

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

METEIL BUTLER, *Applicant*

vs.

WELLPOINT, INC.; ZURICH INSURANCE, self-administered, *Defendants*

**Adjudication Numbers: ADJ9978616; ADJ11697949
Van Nuys District Office**

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

Defendant seeks reconsideration of the Joint Findings of Fact, Order and Award (F&A) issued on October 19, 2023, wherein the workers' compensation administrative law judge (WCJ) found in case number ADJ9978616 that (1) while employed as a customer service representative during the period June 1, 2014, through March 31, 2015, applicant sustained injury arising out of and in the course of employment to her lumbar spine; (2) the primary treating physician (PTP) is Jonathan Kohan, M.D.; (3) no attorney fees have been paid and no attorney fee arrangements have been made; (4) there was a prior stipulation/award under case number ADJ9978616; (5) the permanent and stationary date is that claimed by the employee of March 1, 2021, based on PTP Dr. Kohan; (5) there is a need for further medical treatment; (6) attorney's fees of 15 percent of monies awarded to applicant as a result of the award additional benefits, are reasonable and appropriate, less credit for sums previously paid; and (7) the permanent disability found by Dr. Montell in his March 15, 2023, reporting is less than the permanent disability benefits previously awarded but the previous award was as for the lumbar spine and the March 15, reporting relates to upper extremity impairment.

The WCJ found in case number ADJ11697949 that (1) while employed as a customer service representative during the period November 15, 2017, through November 15, 2018, applicant sustained injury arising out of and in the course of employment to her cervical spine, bilateral shoulders, and bilateral wrists in the form of carpal tunnel syndrome; (2) the PTP is Gabriel Rubanenko, M.D.; (3) no attorney fees have been paid and no attorney fee arrangements have been made; (4) the permanent and stationary date is that claimed by the employee of May 6,

2021, based on the reporting of Dr. Rubanenko; (5) there is a need for further medical treatment; (6) attorney's fees of 15 percent of monies awarded to applicant as a result of the award of additional benefits are reasonable and appropriate, less credit for sums previously paid; and (7) the reporting of Dr. Rubanenko constitutes substantial medical evidence and is more persuasive than the reporting of Dr. Montell.

The WCJ awarded applicant (1) workers' compensation medical and indemnity benefits in accordance with the joint findings of facts in an amount to be adjusted by the parties with jurisdiction reserved by the WCAB in the event of a dispute; and (2) attorney's fees of 15 percent of monies awarded to applicant.

Defendant contends that the WCJ erroneously failed to state the amount of permanent disability benefits owed in case number ADJ11697949.

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 considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration and, as our Decision After Reconsideration, we will rescind the F&A and substitute findings in case number ADJ9978616 that defer the issues of new and further disability, the amount of permanent disability benefits, and all other issues, as appropriate; substitute findings in case number ADJ11697949 that defer the issues of the amount of permanent disability benefits and attorney's fees, and return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On October 22, 2018, the parties entered into a stipulation with request for award in case number ADJ9978616. (Stipulations with Request for Award, October 22, 2018.) In it, the parties stipulated that (1) applicant's lumbar spine injury caused permanent disability of 10 percent for which indemnity is payable at \$290.00 per week beginning April 1, 2018, in the sum of \$8,772.50, less credit for previous payments; (2) applicant's treating physician and qualified medical evaluator (QME) found 13 percent whole person impairment (WPI) for the lumbar spine injury, but the QME found 90 percent apportionment to pre-existing lumbar disc disease while the treating

physician found no apportionment; and (3) the settlement was based on compromise on apportionment. (*Id.*, pp. 6-7.)

Also on October 22, 2018, the WCJ issued an award in applicant's favor pursuant to the parties' stipulations with request for award. (Award, October 22, 2018.)

On November 20, 2018, applicant filed a petition to reopen in case number ADJ9978616, alleging entitlement to additional permanent disability benefits and need for further medical treatment. (Petition to Reopen, November 20, 2018.)

On November 29, 2022, the parties filed a joint pre-trial conference statement. In it, they framed various issues, including "Supplemental report dated July 26, 2021 found less PD than original amount." (Pre-Trial Conference Statement, November 29, 2022, pp. 2-3.)

