand, right index finger, right middle finger, right ring finger, right elbow, right shoulder, and psychological system

...

Pursuant to the parties' stipulations applicant, . . . while employed on April 5, 2019, as a meat worker, . . . sustained an injury arising out of and in the course of employment to her right hand, right index finger, right ring, finger, right elbow, and psychological system. The Court found applicant also sustained an industrial injury to her right shoulder, but found no substantial medical evidence that applicant sustained an injury to the left shoulder as result of the April 5, 2019 industrial injury. With regards to the alleged psychological injury, the Courts accepted Dr. Yassi Zarrin's medical reporting as substantial medical evidence and accepted his medical findings that applicant's psychological injury is a compensable consequence to the orthopedic injuries sustained on April 5, 2019. Pursuant to Labor Code 4660.1 (c)(1) there shall be no increase in impairment for psychiatric disorder arising out of compensable physical injury.

The Court found applicant's argument she is entitled to an increase in permanent disability due to her psychological injury being the result of a violent act or resulting in catastrophic injury was not supported by the facts or the medical evidence. Per the Psychological QME Dr. Yassi Zarrin the applicant was cleaning a machine when the machine began to run and cut her fingers, applicant immediately tried to pull her hand out but her fingers were already caught and lacerated. (See Joint Exhibit 1, page 13). The medical evidence indicates applicant quickly removed her hand from the machine. There is no medical evidence that applicant sustained a catastrophic injury. The applicant has returned to work and continues to work with restrictions. Dr. Yassi Zarrin report states applicant is working full time, she is able to drive and does all of her tasks independently. (See Joint Exhibit 1, page 17).

...

In the present matter applicant argues she is entitled to an increase in permanent disability impairment because her psychological disability was caused by a violent act; however, no evidence was submitted to support the argument applicant's injury was caused by a violent act. Applicant working as a meat processing worker cut her fingers on a meat cutting machine. There is no evidence applicant's hand was trapped by the meat cutting machine. Additionally, the Psychological QME Dr. Yassi Zarrin found applicant's ongoing emotional difficulties are a sequelae of her specific orthopedic injury.

Similarly applicant's argument she is entitled to an increase in permanent disability impairment because her psychological disability was caused by a catastrophic injury is not supported by the facts or the medical evidence. Neither the primary treating physician nor the Panel Qualified Medical Examiner suggest applicant sustained a catastrophic injury. The applicant has returned to work and continues to work with restrictions. Dr. Yassi Zarrin report states applicant is working full time, she continues working around the same machine that caused the injury, and she is able to drive and does all of her tasks independently. (See Joint Exhibit 1, page 17).
(Report, pp. 1-3.)

DISCUSSION

Labor Code section 3208.3(b)² provides:

(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

² Unless otherwise stated, all further statutory references are to the Labor Code.

(3) For the purposes of this section, “substantial cause” means at least 35 to 40 percent of the causation from all sources combined.
(§ 3208.3(b).)

"Predominant as to all causes" for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd. (Garcia)* (1999) 76 Cal. App. 4th 810, 816 [90 Cal. Rptr. 2d 716, 64 Cal.Comp.Cases 1356].) This predominant causation threshold applies to psychiatric injuries pled as a compensable consequence of a physical injury. (*Lockheed Martin Corp. v. Workers' Comp. Appeals Bd. (McCullough)* (2002) 96 Cal.App.4th 1237, 1249 [117 Cal. Rptr. 2d 865, 67 Cal.Comp.Cases 245].) The Court of Appeal in *McCullough* opined that for a compensable consequence psychiatric injury, "the precipitating physical injury constitutes an 'actual event[] of employment' within the meaning of [section 3208.3(b)(1)]." (*Id.*)

Section 4660.1(c) bars an increase in an injured worker’s permanent impairment rating for a psychiatric injury that is a compensable consequence of a physical injury occurring on or after January 1, 2013. However, an injured worker may receive an increased impairment rating for a compensable consequence psychiatric injury if the injury that the psychiatric injury resulted from is due to: (1) being a victim of a violent act or direct exposure to a significant violent act, or (2) a catastrophic injury. (Section 4660.1(c)(2).)

