

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

**NADINA WARE, *Applicant***

**vs.**

**SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendants***

**Adjudication Number: ADJ9500046  
Salinas District Office**

**OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration filed by Subsequent Injuries Benefits Trust Fund (SIBTF). This is our Opinion and Decision After Reconsideration.<sup>1</sup>

SIBTF seeks reconsideration of the June 29, 2021 Amended Findings and Award (erroneously titled Order Rescinding Findings and Award), wherein the workers' compensation administrative law judge (WCJ) found that applicant's subsequent injury dated April 29, 2013 in combination with her prior disabilities caused permanent total disability and that she is entitled to SIBTF benefits.

SIBTF contends that (1) the Amended Findings and Award did not contain specific findings on the five SIBTF eligibility requirements and are merely conclusory; (2) applicant did not prove she had an actual prior disabling disability at the time of the subsequent injury and that applicant cannot rely upon retroactive assignment of permanent disability without prior contemporaneous evidence; (3) the medical reports of Maureen D. Miner, M.D., and David W. Baum, M.D., regarding applicant's preexisting disabilities do not constitute substantial medical evidence as these doctors reviewed only a small number of medical reports that existed prior to the subsequent injury; (4) applicant's trial testimony do not constitute prior contemporaneous

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<sup>1</sup> Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

evidence or substantial evidence of prior labor disabling disability; and (5) the report of vocational consultant Thomas Linvill, M.A., C.R.C., is not substantial evidence because he opined that applicant was 100% disabled from the subsequent industrial injury.

We have not received an answer from applicant Nadina Ware with respect to the instant Petition; although we note that applicant filed an answer to SIBTF's first Petition for Reconsideration, which is substantially the same as the instant petition. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we rescind the decision and return this matter to the trial level for further proceedings consistent with this Opinion.

## **FACTS**

As the WCJ stated in his Report:

Petitioner does not dispute that Applicant sustained injury AOE/COE on 4/29/13 arising out of and in the course of her employment as a speech therapist by Central Coast Community Healthcare, including hypertension, chronic regional pain syndrome and injury to her bilateral lower extremities. The focus of its Petition is primarily on the issue of a prior labor disability and secondarily on the issue of overall permanent disability.

Applicant testified at the 716/19 hearing that she already "...had a lot going on..." when she had her injury in April, 2013; that Dr. Baum correctly described those pre-existing problems on pages 72-75 of his 10/13/16 report; that his reference to chronic regional pain syndrome on page 75 accurately reflected her preexisting disease; that her spine was fused twice, her neck at three or four levels, limiting her range of motion and her ability to do various activities; that she has scoliosis, which reduces her lung volume and impedes her breathing and impairs her ability to do tasks, if she is not sedentary and resting; that because of her restrictive lung disease, it takes more effort to speak and more thinking to make herself heard; that all of these breathing problems pre-existed the 2013 injury; that the reduction of her lung capacity to 40% causes her to have less endurance and tiredness; that her inability to clear her lungs from secretions, coupled with her asthma condition, leads to frequent infections; that she has to take frequent breaks when she climbs stairs or walks uphill; that she limits trips to her kitchen by taking all she needs with her during a single trip; that all of her activities are affected by her preinjury problems; that before the 2013 injury, she had trouble bending, reaching and turning and was unable to squat, kneel, or crawl, for many years; that ever since her spinal fusion as a

teenager, she has had difficulty getting up from a chair, getting out of bed, or rolling in a bed; that because she has thoracic outlet syndrome, she has trouble lifting her arms overhead; that because she has a carpal tunnel condition, she has trouble with repetitive motions and holding on to objects; that before the 2013 injury, her hearing was impaired. She has six Pomeranian dogs that she feeds twice a day. They are trained to go into the crate where they sleep by themselves, and she has assistance cleaning up after them in the yard. Prior to the 2013 accident, she took a trip and was able to drive the dogs with her, from Monterey to San Diego (MOH/SOE, 7/16/19, pp.3-5).

On page 72 of his 10/13/16 report (Ex. A-5), QME Dr. David Baum, evaluating internal medicine issues, stated that Applicant had a 4% WPI for her hypertension, 90% due to her nonindustrial systemic illnesses and 10% apportionable to her specific injury at work “on January 29, 2013 (sic).” She has a polycystic ovarian syndrome diagnosed when Applicant was in her 20’s. She has severe restrictive ventilatory defect as a result of her spinal reconstruction with Harrington rods and has had cervical spine surgery, knee surgery and bilateral carpal tunnel releases. She has edema in her lower extremities, transient elevations in blood pressure and pain, caused by her chronic regional pain syndrome; bilateral carpal tunnel syndrome, obstructive sleep apnea and venous insufficiency in her lower extremities. Dr. Baum concluded that Applicant had a 49% WPI for “sequelae of CPRS”, rated by analogy to neurologic impairment of respiration, with 80% attributed to pre-existing (i.e., before the subsequent 2013 injury) disease and surgeries. He found that Applicant “...might be capable of part-time sedentary work.”