On July 26, 2023, the matter proceeded to trial as to the consolidated cases ADJ9978616 and ADJ11697949. (Minutes of Hearing and Summary of Evidence, July 26, 2023, pp. 2:3-4.)

The following issues were framed for trial in case number ADJ9978616:

1. Whether the Permanent and Stationary Date is that claimed by the employee of March 1, 2021, based on PTP Jonathan Kohan, M.D., or the employer which claims July 26, 2021, based on PQME Thomas J. Montell.
2. Whether there is a need for further medical treatment.
3. The amount of Attorney fees (if any).
- ...
4. Whether the PD found by Dr. Montell in his March 15, 2023, reporting is less than the PD previously awarded.

(Minutes of Hearing and Summary of Evidence, July 26, 2023, pp. 3:2-8.)

The parties stipulated that (1) while employed as a customer service representative during the period June 1, 2014, through March 31, 2015, applicant sustained injury to her lumbar spine; and (2) the PTP is Jonathan Kohan, M.D. (*Id.*, p. 2: 12-20.)

The following issues were framed for trial in case number ADJ11697949:

1. Whether the Permanent and Stationary Date is that claimed by the employee of May 6, 2021, based on the Reporting of Dr. Rubanenko or that of the employer claiming July 26, 2021, based on the Reporting of Dr. Montell.
2. Whether there is a need for further medical treatment.
3. Amount and appropriateness of Attorney Fees (if any).
- ...
4. Whether the reporting of PTP Dr. Rubanenko or QME Dr. Montell is more persuasive medical evidence.

(*Id.*, p. 4:2-8.)

In ADJ11697949, the parties stipulated that (1) while employed as a customer service representative during the period November 15, 2017, through November 15, 2018, applicant sustained injury to her cervical spine, bilateral shoulders, and bilateral wrists in the form of carpal tunnel syndrome; and (2) the PTP is Gabriel Rubanenko, M.D. (*Id.*, p. 3:16-23.)

The WCJ admitted the Report of Dr. Kohan, dated March 1, 2023, into evidence.

It includes the following:

I am in receipt of the January 3, 2021, orthopedic QME record review and supplemental report from Dr. Montell for my review and consideration.

...

In his discussion, the QME noted that the patient had included an aggravation of her preexisting cervical degenerative disc disease and bilateral upper extremity pain that is documented in the current medical records, including November 7, 2020, cervical MRI. He also notes that the October 23, 2020, electrodiagnostic testing interpreted by Dr. Coppelson, found no evidence of cervical radiculopathy and no evidence of right or left upper extremity entrapment neuropathy. Therefore, he concluded that in his opinion, that the patient's cervical spine pain and symptoms in the bilateral upper extremities represented preexisting disease present prior to 2017.

He also noted that the patient had neck pain and bilateral shoulder pain after June 1, 2016, non-industrial motor vehicle accident. She had also complained of cervical and shoulder pain while working as a Customer Service Representative for Watts Health Foundation, per the April 8, 2002, industrial injury. The QME described the patient's job duties at Well Point, Inc., where she sat and reached with her upper extremities, typed, and inbound and outbound telephone calling in customer service. He felt that such activities were not physically sufficient in force and magnitude to produce the bilateral shoulder MRI findings of diffuse tendinopathy, osteoarthritic changes, and labral tears noted in the ProHealth Advanced Imaging of November 7, 2020, MRI reports.

He concluded, therefore, that in his opinion, there was no indication to treat the patient's bilateral shoulders on an industrial basis. He felt that the patient had reached a point of Maximum Medical Improvement. In addressing work restrictions, the QME felt that none were indicated for the November 15, 2017, through November 15, 2018, continuous trauma and that she may continue to work her usual and customary job duties in customer service.

He addressed future medical care and recommended orthopedic evaluation, analgesic and anti-inflammatory medications, a course of physical therapy, pain management consultation, and treatment that included cervical epidural and/ or facet injections and cervical spine specialist evaluation and treatment including possible cervical spine surgery, for any flares of her subjective complaints.

