

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

CELEASTIA WILLIAMS, *Applicant*

vs.

**WOODBURY UNIVERSITY;
TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, *Defendants***

**Adjudication Number: ADJ11142067
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration of the "Findings of Fact & Award" (F&A) issued on November 16, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant sustained industrial injury to her right hip and left knee, which resulted in applicant sustaining 14% permanent partial disability after apportioning 80% of her disability to non-industrial causation.¹ The WCJ further awarded a period of temporary disability but failed to include an award of attorney's fees.

Applicant contends that the parties had previously stipulated to an award of permanent disability, which included 50% apportionment to the left knee and that defendant failed to seek reopening on the issue of apportionment. Applicant further contends that an award of attorney's fees should have issued.

We have not received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we grant reconsideration to amend the award of temporary disability to include attorney's fees, but otherwise deny reconsideration.

¹ The F&A actually finds 20% non-industrial causation; however, that finding appears to be in error as the permanent disability award was calculated with 80% non-industrial apportionment as found by the evaluator.

We have considered the allegations of the Petition for Reconsideration 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 rescind the November 16, 2022 F&A and substitute a new F&A that awards the requested attorney's fee and finds that applicant sustained 54% permanent partial disability.

FACTS

Applicant sustained an admitted injury to her left knee and right hip while working as a director of enrollment services on November 28, 2016. (Minutes of Hearing and Summary of Evidence, May 24, 2022, p. 2.)

Applicant was initially seen by agreed medical evaluator Andrew Roth, M.D., who authored four reports in evidence. (Joint Exhibits 102 through 105.) Dr. Roth took a history of applicant experiencing a pop in her left knee while on commercial travel. (Joint Exhibit 105, Report of AME Andrew Roth, M.D., May 1, 2018, p. 2.) Applicant was diagnosed with a meniscal or ACL tear. (*Ibid.*) Applicant had surgery to her knee in May 2017. (*Ibid.*)

Dr. Roth noted that applicant walked with a marked limp on examination. (*Id.* at p. 16.) He diagnosed applicant with a left knee lateral meniscectomy with mild osteoarthritis. (*Ibid.*) He assigned 10% whole-person impairment (WPI) to the left knee, which included 6% WPI for arthritis, 1% WPI for surgical repair of the meniscus, and 3% WPI via a pain add-on. (*Id.* at pp. 22-23.)

Dr. Roth commented upon apportionment as follows:

The industrial injury reasonably resulted in meniscal injury, and the associated disability attributed to partial meniscectomy would be apportioned entirely to the November 28, 2016 industrial injury. The claimant's overall level of permanent disability involving the left knee, however, is significantly increased because of underlying arthritic changes. It is my opinion the arthritic changes were aggravated as a result of the industrial injury and treatment for same. As a result of the combination of effects of the specific injury, underlying degenerative changes, and aggravation of same, the claimant has significantly greater permanent disability than would have been anticipated for a simple meniscal injury and partial meniscectomy. The cause of left knee permanent disability is apportioned 50% to industrial causation and aggravation and 50% to pre-existent underlying degenerative changes, which significantly increased the impairment rating.

(*Id.* at p. 18.)

Under Dr. Roth's reporting, applicant's disability would have rated as follows:

Left knee arthritis (w/ pain add-on)

.5 (17.05.03.00 – 9 – [1.4] – 13 – 110D – 10 – 13) = 7% PD

Left knee meniscectomy

17.05.06.00 – 1 – [1.4] – 1 – 110D – 1 – 1 = 1 % PD

7 CVC 1 = 8 % PD

Dr. Roth reevaluated applicant and found no change in disability. (See Joint Exhibit 103, Report of AME Andrew Roth, M.D., May 1, 2018.) Dr. Roth did not find any ratable impairment to the hips at the time of his evaluation. (*Ibid.*)

The parties entered into a Stipulations with Request for Award, which was approved on August 27, 2019. The parties stipulated to applicant sustaining 9% permanent partial disability. The stipulations contain no rating string or other explanation for how the parties calculated applicant's permanent disability. The stipulations do not mention apportionment at all, but do state that: "Settlement is predicated on the reporting of orthopedic AME Andrew Roth, M.D., and future medical is pursuant thereto." (Stipulations with Request for Award, August 27, 2019, p. 7.)