QME Maureen Miner, specializing in physical medicine, reported initially on 5/2/16 (Ex. A-4). On pages 2 and 17-18, Dr. Miner listed pre-existing “multiple medical problems” that Applicant had when she suffered her 2013 injury, similar to Dr. Baum’s list but making clear that it was before the 2013 injury that Applicant had the right knee surgery and the cervical fusion with Harrington rods, along with chronic sinusitis and asthma leading to intermittent pneumonia. Activities of daily living were significantly impacted (Id, pp. 15-17) and included interference with sexual function and with ability to concentrate or think; as well as severe depression or anxiety. In her re-evaluation report of 4/3/17 (Ex. A-2), the doctor concluded Applicant was permanent and stationary and left with a 38% Whole Person Impairment (WPI); that she was unable to perform her usual and customary occupation, was limited in the open labor market to partial sedentary-semi sedentary work and was not “competitively employable in the open labor market,” deferring in that regard to a vocational analyst. She apportioned all disability relative to the orthopedic factors in the upper and lower extremities, and with respect to central nervous system factors in the lower extremities, 100% to the 2013 industrial injury.

Applicant’s vocational consultant, Thomas Linvill, reported on 2/3/18 (Ex. A-6). He noted that Applicant drives mostly to medical appointments and

occasionally to the grocery store, although food is delivered; that she is currently on Social Security Disability; that she is able to do self-care and limited housework; that she uses a walker and two canes, glasses and hearing aids; that she tries movement but there is “very little she can do...is very minimally engaged in simple physical activities;” that she tends to stay home, sitting or reclining with her legs elevated; is limited to lifting up to 15 pounds; has problems standing or walking and spends most of her waking time sitting with her legs up or reclining; that she is unable to squat, kneel or crouch; and she is discouraged. Testing showed she has “solid skills” in use of a computer. She has transferable skills enabling sedentary part-time work, according to Dr. Baum. Home-based work would be problematic. Functionally, Mr. Linvill concludes Applicant has suffered a total loss of access to the labor market due to the variability and complications of her CRPS condition, which interfere with her general functioning and which preclude any form of work. He finds Applicant is not amenable to vocational rehabilitation.

The issues were submitted for decision at the conclusion of the 7/16/19 trial, except for post-trial briefs and possible referral for DEU rating. However, on 8/16/2019, I ordered the submission of the case set aside, citing the need for further development of the record on the issue of prior labor disability. I directed the parties to obtain records concerning evaluation and treatment of Applicant’s pre-injury conditions and to forward them, along with the summary of Applicant’s testimony, to the two QME’s, to obtain their opinions as to whether and to what extent Applicant’s pre-existing problems caused disability ratable under the AMA Guides.

Thereafter, Dr. Baum’s supplemental report of 7/14/20 (Ex. A-7) and the supplemental report of Dr. Miner of 8/31/20 (Ex. A-8) were filed and received in evidence. Dr. Baum reviewed and summarized 47 reports or records that preceded the April 29, 2013 injury (Id, pp. 3-12). On pages 60-61, he listed the thirteen pre-existing problems documented in the records, many that would be ratable under the AMA Guides. He concluded that Applicant’s pre-injury impairments “...would have approximated 100% if each impairment were added.” Dr. Miner also listed and summarized the records she reviewed, including the pre-injury records listed on pp. 1 and 2 of her report. Beginning on page 9, she applied AMA Guides impairment ratings to the pre-2013 problems discussed in the records, under the heading, “Premorbid Impairment Rating.” She concluded that those pre-2013 injury problems produced a 41% impairment rating, that the postinjury impairments rated 38%; and while the two classes of impairments produced a mathematical total of 79%, the blend of all of Applicant’s problems, both pre- and post-2013 injury, produced total disability.

Findings and Award followed but were rescinded and replaced by the now challenged Findings and Award of 6/29/21, in which all of the elements

supporting SIBTF liability were addressed, with liability found, for permanent and total disability, less allowable credits and attorney fees. (Report, pp. 1-5.)

## DISCUSSION

Section 5313 requires the WCJ to,

. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (§ 5313.)

Section 5313 requires the WCJ to state the “reasons or grounds upon which the [court’s] determination was made.” (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIA 74].) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers’ Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Furthermore, the WCJ is charged with preparing the minutes of hearing and a summary of evidence at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10787; *Hamilton, supra*, at p. 476.) The minutes of hearing and summary of evidence must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10787; *Hamilton, supra*, at p. 476.)

Here, the June 29, 2021 Amended Findings and Award merely lists the SIBTF eligibility requirements without making specific findings relevant to the instant matter. The WCJ found that applicant's subsequent injury combined with her preexisting permanent disabilities caused permanent total disability, but the findings do not explain how that conclusion was reached. (Amended Findings and Award, Finding no. 4.)

Dr. Miner opined that applicant's preexisting disabilities to the upper extremity and spine resulted in 41% whole person impairment (WPI)<sup>2</sup> and applicant's subsequent injury in the form of complex regional syndrome (CRPS) resulted in 38% WPI. (Exhibit A8, Dr. Miner's report dated August 31, 2020, p. 13.) Adding these two WPIs results in 79% WPI. But there is no record as to what the preexisting and subsequent WPIs, separately and combined by addition, translate to in terms of permanent disability percentages,. (See *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc).)