The QME also addressed the issue of apportionment, and, in his opinion, apportioned 10% of her current disability to the industrial CT and questioned the remaining 90% caused by the results from a preexisting cervical degenerative disc disease. This is excessive and I disagree as she was asymptomatic prior to her industrial injury based on the reviewed records and history. On this basis, not more than 35% should be apportioned to pre-existing disease.

He provided impairment of the patient's condition and classified the cervical spine under a DRE Cervical Category II at 8% WPI. He also noted that regarding her other industrial injury of June 1, 2014, through March 3, 2015, that involved the lumbar spine, that remained at MMI per his QME report of April 2, 2018.

At this point, having reviewed Dr. Montell's supplemental report of January 3, 2021, we will continue to provide the patient with treatment for his recommendations.

(Ex. 6, Report of Dr. Kohan, dated March 1, 2023, pp. 1-3.)

The WCJ admitted the Report of Rubanenko, dated June 1, 2021, into evidence.

It includes the following:

DIAGNOSES/IMPRESSION:

1. Cervical/trapezial strain with asymmetric motion and without clinical evidence of radicular involvement (S13.4XXA).
2. Bilateral shoulder strain with impingement syndrome (S43.409A; M75.40).
3. Bilateral elbow strain, normal clinical exam (S53.409A).
4. Bilateral wrist strain with clinical findings of bilateral carpal tunnel syndrome (S63.509A; G56.00).

DISCUSSION:

Ms. Turner-Butler presents today on May 6, 2021 for final orthopedic evaluation relative to her pled cumulative trauma injury extending from November 15, 2017 – November 15, 2018 involving the neck, shoulders, and bilateral upper extremities arising out of and during the course and scope of her employment while working as a customer service representative for Wellpoint Incorporated.

...

Based on my review of Dr. Montell's PQME reports, it is evident that the patient also had an industrial lumbar spine injury which is currently not claimed as part of the current cumulative trauma but having limited my findings, opinions, and recommendations on the orthopedic issues in relation to the current repetitive cumulative trauma injury, all medical-legal issues regarding the patient's lumbar spine injury is deferred to Dr. Montell.

However, in reviewing Dr. Montell's findings and opinions regarding the patient's claimed injury for the cervical spine, bilateral shoulders, and bilateral wrists/hands

secondary to the current cumulative trauma injury extending to November 15, 2018, and while I do respect and appreciate his designation as the PQME in this case, I must respectfully disagree with the opinion on the lack of industrial causation relative to the patient’s bilateral shoulders and the bilateral wrists/hands for carpal tunnel syndrome, as well as opinion on apportionment, and in his findings on permanent impairment regarding the cervical spine and lack of impairment for the bilateral shoulders and bilateral wrists/hands for carpal tunnel syndrome. While Dr. Montell explains that the patient’s occupational duties aggravated her preexisting condition involving the cervical spine, it would also be my opinion, given the repetitive clerical nature of her occupational duties, which was fully described to Dr. Montell, as well as to the undersigned, I believe it is more than medically reasonable and probable that the patient suffered an aggravation of her preexisting bilateral shoulder and bilateral wrist/hand complaints in direct relationship to the physical demands of her occupational duties. Although the patient’s duties did not require repetitive overhead activity work using both arms above head level, she fully described her duties requiring repetitive reaching, typing, computer keyboarding, using the mouse, and using the telephone, which in my opinion can aggravate a preexisting shoulder pathology.

...

[I]t is my opinion to a reasonable degree of medical probability, based on the review of the available medical records, in conjunction with the applicant’s described occupational duties and job description and current objective findings, 70% of the patient current disability and impairment involving the cervical spine, bilateral shoulders, and bilateral wrists is apportioned to her prior industrial injuries and subsequent preexisting condition for diffuse degenerative pathology and 30% is apportioned to the occupational exposure that occurred arising out and during the course and scope of employment while working as customer service representative for Wellpoint Incorporated.