In this case, the psychiatric QME Dr. Zarrin concluded that applicant's psychiatric injury was predominantly related to the work events that occurred on April 05, 2019, and, therefore, that her psychiatric injury is compensable pursuant to section 3208.3. (Ex. 1, PQME PSYD Report, Yassi Zarrin Psy.D. February 28, 2022, pp. 13, 28, 29, 30, 31.) In so doing, Dr. Zarrin observed that applicant “suffered symptoms of apathy, irritability, despondency, and problems with sleep as a result of her work injury . . . ongoing pain.” (*Id.*, p. 30.) However, although he used the term “compensable consequence” in opining that actual events of employment predominantly caused applicant’s psychiatric injury, Dr. Zarrin did not explain which of applicant’s symptoms were directly caused by the April 5, 2019 incident and which were a compensable consequence of her physical injury. (Ex. 2, PQME Supplemental Report, Yassi Zarrin, Psy.D., June 15, 2022, pp. 3-5.) Notably, Dr. Zarrin did not state what percentage of applicant’s injury was directly caused by the April 5, 2019 incident and what percentage was the compensable consequence of her physical

injury. (See *Wilson v. State of CA Cal Fire* (2019) 84 Cal.Comp.Cases 393, 414 (Appeals Board en banc) (stating that the evaluating physician must render an opinion not only as to whether the psychiatric injury was predominantly caused by actual events of employment, but also must specify if the psychiatric injury was directly caused by events of employment or was a compensable consequence of the physical injury).)

Here, the record does not contain medical evidence regarding what percentage of applicant's psychiatric injury was directly caused by the April 5, 2019 incident and what percentage was a compensable consequence of her physical injury. More significantly, applicant did not testify at trial as to her symptoms or explain how her injury occurred. (See *Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc).) Consequently, we are unable to determine the preliminary issue of whether section 4660.1 applies. Thus, we cannot reach the issue of whether applicant may be entitled to an increased impairment rating under section 4660.1 because her psychiatric injury resulted from her being a victim of a violent act or a catastrophic injury.

In order to determine what percentage of applicant's psychiatric injury was directly caused by the April 5, 2019 incident and what percentage was a compensable consequence of the physical injury, we conclude that the record should be developed by way of witness testimony as to applicant's medical symptomatology and how the injury occurred, as well as additional reporting or testimony from Dr. Zarrin.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [72 Cal. Rptr. 2d 898, 63 Cal.Comp.Cases 261]; see also *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [65 Cal. Rptr. 2d 431, 62 Cal.Comp.Cases 924]; §§ 5701, 5906.) The Appeals Board also has a constitutional mandate to "ensure substantial justice in all cases" and may not leave matters undeveloped where it is clear that additional discovery is needed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403-404 [94 Cal. Rptr. 2d 130, 65 Cal.Comp.Cases 264].) The "Board may act to develop the record with new evidence if, for example, it concludes that neither side has presented substantial evidence on which a decision could be based, and even that this principle may be appropriately applied in favor of the employee." (*San Bernardino Cmty. Hosp. v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74

Cal. App. 4th 928, 937-938 [88 Cal. Rptr. 2d 516, 64 Cal.Comp.Cases 986].) The preferred procedure to develop a deficient record is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Per *McDuffie*, if the existing physicians cannot cure the need for development of the record, the selection of an agreed medical evaluator (AME) should be considered by the parties. If the parties cannot agree to an AME, then the WCJ can appoint a physician to evaluate applicant pursuant to section 5701.

As explained above, while we are unable to determine whether section 4660.1 applies, we observe that the Appeals Board has defined a violent act within the meaning of section 4660.1(c)(2) as an act characterized by either strong physical force, extreme or intense force, or an act that is vehemently or passionately threatening. (*Wilson, supra*, 84 Cal.Comp.Cases at p. 405.) The determination of whether a physical injury is the result of a violent act requires an evaluation of the mechanism of injury in light of the event causing injury:

Evaluation of whether an injury resulted from a "violent act" under section 4660.1(c)(2)(A) focuses on the mechanism of injury. This focus on the *mechanism* of injury comports with the statute's language, which emphasizes the *event causing the injury*, rather than the injury itself: the statute expressly refers to being a victim of or direct exposure to a violent "act." The word "injury" is not in this subsection. The focus in evaluating whether an injury qualifies for the exception in section 4660.1(c)(2)(A) is therefore on the mechanism of injury, not on the injury itself. (*Wilson, supra*, 84 Cal.Comp.Cases at p. 406 [Emphasis in original].)

In this case, the WCJ concluded that there is no evidence that applicant's psychiatric injury was caused by a violent act because "[t]here is no evidence applicant's hand was trapped by the meat cutting machine" and "Psychological QME Yassi Zarrin found applicant's ongoing emotional difficulties are a sequelae of her specific orthopedic injury." (Report, p. 3.)

