WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

GREGORY ROSS, *Applicant*

vs.

FRONTIER COMMUNICATIONS;
ZURICH NORTH AMERICA, *Defendants*

Adjudication Numbers: ADJ12178496; ADJ12284136
Pomona District Office

OPINION AND DECISION AFTER RECONSIDERATION

We granted reconsideration to further study the factual and legal issues in this case. This is our decision after reconsideration.[1]

Defendant sought reconsideration of the August 24, 2022 Joint Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found in pertinent part in case number ADJ12178496 that while employed by defendant as a fiber optics technician, applicant sustained a cumulative injury from April 12, 1999 to April 26, 2019 to his cervical spine, right shoulder, left shoulder, right wrist and left wrist; and that applicant's injury caused permanent disability of 82 percent; and found in pertinent part in case number ADJ12284136 that while employed by defendant as a fiber optics technician, applicant sustained injury on June 15, 2018 to his cervical spine and left shoulder; and applicant's injury caused permanent disability of 15 percent.

Defendant contends that a Whole Person Impairment (WPI) of 28 percent was not warranted under criteria for DRE Cervical Category IV of the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* (AMA Guides). Defendant further contends that a WPI of 19 percent for each wrist was not warranted under the AMA Guides because applicant has not had carpal tunnel release surgery.

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[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 appointed in her place.

We have received an Answer from applicant. The WCJ has prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that we deny the Petition.

We previously granted reconsideration to allow sufficient opportunity to further study the factual and legal issues in this case. Having fully considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the Report with respect thereto, based on our review of the record, and as discussed below, as our Decision After Reconsideration, we will affirm the August 24, 2022 F&A.

FACTS

In case number ADJ12284136, the parties stipulated that applicant sustained injury to the cervical spine and left shoulder while employed by defendant Frontier Communications as a Fiber Optics Technician, Occupational Group Number 470, on June 15, 2018. Based on applicant's stipulated date of birth, he was 56 years of age as of the date of injury. (Minutes of Hearing and Summary of Evidence dated April 14, 2022, p. 2, lines 8-12.)

In case number ADJ12178496, defendant disputed applicant's claim that he sustained a cumulative injury to his cervical spine, right shoulder, left shoulder, right wrist, and left wrist arising out of and in the course of the same employment (AOE/COE) during the period from April 12, 1999 through April 26, 2019. Based on the stipulated date of birth, applicant was 57 years of age at the conclusion of the claimed cumulative trauma period of injurious exposure. (*Id*. at p. 3, lines 8-13.)

At trial, the parties submitted issues including whether applicant sustained a cumulative injury AOE/COE, permanent disability, and apportionment. (*Id*. at p. 3, lines 1-7 and 19-25; p. 4, lines 1-3; p. 8, lines 8-10.) No testimony was taken, but the parties jointly moved exhibits into evidence, including reports by Panel Qualified Medical Evaluator (PQME) Robert J. MacArthur, M.D., in the medical specialty of orthopedic surgery. (*Id*. at p. 4, line 5 through p. 8, line 7.)

In his report dated November 8, 2019, Dr. MacArthur found that applicant sustained an industrial injury of June 15, 2018, to the cervical spine and left shoulder, as well as a cumulative injury AOE/COE to the cervical spine, left hip, left and right shoulders, and left and right wrists. The PQME assessed 16 percent Whole Person Impairment (WPI) using DRE Cervical Category III of Table 15-5 at page 392 of the AMA Guides. The PQME offered his expert opinion that his

examination showed significant radicular type symptoms with a left side C6 distribution, motor and sensory, even though an EMG did not technically show a cervical radiculopathy, because applicant showed symptoms consistent with radicular type pathology matching the level of his anterior cervical decompression and fusion. (Joint Exhibit 3, PQME Report by Dr. Robert MacArthur dated November 8, 2019, p. 13, lines 5-9.) Dr. MacArthur apportioned 30 percent of cervical spine disability to the injury of June 15, 2018 and 30 percent to industrial cumulative trauma. (*Id*. at p. 13, lines 1-4.)

Dr. MacArthur also found 18 percent WPI of the left shoulder, and 18 percent WPI of the right shoulder, based on a 50 percent loss of normal motion of the glenohumeral joint of each shoulder using Table 16-18 on page 499 of the AMA Guides. (*Id*. at p. 13, last five lines, and p. 14, lines 11-15.) He apportioned 25 percent of left and right shoulder disability to industrial cumulative trauma. (*Id*. at p. 13, lines 14-25, and p. 14, lines 4-10.)