...

| BODY PART | WPI |
|-------------------|-----------|
| 1 Cervical Spine | 24% . . . |
| 2 Right Shoulder | 5% . . . |
| 3 Left Shoulder | 5% . . . |
| 4 Right Wrist/CTS | 6% . . . |
| 5 Left Wrist/CTS | 6% . . . |

TOTAL WPI: 39%
 (Ex. 9, Report of Dr. Rubanenko, June 1, 2023, pp. 17-23.)

Dr. Rubanenko apportioned 70 percent of applicant’s impairment to preexisting industrial injury and 30 percent to the cumulative trauma injury of November 15, 2017 through November 15, 2018. (*Id.*, p. 23.)

In the Opinion on Decision, the WCJ states:

Based upon the stipulations and the credible, un rebutted, testimony of the applicant and the medical reporting of Jonathan Kohan, M.D., dated March 1, 2021, May 14, 2020, July 23, 2020 and the medical reporting of Gabriel Rubanenko, M.D., dated June 1, 2021, and the medical reporting Qualified Medical Evaluator (QME) Dr. Thomas Montell, M.D., dated July 26, 2021 and March 15, 2023, it is found that Applicant Meteil Butler, born July 25, 19--, while employed during the period June 1, 2014, through March 31, 2015, as a Customer Service Representative, Occupational Group No. 112, at Cerritos, California, by WellPoint, Inc., sustained injury arising out of and in the course of employment to her lumbar spine and while employed during the period November 15, 2017, through November 15, 2018, sustained injury arising out of and in the course of employment to her cervical spine, bilateral shoulders, and bilateral wrists in the form of Carpal Tunnel Syndrome.

In the instant case, the undersigned WCJ was presented at trial with a variety of medical opinions as to the Permanent and Stationary (P&S) dates for the above referenced industrial injuries. The parties requested a judicial determination to weigh the value of the medical reports and to consider them in light of all the evidence presented. It has been well established under California workers' compensation law that an award for benefits must be supported by substantial evidence. *LeVesque v. WCAB* (1970) 35 CCC 16. California Labor Code (LC) section 5952(d) requires an award of the appeals board to be "supported by substantial evidence." The term "substantial medical evidence" separates evidence that may be used to support an award from evidence that is not considered worthwhile. Here, based on the range of substantial medical evidence, the testimony, and stipulations of the parties, the court finds the P&S date in case ADJ9978616 is that claimed by the employee of March 1, 2021 and the P&S date in case ADJ11697949 is that claimed by the employee of May 6, 2021. Lastly, based on the criterion outlined herein, in the instant case only, the reporting of Dr. Rubanenko is more persuasive medical evidence than that of Dr. Montell.
(Joint Opinion on Decision, pp. 1-2.)

DISCUSSION

Labor Code section 5410 confers on the Workers' Compensation Appeals Board continuing jurisdiction over a prior award when a timely petition is filed within five years of the date of injury.

The section provides:

Nothing in this chapter shall bar the right of any injured worker to institute proceedings for the collection of compensation within five years after the date of the injury upon the ground that the original injury has caused new and further disability. The jurisdiction of the appeals board in these cases shall be a continuing

jurisdiction within this period. This section does not extend the limitation provided in Section 5407.
(Lab. Code, § 5410.)

Hence, to recover additional temporary or permanent disability benefits, the applicant must file a petition to reopen within five years of the date of injury and show that a “new and further disability” occurred within that five-year period, unless “good cause” otherwise exists to reopen the prior award. (See *Sarabi v. Workers' Comp. Appeals Bd.* (2007) 151 Cal.App.4th 920, 926 [72 Cal.Comp.Cases 778] (*Sarabi*); *Nicky Blair's Rest. v. Workers' Comp. Appeals Bd.* (1980) 109 Cal.App.3d 941 [45 Cal.Comp.Cases 876].)

A new and further disability has been defined to mean “disability ... result[ing] from some demonstrable change in an employee's condition ...’ [citation],” including a “gradual increase in disability.” [citation] “Historically, a change in physical condition necessitating further medical treatment ha[s] been considered new and further disability ... [Citation.]” Thus, “[c]ommonly, new and further disability refers to a recurrence of temporary disability, a new need for medical treatment, or the change of a temporary disability into a permanent disability.” [Citation.]” (*Sarabi, supra*, at 926.)

