

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

RYAN HOSMAN, *Applicant*

vs.

**CDCR – CCI TEHACHAPI, legally uninsured, adjusted by
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ8257521
Bakersfield District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration of the "Order Denying Request for a *Jackson* Reservation" (Order) issued on October 13, 2021, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues.¹ This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant's condition was permanent and stationary and did not warrant an order reserving jurisdiction over applicant's permanent disability pursuant to the holding in *Jackson*. (*General Foundry Service v. Workers' Comp. Appeals Bd. (Jackson)* (1986) 42 Cal.3d 331 [51 Cal.Comp.Cases 375].)

Applicant contends that his coronary artery disease constitutes an insidious disease process and thus, applicant is entitled to a reservation of jurisdiction on the issue of permanent disability.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below, as our Decision After Reconsideration we will affirm the October 13, 2021 Order.

¹ Commissioner Sweeney was on the panel that issued the order granting reconsideration. Commissioner Sweeney no longer serves on the Appeals Board. A new panel member has been substituted in her place.

FACTS

Applicant worked as a correctional officer when he sustained an admitted cumulative injury through September 2011 to his heart in the form of coronary artery disease. (Minutes of Hearing and Summary of Evidence, May 12, 2021, p. 2, lines 3-7.)

The parties entered stipulations with an award issuing on February 26, 2014. Thereafter, applicant sought to reopen his award of permanent disability.

Applicant was seen by agreed medical evaluator (AME) Edward O'Neill, M.D., who authored eight reports in evidence and was deposed twice. (Joint Exhibits A through H, and J, K.) Applicant was diagnosed with the following: "1) Coronary artery disease, status post multiple stent placement (5) and status post coronary artery bypass graft surgery of two vessels. 2) Residual angina pectoris." (Joint Exhibit H, Report of AME Edward O'Neill, M.D., May 29, 2013, p. 1.)

In 2013, Dr. O'Neill opined on permanent and stationary status as follows:

In workers' compensation terms, he would have multiple different periods of being permanent and stationary as time went on and the degree of his heart disease continues. Thus far, there has been no record of his having congestive heart failure, although with the continued coronary disease and the reduction in the perfusion of the myocardium, ultimately one can expect that he will develop some degree of congestive heart failure. Absenting such a definable condition, the complications of his coronary disease which have continued over the last two or three years can be expected to continue into the future. . . .

Subjectively, the applicant continues to have angina pectoris and objectively has the abnormalities noted on the repeat angiograms and angioplasties. As I noted above, one can anticipate periods of temporary total disability for days or weeks following these procedures, however, that does not represent a continuing state of temporary total disability. In that regard, I have seen him now on March 20, 2013 and can once again state that he is permanent and stationary. He has a WP·I at this time. as I documented above, which is a Class IV at 70% WPI for the reasons elaborated.

(*Id.* at p. 5.)

In 2018, Dr. O'Neill reevaluated applicant and noted no change in permanent and stationary status. (Joint Exhibit E, Report of AME Edward O'Neill, M.D., April 24, 2018, pp. 5-6.)

In 2020, Dr. O'Neill opined:

Mr. Hosman is permanent and stationary for rating purposes and is clinically stable according to the medical records of his treating physician and his current laboratory data is consistent with that opinion. The level of impairment is unchanged from my

report from 2018 and he continues to require intensive cardiac evaluation and treatment. The only significant change in his medication has been the addition of a thyroid supplement as prescribed by Dr. Puga which appears to be appropriate.

(Joint Exhibit B, Report of AME Edward O'Neill, M.D., March 10, 2020, p. 6.)

Upon review of additional testing, Dr. O'Neill further opined:

The findings of this echocardiogram are consistent with the findings which I noted previously. The doctor does note that the left atrium appears normal, whereas in the echocardiogram which was performed on February 24, 2020 and interpreted by Michael B. Levey, M.D., he noted the left atrium had mild enlargement with measurement of 4.2 cm. (4.0).

At the time of my evaluation of the applicant and the report of March 10, 2020, it was my opinion that his condition was stable and continued to be stable subsequent to my 2018 report with no substantial change in his clinical status according to his treating doctor's records (Dr. Puga).

These additional records are consistent with that prior opinion and indicate that the applicant's medical condition regarding his heart is stable, consistent with the results of the additional records which involved a repeat echocardiogram.

(Joint Exhibit A, Report of AME Edward O'Neill, M.D., November 4, 2020, p. 2.)

In deposition, Dr. O'Neill testified, in pertinent part, as follows:

Q Okay. Now, if the coronary artery disease continues to progress like it seems probable that it will and we start running into some of those other complications that you referenced in terms of the heart, do you think that would materially impact the level of whole person impairment?

A It may or may not. I don't know. You know, you're asking me to predict the future. I don't know.

(Joint Exhibit J, Deposition of AME Edward O'Neill, M.D., October 2, 2018, p. 39, line 23, through p. 40, line 5.)