Because applicant had positive clinical findings with an abnormal EMG, the PQME used Table 16-15 on page 492 as well as the discussion of carpal tunnel syndrome on page 495 of the AMA Guides to find seven percent WPI of each wrist due to carpal tunnel syndrome. Dr. MacArthur indicated that this condition was caused by the nature of applicant's work, which required repetitive grasping. He apportioned 100 percent of bilateral wrist disability to industrial cumulative trauma, noting that applicant did not complain of any pain in the bilateral wrists prior to his date of hire in 1999.

The PQME also found industrial exacerbation of osteoarthritis of the left hip, but concluded that any impairment due to this condition was caused by a nonindustrial motorcycle accident. (*Id*. at p. 14, lines 16-21.)

In his deposition dated March 5, 2021, Dr. MacArthur opined that applicant had significant signs of radiculopathy warranting a DRE Cervical Category III based upon a physical examination that matched an MRI but not EMG studies. (Joint Exhibit 38, Deposition Transcript of Dr. Robert MacArthur dated March 5, 2021, pp. 10-11.) With respect to applicant's carpal tunnel syndrome in each wrist, the PQME testified that it was based on moderate to severe sensory loss revealed by his examination and an EMG, approximately 25 percent or a Grade 3 to 4 under Table 16-10 in the AMA Guides, and a mild motor loss under Table 16-11. He used the standard neuropathy table, Table 16-15 in the AMA Guides, to assess 20 percent WPI (33 percent upper extremity impairment) for each wrist, even though applicant had not yet had carpal tunnel surgery. He stated

that he would like to re-evaluate applicant if applicant has carpal tunnel release surgery in the future. (*Id*. at pp. 8-9.)

In his report dated August 23, 2021, Dr. MacArthur noted that a supplemental report was requested at his deposition to further address impairment of the cervical spine and wrists. (Joint Exhibit 2, PQME Supplemental Report of Dr. Robert MacArthur dated August 23, 2021, p. 1.) In his next supplemental report, dated October 4, 2021, Dr. MacArthur once again assessed 16 percent WPI of the cervical spine, based on a C5-6 decompression and fusion surgery. (Joint Exhibit 1, PQME Supplemental Report of Dr. Robert MacArthur dated October 4, 2021, p. 13, lines 3-10.) He revised the WPI for bilateral carpal tunnel syndrome to 19 percent (32 percent upper extremity impairment) for each wrist. (*Id*. at p. 13, lines 10-18.)

In his final report dated March 7, 2022, Dr. MacArthur confirmed his assessment of 19 percent WPI for each wrist, but increased the cervical WPI to 28 percent, reasoning as follows:

> Due to the clinical findings of persistent radiculopathy and C6 distribution, motor and sensory, albeit mild, in my opinion this claimant should be rated on the high end of [DRE Cervical] category IV or 28% whole person impairment. I again acknowledged in my report that the EMG did not show signs of radiculopathy and for this reason and out of respect for the sensitivity of EMGs in detecting radiculopathy, I do not find category V to be appropriate, but again high end of category IV would be appropriate.

(Joint Exhibit 39, PQME Supplemental Report of Dr. Robert MacArthur dated March 7, 2022, p. 7, lines 1-6.)

The PQME's final WPI percentages were converted into permanent disability using the criteria set forth in Labor Code[2] section 4660.1 and the current permanent disability rating schedule, with percentages of apportionment applied to both the specific injury in case number ADJ12284136 and the cumulative injury in case number ADJ12178496, as shown in the following rating strings:

> ADJ12284136:
>
> Cervical spine: 30%(15.01.01.00—28—[1.4]39—470H—45—51)15
>
> ADJ12178496:
>
> Cervical spine: 30%(15.01.01.00—28—[1.4]39—470H—45—53)16
> Left shoulder: 25%(16.02.02.00—24—[1.4]34—470H—40—48)12
> Right shoulder: 25%(16.02.02.00—23—[1.4]32—470H—38—46)12
> Left carpal tunnel: 16.01.02.02—19—[1.4]27—470J—38—46