In *Applied Materials v. Workers' Comp. Appeals Bd.* (2021) 64 Cal.App.5th 1042 [86 Cal.Comp.Cases 331], the court defined new and further disability similarly, as “disability resulting from some demonstrable change in the employee's condition, including a gradual increase in disability, a recurrence of TD, a new need for medical treatment, or the change of a temporary disability into a permanent disability.” (*Id.* at p. 1080.)

In case number ADJ9978616, applicant filed a petition to reopen on November 20, 2018. (Petition to Reopen, November 20, 2018.) However, the parties did not frame the issues of whether good cause exists to reopen the claim and what change of physical condition or gradual increase in disability constituted the alleged new and further disability for trial. (Minutes of Hearing and Summary of Evidence, July 26, 2023, pp. 3:2-8.)

Consequently, the parties went to trial on the issues of the permanent and stationary date, need for further medical treatment, amount of attorney’s fees, and whether the permanent disability found by Dr. Montell in his March 15, 2023, reporting is less than the permanent disability previously awarded without developing the record as to the grounds for reopening the claim, the

nature and extent of the asserted new and further disability, and the amount of permanent disability benefits, if any, arising therefrom. (*Id.*)

The WCJ's decision "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Bd. en banc) (*Hamilton*).) An adequate and complete record is necessary to understand the basis for the WCJ's decision and the WCJ shall "make and file findings upon all facts involved in the controversy[.]" (Lab. Code, § 5313; *Blackledge v. Bank of America, ACE American Insurance Company* (2010) 75 Cal.Comp.Cases 613, 621.) The WCJ's decision must "set[] forth clearly and concisely the reasons for the decision made on each issue, and the evidence relied on," so that "the parties, and the Board if reconsideration is sought, [can] ascertain the basis for the decision[.] . . . For the opinion on decision to be meaningful, the WCJ must refer with specificity to an adequate and completely developed record." (*Hamilton, supra*, at 476 (citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350]).) Moreover, sections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 393-394 [62 Cal.Comp.Cases 924], *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138, 141 (Appeals Bd. en banc).)

We conclude that the record as to the grounds for reopening the claim, the nature and extent of the asserted new and further disability, and the amount of permanent disability benefits, if any, arising therefrom should be further developed in order for us to meaningfully review the findings in case number ADJ9978616.

Accordingly, we will rescind the findings as to case number ADJ9978616 and substitute findings that defer the issues of new and further disability, the amount of permanent disability benefits to which applicant is entitled therefor, and all other issues, as appropriate.

Additionally, we observe that in case number ADJ9978616 the parties framed for trial the issue of whether the permanent disability found by Dr. Montell in his March 15, 2023, reporting is less than the permanent disability previously awarded without a pleadings record establishing that the issue was in controversy. (*Id.*) Specifically, the issue of whether defendant may be entitled to reduce the amount of permanent disability provided by the stipulated award may not be considered by the WCJ unless defendant filed its own petition to reopen, but it did not do so. (See

Weitnauer v. Sacramento County Sheriff's Dept. (2016) Cal.Wrk.Comp. P.D. LEXIS 171¹ (finding that the WCAB lacks jurisdiction under Labor Code section 5804 to issue an award which reduces an applicant's permanent disability unless and until the defendant files a petition to reduce permanent disability within the statutory period or files a counter-petition within thirty days of applicant's petition to reopen for increased disability).)

Accordingly, we conclude that the finding that the permanent disability found by Dr. Montell in his March 15, 2023, reporting is less than the permanent previously awarded is without support.

Turning to defendant's contention that the WCJ erroneously failed to state the amount of permanent disability benefits owed in case number ADJ11697949, we observe that the parties went to trial on the issues of the permanent and stationary date, need for further medical treatment, amount of attorney's fees, and whether the reporting of PTP Dr. Rubanenko or QME Dr. Montell is more persuasive medical evidence without framing the issue of the amount of permanent disability resulting from the November 15, 2017 to November 15, 2018 cumulative injury to the cervical spine, bilateral shoulders, and bilateral wrists in the form of carpal tunnel syndrome for trial. (Minutes of Hearing and Summary of Evidence, July 26, 2023, p. 4:2-8.)