Applicant filed a Petition to Reopen on January 21, 2020. It appears that Dr. Roth was unavailable as the parties obtained an evaluation with QME Graham Purcell, M.D., who authored one report in evidence.

Dr. Purcell diagnosed applicant with degenerative arthritis in both knees, and strains of both hips with degenerative arthritis. (Joint Exhibit 101, Report of QME Graham Purcell, M.D., May 10, 2021, p. 15.) He found that injury to the right knee and bilateral hips were a compensable consequence of gait derangement from the left knee. (*Ibid.*) He assigned 1% WPI for the left knee meniscectomy. (*Id.* at p. 16.) He assigned 10% WPI for left knee arthritis. (*Ibid.*) He assigned 10% WPI for left hip arthritis. (*Ibid.*) He assigned 20% WPI for right knee degenerative arthritis. (*Ibid.*) He assigned 10% WPI for right hip degenerative arthritis. (*Ibid.*)

Dr. Purcell opined on apportionment, as follows:

With regards to apportionment, there are medical records outlining approximately 4 years of physical therapy for symptoms of underlying degenerative joint disease. It is my medical opinion based on the diagnostic studies, the medical records available and Ms. Williams own history to me, that 20% of her current impairment has been caused by the industrial injury of 11/28/2016 and 80% of her current impairment has been caused by other factors.
(*Id.* at p. 17.)

DISCUSSION

Stipulations are binding on the parties unless, on a showing of good cause, the parties are given permission to withdraw from their agreements. (*County of Sacramento v. Workers' Comp. Appeals Bd.* (2000) 77 Cal.App.4th 1114, 1121 [65 Cal.Comp.Cases 1] (*Weatherall*)). As defined in *Weatherall*, "A stipulation is 'An agreement between opposing counsel . . . ordinarily entered into for the purpose of avoiding delay, trouble, or expense in the conduct of the action,' (Ballentine, Law Dict. (1930) p. 1235, col. 2) and serves 'to obviate need for proof or to narrow range of litigable issues' (Black's Law Dict. (6th ed. 1990) p. 1415, col. 1) in a legal proceeding." (*Weatherall, supra*, 77 Cal.App.4th at p. 1119.)

Labor Code² section 5702 states:

The parties to a controversy may stipulate the facts relative thereto in writing and file such stipulation with the appeals board. The appeals board may thereupon make its findings and award based upon such stipulation, or may set the matter down for hearing and take further testimony or make the further investigation necessary to enable it to determine the matter in controversy.

As explained in the Appeals Board's en banc decision in *Nunes I*:

The California worker's compensation system requires that, "[e]mployers must compensate injured workers only for that portion of their permanent disability attributable to a current industrial injury, not for that portion attributable to previous injuries or to nonindustrial factors. 'Apportionment is the process employed by the Board to segregate the residuals of an industrial injury from those attributable to other industrial injuries, or to nonindustrial factors, in order to fairly allocate the legal responsibility.'" (*Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1321 [57 Cal. Rptr. 3d 644, 156 P.3d 1100, 72 Cal.Comp.Cases 565], quoting *Ashley v. Workers' Comp. Appeals Bd.* (1995) 37 Cal.App.4th 320, 326 [43 Cal.Rptr. 2d 589, 60 Cal.Comp.Cases 683].)

(*Nunes v. State of California, Dept. of Motor Vehicles (Nunes I)*, (2023) 88 Cal.Comp.Cases 741, 748-749 (Appeals Board en banc).)

Section 4663(c) provides, in relevant part:

(c) In order for a physician's report to be considered complete on the issue of permanent disability, the report must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury

² All future references are to the Labor Code unless noted.

arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior industrial injuries.

(Lab. Code, § 4663(c).)

In *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Board en banc) (*Escobedo*), we explained:

Section 4663(c) not only prescribes what determinations a reporting physician must make with respect to apportionment, it also prescribes what standards the WCAB must use in deciding apportionment; that is, both a reporting physician and the WCAB must make determinations of what percentage of the permanent disability was directly caused by the industrial injury and what percentage was caused by other factors.

(*Id.* at p. 607.)