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

Right carpal tunnel: 16.01.02.02—19—[1.4]27—470J—38—46

46 C 46 C 16 C 12 C 12 = 82

The five percentages of permanent disability apportioned to industrial cumulative trauma combine to 82 percent permanent disability on the Combined Values Chart (CVC) in the current Permanent Disability Rating Schedule (PDRS).[3]

Based upon the PQME's assessment of WPI and apportionment, in the August 24, 2022 F&A, the WCJ found and awarded permanent disability of 82 percent in case number ADJ12178496 in connection with a cumulative injury from April 12, 1999 to April 26, 2019 to applicant's cervical spine, right shoulder, left shoulder, right wrist and left wrist, and 15 percent in ADJ12284136 due to an injury on June 15, 2018 to applicant's cervical spine and left shoulder.

Defendant's timely, verified Petition for Reconsideration only challenges the calculation of permanent disability of the cervical spine and bilateral wrists.

DISCUSSION

I

Based upon our review of the record, we agree that the evidence is sufficient to support the WCJ's finding that applicant is entitled to compensation for 82 percent permanent disability in case number ADJ12178496 and 15 percent in ADJ12284136, after apportionment.

All decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 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].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.)

We agree with the WCJ that the expert opinions of Dr. MacArthur in orthopedics constitute substantial medical evidence. The medical expert opinions of the PQME which formed the basis for the finding of 82 percent permanent disability in case number ADJ12178496 and 15 percent in

[3] These rating strings can be found in the Joint Opinion on Decision, at p. 5, lines 2-10.

ADJ12284136 have probative value, are more than a mere scintilla, and are reasonable in nature, credible, and of solid value. The remainder of the evidentiary record herein affords no reason to disbelieve Dr. MacArthur's conclusions, which apply correct legal standards, medical criteria, and expert judgment to the issue of whether applicant's low back and lower extremity disabilities should be added or combined.

Specifically, as noted by the WCJ in the Report:

> The petition for reconsideration should be denied for the following reasons: First, the court correctly calculated the PD on the cervical spine because there was a fusion, which places the Applicant in DRE Category IV. Secondly, the court correctly calculated the PD on the bilateral carpal tunnel because Dr. MacArthur explained that instead of guessing about whether Applicant was going to get carpal tunnel surgery, which he believed was inappropriate, he now calculates the WPI for pre-surgical injured workers based on the neuropathy tables on pp. 482 and 484 of the AMA Guides, with the proviso that the WPI can change if the injured worker later has surgery. In the alternative, if the carpal tunnel PD is not correct, then Defendant should provide the carpal tunnel surgery followed by occupational therapy, work conditioning, an EMG, and a reevaluation for final rating purposes, as recommended by Dr. MacArthur.
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> **A. The cervical spine PD is correct because Applicant had a fusion.**
>
> Regarding this first point, the court correctly calculated the PD on the cervical spine because there was a fusion. Applicant had a C5-6 anterior cervical discectomy and fusion on 4/4/19 performed by a Dr. Alan. (See Joint Exhibit 25.) Dr. MacArthur notes this in his record review on p. 10 of his 11/8/19 report. (See Joint Exhibit 3.)
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> This was also noted in the DEU's consultative ratings generated on 2/23/22 which prompted the court at the first trial hearing on 2/24/22 to order the parties to get a supplemental report from Dr. MacArthur to provide a whole person impairment value in DRE Category IV, as opposed to DRE Category III. The court wrote on the minutes that day: "Parties agree to obtain a supplemental report from Dr. McArthur, which they anticipate can be procured within 45 days. Parties will prepare a joint letter to the doctor. The purpose is to get the doctor to assign a WPI within the DRE Category IV range in light of the fusion at C5-6." In response, Dr. MacArthur provided for 28% WPI in his 3/7/22 supplemental report. (See Joint Exhibit 39.) Dr. MacArthur does not specifically mention the fusion on p. 7 of that report where he gives the WPI, but he mentions it on p. 1 of the report where he discusses the letter sent to him by Applicant's attorney dated 3/10/22 asking him to assign a WPI in DRE Category IV.
>
> Defendant does not mention this fusion at all in their petition for reconsideration. So, there is no argument or explanation as to how the Applicant's C5-6 fusion does not qualify him for DRE Category IV. The AMA Guides specifically indicate in Table 15-5 on p. 392, that DRE Category IV includes situations where "alternatively, the individual may have loss of motion of a motion

segment due to a developmental fusion or successful or unsuccessful attempt at *surgical arthrodesis*." (Emphasis added.) As such, the court's finding with respect to PD for the cervical spine should stand.