DISCUSSION

The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) The Appeals Board will follow the opinions of the AME unless good cause exists to find the opinion unpersuasive. (*Ibid.*)

A progressive insidious disease is a disease “(1) that it is caused by a ‘remote’ and ‘undramatic’ work exposure - one that is likely to be undetected at the time, or if detected, the significance is likely to be unappreciated, (2) that the disease worsens over time, but at a rate so gradual that it is well established before becoming apparent and, (3) that it has a “long latency period” between exposure to the risk and the onset of symptomatology.” (*Ruffin v. Olson Glass Co.* (1987) 52 Cal.Comp.Cases 335, 341-342 (Appeals Board en banc); In *Jackson, supra*, the Supreme Court addressed the issue of when jurisdiction over permanent disability may be reserved in the case of an insidious and progressive disease. The applicant in *Jackson* was exposed to asbestos while working as a molder for the period from 1952 to 1981, which exposure caused the development of asbestosis. The Supreme Court noted that the Labor Code does not define the term permanent disability, although Rule 9735 (Cal. Code Regs, tit. 8, § 9735) states that “disability is considered permanent after the employee has reached maximum improvement or his condition has been stationary for a reasonable period of time.” The Court observed that this definition is inadequate when it is applied to a progressive occupational disease, stating: “The term does not envision an insidious, aggressive disease process that results from a remote, undramatic work exposure and is of little or no use in determining the status of such condition... The Board rule for permanent disability, therefore, is not very helpful... except to suggest that the condition is not permanent and stationary because of its progressive nature.” (citing *Piedmonte v. Western Asbestos* (1981) 46 Cal.Comp.Cases 475, 478.)

The Court found that the Appeals Board clearly has the power to continue its jurisdiction beyond the five-year period on the issue of permanent disability in the case of insidious progressive diseases, noting that on remand, “the Board may tentatively rate Jackson’s known permanent disability and order advances based on a tentative rating. The Board may then reserve its jurisdiction for a final determination of permanent disability when either: (1) [applicant]’s condition becomes permanent and stationary, or (2) his permanent disability is total and further deterioration would be irrelevant for rating purposes.” (*Jackson, supra*, at p. 338.)

We find the analyses in *Jackson* and *Piedmonte* to be particularly instructive to the present case, since reservation of jurisdiction was found justified in those cases based on medical evidence that indicated applicant’s condition—asbestosis in both cases-- could potentially progress to a more serious disabling condition, including cancer. In the present case, applicant has already been diagnosed with coronary artery disease, and his condition may progress, requiring lifetime

monitoring and potentially causing increased disability. see also, *Jackson, supra*, 42 Cal.3d 331 at p. 338 [“The Board may tentatively rate [the injured worker’s] known permanent disability and order advances based on that tentative rating. It may then reserve its jurisdiction for a final determination of permanent disability when either: (1) his condition becomes permanent and stationary, or (2) his permanent disability is total (100 percent) and further deterioration would be irrelevant for rating purposes.”].)

The key factor in determining whether there is a basis for reserving jurisdiction is determining whether the injured worker is suffering from an insidious progressive disease, and it has been repeatedly recognized since *Jackson* that a reservation of jurisdiction applies only in cases involving such an insidious progressive disease. (*Nickelsberg v. Workers’ Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 300, fn. 9 [56 Cal.Comp.Cases 476]; *Ruffin, supra*, 52 Cal.Comp.Cases 335 [No reservation of jurisdiction because degenerative knee condition and chronic lumbosacral sprain are not insidious progressive disease]; *Harisuiker v. Workers’ Comp. Appeals Bd.* (1993) 12 Cal.App.4th 209, 212 [58 Cal.Comp.Cases 19]; *Finley v. Workers’ Comp. Appeals Bd.* (2006) 71 Cal.Comp.Cases 361 (writ den.) [No reservation of jurisdiction because specific orthopedic injury was not insidious progressive disease]; *City of Santa Rosa v. Workers’ Comp. Appeals Bd. (Bertolucci)* (2003) 68 Cal.Comp.Cases 248 (writ den.) [Hepatitis C is insidious progressive disease that allows reservation of jurisdiction]; *County of Marin v. Workers’ Comp. Appeals Bd. (Carter)* 66 Cal.Comp.Cases 1533 (writ den.) [same]; *Los Angeles Unified School District v. Workers’ Comp. Appeals Bd. (Rainey)* (1985) 50 Cal.Comp.Cases 285 (writ den.) [Asbestosis is insidious progressive disease that allows reservation of jurisdiction]; *Seavello v. Workers’ Comp. Appeals Bd.* (2012) 77 Cal.Comp.Cases 596 (writ den.) [Skin cancer was not an insidious progressive disease where cancer had been excised and declared permanent and stationary].)

“‘Permanent and stationary status’ is the point when the employee has reached maximal medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment.” (Cal. Code Regs., tit. 8, § 9785(a)(8).) Ordinarily a finding of permanent disability is only made once applicant is permanent and stationary.

The underlying premise in progressive insidious disease cases is that applicant is not actually permanent and stationary. In fact, applicant’s condition progressively continues to deteriorate, such that they are never truly permanent and stationary for a significant period, which

in many cases ultimately ends in death. In such cases, the Appeals Board will make an interim award of permanent disability for the purpose of beginning payment of such benefits during applicant's lifetime, but will reserve jurisdiction over determination of the final award once applicant becomes permanent and stationary. This limited remedy was created in case law to ensure that an applicant could obtain interim permanent disability benefits. The facts of such cases must show that applicant's disease is progressively worsening.

Based on the facts presented here, applicant's coronary artery disease is not a progressive insidious disease. Applicant's disease is not progressively worsening. To the contrary, the AME opines that applicant's disease has stabilized and applicant is permanent and stationary. It is not enough to show that a disease process *may* worsen at some point in the future. That is true of every disease or condition. Instead, applicant must show to a reasonable degree of medical probability that the disease is actually getting worse.

The AME opined that applicant's condition *may* get worse in the future, but he does not know. Furthermore, the AME reviewed applicant's contemporary treatment records and found that applicant is presently stable. This is insufficient to reserve jurisdiction over permanent disability.

For all of the above reasons as our Decision After Reconsideration we affirm the October 13, 2021 Order.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Order Denying Request for a *Jackson* Reservation issued on October 13, 2021, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 5, 2025

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

**RYAN HOSMAN
FERRONE FERRONE
SCIF INSURED**

EDL/mt

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