Accordingly, section 4663(c) authorizes and requires the reporting physician to make an apportionment determination, and further prescribes the standards the physician must use. (Lab. Code, § 4663(c); *Escobedo*, supra, at pp. 607, 611–612.) Apportionment must account for “other factors both before and subsequent to the industrial injury,” and may include disability that formerly could not have been apportioned, including apportionment to pathology, asymptomatic prior conditions, and retroactive prophylactic work restrictions. (*Ibid.*) In addition, when a physician considers all appropriate factors of apportionment but nevertheless determines that it is not possible to approximate the percentages of each factor contributing to the employee’s overall permanent disability to a reasonable medical probability, the physician has made the apportionment determination required under section 4663(c). (*Benson v. Workers' Comp. Appeals Bd.* (2009) 170 Cal. App. 4th 1535 [89 Cal. Rptr. 3d 166, 74 Cal.Comp.Cases 113, 133]; see also *James v. Pacific Bell Tel. Co.* (May 10, 2010, ADJ1357786) [2010 Cal. Wrk. Comp. P.D. LEXIS 188].)

(*Nunes I*, 88 Cal.Comp.Cases, at pp. 748-749.)

Defendant carries the burden of proof on apportionment. (§ 5705.) Apportionment of permanent disability must address causation of disability and must constitute substantial evidence. (*Escobedo*, supra at pp. 611, 620-621.) To constitute substantial evidence “. . . a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.” (*Id.* at p. 621.) Causation of disability is not to be confused with causation of injury. (*Id.* at p. 611.)

First, the apportionment opinion of QME Dr. Purcell does not constitute substantial medical evidence as it is conclusory and without adequate explanation. Not only is it conclusory, but it is also vague as Dr. Purcell states that “other factors” caused disability without describing any such factors. The apportionment opinion of Dr. Purcell cannot be followed.

However, and notwithstanding the fact that QME Dr. Purcell’s apportionment opinion is not substantial, the parties previously stipulated to Dr. Roth’s opinion, which included assignment of 50% apportionment to applicant’s left knee arthritis, and thus, we will include that apportionment in rating applicant’s disability.

Accordingly, we will calculate applicant’s prior disability to the left knee arthritis applying the apportionment opinion of Dr. Roth, but we cannot find apportionment to other body parts as defendant failed its burden of proof.

Left knee arthritis

$$.5 (17.05.03.00 - 10 - [1.4] - 14 - 110D - 11 - 15) = 8\% \text{ PD}$$

Left knee meniscectomy

$$17.05 - 1 - [1.4] - 1 - 110D - 1 - 1 = 1\% \text{ PD}$$

Left Hip Arthritis

$$17.03.03.00 - 10 - [1.4] - 14 - 110D - 11 - 15 = 15\% \text{ PD}$$

Left Lower Extremity - CVC – 15 + 8 + 1 = 23

Right Hip Arthritis

$$17.03.03.00 - 10 - [1.4] - 14 - 110D - 11 - 15 = 15\% \text{ PD}$$

Right Knee Arthritis

$$17.05.03.00 - 20 - [1.4] - 28 - 110D - 24 - 31 = 31\% \text{ PD}$$

Right Lower Extremity - CVC 31 + 15 = 41 % PD

CVC 23 + 41 = **55 % PD**

Applicant’s disability rating does not require the assistance of a DEU rater in this case. (See *Blackledge v. Bank of America* (2010) 75 Cal. Comp. Cases 613, 624-625 (Appeals Board en banc).)

As to the issue of attorney’s fees from the temporary disability awarded, no party objects to this request and the WCJ has admitted error in not awarding such fees. Thus, we will correct the award to include appropriate attorney’s fees. As we are reissuing the award of temporary disability, we must issue it correctly and note that the original award appears to contain an error in the

temporary disability rate. The parties stipulated that applicant's earnings were \$1,927.29 per week.

Pursuant to section 4661.5:

Notwithstanding any other provision of this division, when any temporary total disability indemnity payment is made two years or more from the date of injury, the amount of this payment shall be computed in accordance with the temporary disability indemnity average weekly earnings amount specified in Section 4453 in effect on the date each temporary total disability payment is made unless computing the payment on this basis produces a lower payment because of a reduction in the minimum average weekly earnings applicable under Section 4453.

(§ 4661.5.)

By statute, and because payment is issuing beyond two years from the date of injury, applicant's temporary disability rate is two-thirds of average earnings, which equals \$1,284.85 per week. To the extent that the parties stipulated to a lower rate of temporary disability, in error, we reject this stipulation as it is not adequate. We will correct the Findings of Fact accordingly.