But the WCJ cited these grounds in the absence of evidence and without any testimony by applicant regarding the mechanism of injury, such as the nature, extent and intensity of the physical force involved in the lacerations to applicant's index finger, middle finger and tendon, and right ring finger. (F&O; Ex. 1, PQME PSYD Report, Yassi Zarrin Psy.D. February 28, 2022, pp. 13, 28, 31; Ex. 2, PQME Supplemental Report, Yassi Zarrin, Psy.D., June 15, 2022, pp. 4-5; Report, p. 3.)

It follows that, should the further developed record establish that applicant's psychiatric injury was more than fifty percent a compensable consequence of her physical injury, the issue of

whether applicant may be entitled to an increased impairment rating on the grounds that she was the victim of a violent act should be further developed, including by requesting witness testimony as to the nature and extent of the force involved in applicant's injury and the WCJ's determination thereon. (*Wilson, supra*, 84 Cal.Comp.Cases at p. 405.)

As to applicant's contention that the evidence establishes that her psychiatric injury resulted from a catastrophic injury, we observe that where the physical injury is not loss of a limb, paralysis, severe burn, or severe head injury, the WCJ must evaluate the evidence against applicable factors to determine whether the nature of the physical injury is catastrophic, including:

1. The intensity and seriousness of treatment received by the employee that was reasonably required to cure or relieve from the effects of the injury.
2. The ultimate outcome when the employee's physical injury is permanent and stationary.
3. The severity of the physical injury and its impact on the employee's ability to perform activities of daily living (ADLs).
4. Whether the physical injury is closely analogous to one of the injuries specified in the statute: loss of a limb, paralysis, severe burn, or severe head injury.
5. If the physical injury is an incurable and progressive disease.
(*Wilson, supra*, 84 Cal.Comp.Cases at pp. 414-415.)

The determination of whether an injury is catastrophic under section 4660.1(c)(2)(B) is a fact-driven inquiry. (*Id.*)

Here, despite the lack of testimony by applicant, the WCJ concluded that applicant's physical injury was not catastrophic on the grounds that applicant returned to work, works full time, and performs her tasks independently. (Report, p. 3.) But the WCJ cited these grounds in the absence of evidence relating to several of the *Wilson* factors, including: (1) the intensity and seriousness of treatment received by applicant; (2) the severity of the physical injury and its impact on the employee's ability to perform ADLs; and (3) whether the physical injury is closely analogous to loss of a limb, paralysis, severe burn, or severe head injury.

It follows that, should the further developed record establish that applicant's psychiatric injury was more than fifty percent a compensable consequence of her physical injury, the record should be developed to include witness testimony, and possibly further medical reporting, as to the *Wilson* factors and the WCJ's determination thereon.

Accordingly, we will grant reconsideration and affirm the F&O, except that we will amend it to change “psychological system” to psyche and to defer the issues of whether section 4660.1 applies to applicant’s psychological injury and whether applicant is entitled to an increased impairment rating under section 4660.1(c)(2), and return this matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the Findings and Award and Order issued on March 1, 2023 is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration, that the Findings and Award and Order issued on March 1, 2023 are **AFFIRMED**, except that they are **AMENDED** as follows:

FINDINGS OF FACT

1. MARLENY CANAHUI DE BURAYE, while employed on April 5, 2019, as a meat worker, occupational group 320, at Los Angeles, California, by Smithfield Foods, sustained injury arising out of and in the course of employment to her right hand, right index finger, right middle finger, right ring finger, right elbow, right shoulder, and psyche.

4. Applicant's April 5, 2019 injury caused permanent disability of 40%, entitling applicant to 201 weeks of permanent disability, payable beginning September 16, 2020, at the rate of \$290.00 per week, in the total sum of \$58,290.00 less credit for permanent disability advances, and less 15% attorney's fees as set forth in paragraph 7 below. The issue of whether applicant is entitled to further permanent disability indemnity for her injury to psyche is deferred.

5. The issue of whether Labor Code section 4660.1 applies to applicant’s psychological injury is deferred.

6. The issue of whether applicant is entitled to an increased impairment rating for her psychological injury under Labor Code section 4660.1(c)(2) is deferred.

7. There is no valid, legal basis for apportionment of permanent disability.

8. Applicant is entitled to further medical treatment to cure and/or be relieved from the effects of the industrial injury.

9. The reasonable value of the services rendered by applicant's attorney is \$8,743.50.

10. Applicant's exhibits 1 thru 4 are admitted into evidence over defendant's objection.

IT IS FURTHER ORDERED THAT this matter is hereby **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 22, 2023

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

**MARLENY CANAHUI DE BURAYE
LAW OFFICES OF FENSTEN & GELBER
LAW OFFICES OF MAX MALMYGIN**

SRO/cs

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