Dr. Baum listed the following preexisting disabilities:

The claimant's impairments prior to 4/29/13 included:

- Peptic ulcer disease requiring continuous treatment; stable weight
- Essential hypertension, low grade
- Thoracic (T1-T2) fusion with a Harrington Rod, performed in 1979
- C5-C6 ACDF in 1999
- Moderate asthma, at times requiring prednisone
- Cervicalgia

...

- Chronic pharyngitis and nasopharyngitis
- Obstructive sleep apnea
- Chronic obstructive pulmonary disease [*sic*]
- Diabetes mellitus, type 2
- Lumbar scoliosis
- Left lower lob pneumonia in March 2013
- Morbid obesity (weight approximately 260 pounds; height 5 feet 4 inches}

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<sup>2</sup> Dr. Miner concluded that applicant's preexisting disabilities resulted in 41% WPI by combining 4% WPI for her upper extremity with 39% WPI for her spine. (Exhibit A8, Dr. Miner's report dated August 31, 2020, p. 12.) The upper extremity WPI is for applicant's carpal tunnel. (*Id.* at p. 9.) SIBTF argues that the carpal tunnel injury is not substantiated by contemporaneous records. (Petition for Reconsideration, p. 8:1-2.) The carpal tunnel impairment appears to stem from applicant's use of a cane as a result of her CRPS. (Exhibit A2, Dr. Miner's report dated April 3, 2017, p. 23.) It appears that applicant's cane usage started after and as a result of the subsequent injury. (*Id.* at p. 6 ["Office visit dated 05/01/13 . . . She was referred to orthopedic consult and given a cane."].) Thus, it is unclear why Dr. Miner included the 4% WPI for applicant's upper extremity in her analysis of applicant's preexisting disabilities.

The impairments which would have been subject to the combined values chart included:

Thoracic fusion; cervical fusion; obstructive sleep apnea; lumbar scoliosis; cervicalgia.

The impairment for asthma and COPD would have been subjected to the CVC.

The impairments which would have been additive were peptic ulcer disease, hypertension; diabetes; obesity; chronic pharyngitis and nasopharyngitis.

Clearly, her pre-injury impairment would have approximated 100 percent if each impairment were added. (Exhibit A7, Dr. Baum's report dated July 14, 2020, pp. 60-61.)

While the number of preexisting disabilities are many, Dr. Baum does not assign a WPI for them but simply concludes that applicant's pre-injury impairment "would have approximated 100 percent." Dr. Baum also does not explain why he would add certain impairments or combine other impairments via the combined values chart (CVC). The only permanent disability rating he provided is 4% WPI for hypertension – 90% attributable to preexisting disabilities and 10% attributable to the subsequent injury – and 49% WPI for CRPS – 80% attributable to preexisting disabilities and 20% attributable to the subsequent injury. (Exhibit A5, Dr. Baum's report dated October 13, 2016, pp. 72-73.)

With respect to SIBTF's argument that there is little to no contemporaneous medical evidence to support applicant's preexisting disabilities, however, we note that both Drs. Miner and Baum reviewed applicant's medical records from 2011 until the subsequent injury of April 29, 2013 and after. (Exhibit A8, Dr. Miner's report dated August 31, 2020, pp. 1-2; Exhibit A7. Dr. Baum's report dated July 14, 2020, pp. 3-12.) Dr. Baum's summary of medical records is more comprehensive, but both doctors' review of records support applicant's preexisting gastrointestinal, respiratory, hypertension, and spinal disabilities.

Lastly, we agree that applicant's trial testimony does not constitute prior contemporaneous evidence (see Petition for Reconsideration, pp. 16:23-17:22), but her testimony corroborates and informs the prior contemporaneous evidence reviewed by Drs. Miner and Baum. Particularly, it provides information as to how her preexisting disabilities were labor disabling at the time of her subsequent injury. For example, she testified that her preexisting spinal problems "limits her range

of motion and limits her ability to do various activities;” her preexisting scoliosis limits her breath, speech, mobility, and lung capacity, which in turn makes her susceptible to lung infections. (Minutes of Hearing and Summary of Evidence dated July 16, 2019, pp. 3:22; 3:23-5:7.) Therefore, her trial testimony is relevant in light of the prior medical evidence.

Accordingly, we rescind the decision and return this matter to the trial level for further proceedings consistent with this Opinion.

For the foregoing reasons,

**IT IS ORDERED**, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the June 29, 2021 Amended Findings and Award (erroneously titled Order Rescinding Findings and Award) is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings.

**WORKERS’ COMPENSATION APPEALS BOARD**

/s/ CRAIG SNELLINGS, COMMISSIONER

**I CONCUR,**

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 26, 2025**

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

**NADINA WARE  
RUCKA O’BOYLE  
OFFICE OF THE DIRECTOR- LEGAL UNIT (OAKLAND)**

**LSM/ pm**

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