We must also correct the award as the WCJ found a period of temporary disability from May 1, 2020 through March 31, 2021, but found that permanent disability began on May 10, 2020, during the period of temporary disability, which is not correct.³ Permanent disability is payable when temporary disability ceases. (See *Brower v. David Jones Const.*, (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).) Where applicant sustains broken periods of permanent disability and temporary disability, permanent disability is payable between the periods of temporary disability and after temporary disability ceases. (*Id.*) The date that applicant becomes permanent and stationary does not control payment of permanent disability.⁴

The correct period of permanent disability payment is May 15, 2018, through April 30, 2020, and April 1, 2021 and continuing, which means that applicant's award of 303.25 weeks is all due and payable. We will correct the award accordingly.

³ This may have been a typographical error as the WCJ found applicant permanent and stationary as of May 10, 2021; however, as explained below, even if the WCJ intended permanent disability to coincide with applicant's permanent and stationary date, that would also be in error as payment of permanent disability begins immediately upon the end of temporary disability payment. (See *Brower v. David Jones Const.* (2014) 79 Cal.Comp.Cases 550 (Appeals Board en banc).)

⁴ Often parties may incorrectly conflate the permanent and stationary date as being the start date of permanent disability payment; however, this correlation occurs only in cases where the permanent and stationary date correlates with the end of temporary disability payment.

Accordingly, as our Decision After Reconsideration we rescind the November 16, 2022 F&A and substitute a new F&A that awards the requested attorney's fee and finds that applicant sustained 54% permanent partial disability.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact & Award issued on November 16, 2022, by the WCJ is **RESCINDED** and with the following **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, Celestia Williams, while employed on November 28, 2016, as the Director of Enrollment Services by Woodbury University, occupational group number 110, at Burbank, California, sustained injury arising out of and in the course of employment to her left knee, right knee, left hip, and right hip.
2. Applicant, Celestia Williams, was temporarily disabled from the period of May 1, 2020 through March 31, 2021 and is entitled to temporary disability indemnity at the weekly rate of \$1,284.85, subject to the maximum period for temporary disability as set forth in Labor Code section 4656.
3. Applicant was permanent and stationary on May 10, 2021.
4. Applicant is entitled to a permanent disability award of 54%, equivalent to 303.25 weeks of indemnity, payable at the rate of \$290.00 per week, in the total sum of \$87,942.50, for the periods of May 15, 2018, through April 30, 2020, and April 1, 2021 and continuing, which is all due and payable, less credit for permanent disability paid on account thereof and less the attorney's fee awarded herein.
5. Defendant failed its burden of proof on apportionment of permanent disability.
6. Applicant is need of further medical treatment to cure or relieve from the effects of the industrial injury.
7. Out-of-pocket medical costs and mileage are deferred with jurisdiction reserved.
8. Liens are deferred with jurisdiction reserved.
9. Applicant sustained new and further disability.

10. Applicant's attorney performed services reasonably valued at 15% of applicant's permanent disability and temporary disability awards. Attorney's fees from permanent disability are \$12,016.88 (\$13,191.38 less prior fees of \$1,174.50). The exact calculation of attorney's fees from the temporary disability awarded is deferred to the parties to adjust with jurisdiction reserved in the event of a dispute.

AWARD

AWARD IS MADE in favor of **CELEASTIA WILLIAMS** against **TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA** as follows:

- (a) Temporary disability for the period of May 1, 2020 through March 31, 2021, at the weekly rate of \$1,284.85, subject to the maximum period for temporary disability as set forth in Labor Code section 4656, less credit for temporary disability paid on account thereof and less an attorney's fee of 15%, which is deferred to the parties to adjust with jurisdiction reserved in the event of a dispute.
- (b) Permanent disability of 54%, equivalent to 303.25 weeks of indemnity, payable at the rate of \$290.00 per week, in the total sum of \$87,942.50, for the periods of May 15, 2018, through April 30, 2020, and April 1, 2021 and continuing, which is all due and payable, less credit for permanent disability paid on account thereof and less an attorney's fee of \$12,016.88.
- (c) Future medical care to cure or relieve from the effects of the industrial injury.
- (d) All other issues are deferred.

IT IS FURTHER ORDERED that this matter is **RETURNED** to the trial level.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 6, 2026

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

**CELEASTIA WILLIAMS
LESTER FRIEDMAN
WOOLFORD ASSOCIATES**

EDL/mt

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