In this regard, the record shows that PTP Dr. Rubanenko found that applicant's injury to the cervical spine, right shoulder, left shoulder, right wrist/carpal tunnel syndrome, and left wrist/carpal tunnel syndrome resulted in a total WPI of 39 percent, with 70 percent of applicant's impairment apportioned to preexisting industrial injury and 30 percent to the cumulative trauma injury of November 15, 2017 through November 15, 2018. (Ex. 9, Report of Dr. Rubanenko, June 1, 2023, p. 23.)

Although the WCJ found Dr. Rubanenko's reporting persuasive, the record was not developed as to the permanent disability rating based thereon and, consequently, the amount of permanent disability benefits and attorney's fees to which applicant is entitled. (F&A.)

Accordingly, we will rescind the findings as to case number ADJ11697949 and substitute findings that defer the issues of the amount of permanent disability benefits and attorney's fees to which applicant is entitled.

¹ WCAB panel decisions are not binding but may be considered to the extent their reasoning is persuasive. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, fn. 7 (Appeals Bd. en banc).)

Lastly, we will rescind the joint order/award because the issues of the amount of permanent disability benefits and attorney's fees have been deferred.

Accordingly, we will grant reconsideration and, as our Decision After Reconsideration, we will rescind the F&A and substitute findings in case number ADJ9978616 that defer the issues of new and further disability, the amount of permanent disability benefits, and all other issues, as appropriate; substitute findings in case number ADJ11697949 that defer the issues of the amount of permanent disability benefits and attorney's fees to which applicant is entitled, and return the 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 Joint Findings of Fact, Order and Award issued on October 19, 2023 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Joint Findings of Fact, Order and Award issued on October 19, 2023 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

CASE NO. ADJ9978616 (MF) FINDINGS OF FACT

1. Meteil Butler, born July 25, 19--, while employed during the period June 1, 2014, through March 31, 2015, as a Customer Service Representative, Occupational Group No. 112, at Cerritos, California, by WellPoint, Inc., sustained injury arising out of and in the course of employment to her lumbar spine.

2. At the time of injury, the employer's workers' compensation carrier was Zurich Insurance, self-administered.

3. At the time of injury, the employee's earnings warranted a permanent disability rate of \$290.00 per week.

4. The employer has furnished some medical treatment.

5. The primary treating physician is Jonathan Kohan, M.D.

6. No attorney fees have been paid, and no attorney fee arrangements have been made.

7. There was a prior stipulation/award in case number ADJ9978616.

8. The issue of new and further disability is deferred.

9. The issue of the amount of permanent disability benefits to which applicant is entitled on the alleged new and further disability is deferred.

10. The issue of the amount of attorney's fees, if any, is deferred.

11. All other issues are deferred.

CASE NO. ADJ11697949 FINDINGS OF FACT

1. Meteil Butler, born July 25, 19--, while employed during the period November 15, 2017, through November 15, 2018, as a Customer Service Representative, Occupational Group No. 112, at Cerritos, California, by WellPoint, Inc., sustained injury arising out of and in the course of employment to her cervical spine, bilateral shoulders, and bilateral wrists in the form of carpal tunnel syndrome.
2. At the time of injury, the employer's workers' compensation carrier was Zurich Insurance, self-administered.
3. At the time of injury, the employee's earnings warranted a permanent disability rate of \$290.00 per week.
4. The employer has furnished some medical treatment.
5. The primary treating physician is Gabriel Rubanenko, M.D.
6. No attorney fees have been paid, and no attorney fee arrangements have been made.
7. The permanent and stationary date is that claimed by the employee of May 6, 2021, based on the reporting of Dr. Rubanenko, M.D.
8. There is a need for further medical treatment.
9. The reporting of Dr. Rubanenko constitutes substantial medical evidence and is more persuasive than the reporting of Dr. Montell.
10. The issue of the amount of permanent disability benefits is deferred.
11. The issue of the amount of attorney's fees is deferred.

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 26, 2023

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

**METEIL BUTLER
GLAUBER BERENSON VEGO
TOBIN LUCKS**

SRO/cs

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