B. The bilateral carpal tunnel PD is correct because the doctor explained the basis for using the neuropathy tables in pre-surgical cases.

With respect to the carpal tunnel, Defendant complains that the doctor originally found 7% WPI for each wrist in his 11/8/19 report after extrapolating from pp. 495 and 492 of the AMA Guides but that the Applicant had never undergone a carpal tunnel surgery. Defendant then complains that the doctor changed his mind at his cross examination on 3/5/21 (Joint Exhibit 38) to find WPI for the carpal tunnel using Tables 16-10 and 16-11 on pp. 482 and 484 of the AMA Guides instead, which he estimated at the time as 20% for each wrist. Defendant argues again that these tables are intended for post-surgical patients without citing to any particular authority. Defendant asked the doctor at his deposition to do a supplemental report regarding his change of opinion, which the doctor said he would do later that day.

Defendant does not discuss this supplemental report, however. The report was not actually generated until 10/4/21 (Joint Exhibit 1), which was about seven months after Defendant was expecting it. That report says on p. 13: "Regarding rating of the wrists and hands, same rating bilaterally, based upon EMG findings and physical examination findings, with a 75% median sensory neuropathy or a Grade II lesion per Table 16-10, Page 482, and a Grade III to IV or 25% motor deficit per Table 16-11, Page 484, which would equate to a 29% Upper Extremity Impairment sensory, which is three-fourths of 39 and a 3% Upper Extremity Impairment motor based on 25% of 10 or 2.5% for motor, which equals a total of 32% Upper Extremity Impairment each extremity corrected from the 33% described in the Deposition, which equates to a 19% Whole Person Impairment each upper extremity…. I reiterate that this impairment rating could change if a carpal tunnel release was performed and that if a carpal tunnel release were performed, I would recommend occupational therapy and work hardening for a period of no less than three months and an EMG bilateral upper extremities no sooner than three months and then PQME reevaluation for reassessment of impairment rating if requested by parties involved." The court agrees that the Applicant has not had carpal tunnel surgery. Defendant seems to be suggesting that PD for the carpal tunnel therefore cannot be rated in the absence of surgery. But per *Almaraz*,[4] the doctor can rate within the four corners of the AMA Guides, as long as his conclusions are supported by adequate reasoning. Here, the doctor comments on p. 9 of his deposition transcript about how he believes that it is inappropriate to try to guess whether the Applicant is or is not going to get carpal tunnel surgery. He explained that he went back to using the standard neuropathy tables in these pre-operative situations. He states on p. 9, lines 10-11 "I should just

[4] See *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd*. (referred to frequently as *Almaraz/Guzman*) (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837]).

grade the neuropathy and then re-evaluate him and get the release." This seems to be a reasonable basis to use the neuropathy tables.

If a patient cannot or reasonably does not want to get surgery, or if a defendant won't authorize it, then there ought to be way to rate his carpal tunnel without it. It is not known for certain which of these situations applies to the Applicant's case. The court can see from the record that Defendant wanted to try to settle the case based on the existing evidence when they filed their DOR of 10/5/21. Applicant objected to this DOR on 10/12/21 on the basis that they had just sent a 4600 letter to defense counsel in an effort to obtain approval for the carpal tunnel releases and that they were still coordinating with defense to complete those releases. One could surmise from this that Defendant was hesitant to authorize the surgeries. But even if Applicant did not want to get the surgeries, and assuming the inapplicability of Labor Code Section 4056—which bars compensation when disability is caused, continued, or aggravated by an unreasonable refusal to submit to treatment—then the court believes that doctors should be free to assign a WPI for any existing disability, within the four corners of the AMA Guides, of course. Therefore, the court's finding with respect to PD for the bilateral carpal tunnel should also stand.

(Report, pp. 2-6.)

We agree with the WCJ's reasoning, and will not disturb the decision.

Accordingly, we affirm the April 20, 2022 F&A.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration that the Findings & Award of August 24, 2022 is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 5, 2026

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

GREGORY ROSS
SOLIMON RODGERS, P.C.
FLOYD, SKEREN, MANUKIAN, LANGEVIN, LLP

CWF/*cs*

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