WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIE TALLEY, *Applicant*

vs.

COUNTY OF MONTEREY, permissibly self-insured, administered by INTERCARE HOLDINGS INSURANCE SERVICES, INC., *Defendants*

Adjudication Number: ADJ8492544
Salinas District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Applicant seeks reconsideration of the February 2, 2022 Findings and Award (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a management analyst on April 30, 2008, sustained industrial injury to her cervical spine, face (consisting of trigeminal nerve injury), headaches and hypertension. The WCJ found that applicant did not sustain injury in the form of diabetes or sleep loss and awarded permanent disability after combining applicant's impairment ratings rather than adding them.

Applicant contends that the record supports industrial contribution to her diabetes and sleep impairment conditions, and that her impairment ratings should be added rather than combined.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will affirm the F&A.

---

[1] Commissioner Lowe, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been substituted in her place.

FACTS

Applicant claimed injury to her cervical spine, face consisting of the trigeminal nerve, headaches, sleep loss, hypertension, and diabetes while employed as a management analyst by defendant County of Monterey on April 30, 2008. Defendant admits injury to the cervical spine, face consisting of the trigeminal nerve, and headaches but disputes injury in the form of sleep loss and diabetes.

The parties have selected Charles Martin, D.C., as the chiropractic Qualified Medical Evaluator (QME), Massoud Mahmoudi, D.O., Ph.D., as the QME in internal medicine, and A. K. Bhattacharyya, M.D., as the QME in neurology.

On December 9, 2021, the parties proceeded to trial and framed for decision, in relevant part, the disputed body parts/systems of sleep loss, hypertension and diabetes. (Minutes of Hearing, dated December 9, 2021, at p. 3:3.) The parties also placed in issue permanent disability and "the applicability of the Combined Value Chart versus Additive Method for impairment." (*Id.* at p. 3:6.) Neither party offered witness testimony, and the WCJ ordered the matter submitted for decision as of December 17, 2021.

On February 2, 2022, the WCJ issued her F&A, determining in relevant part that applicant sustained her burden of establishing industrial injury in the form of hypertension, but not in the form of diabetes or sleep loss. (Finding of Fact No. 1.) The WCJ combined, rather than added, applicant's impairments using the Combined Values Chart (CVC) and awarded 49 percent permanent partial disability. (Finding of Fact No. 4.) The WCJ's Opinion on Decision explained that although QME Dr. Mahmoud had identified industrial contribution for applicant's diabetic condition due to post-injury weight gain, and industrial contribution to applicant's headache condition due to orthopedic injury, the QME's findings were not based on substantial medical evidence. The WCJ also noted that insofar as the diabetic and sleep disturbance conditions were nonindustrial, the issue of whether an additive approach to combining her internal medicine related impairments was moot.

Applicant's Petition contends her post-injury weight gain was significant, and that per the opinion of QME Dr. Mahmoud, there is a positive correlation between weight gain and the onset of diabetes. (Petition, at p. 5:8.) Applicant further contends the WCJ should follow the undisputed opinions of the QME with respect to industrial causation for her sleep disturbance, and that the WCJ is substituting her medical opinions for those of the various QMEs in this matter. (*Id.* at

p. 9:15.) Applicant also asserts that if there are doubts as to the cause of the injury, the record should be developed. (*Id.* at p. 12.)

Defendant's Answer responds that the record does not support industrial contribution to applicant's diabetic or sleep disturbance conditions, and that the WCJ appropriately combined applicant's impairments utilizing the CVC.

The WCJ's Report reviews the medical evidence in detail and explains why the reporting of Dr. Mahmoudi was persuasive as to applicant's industrial hypertension, but not as to the claimed sleep or diabetic conditions. The WCJ recommends we deny reconsideration.

DISCUSSION

The F&A finds industrial injury to applicant's cervical spine, face, headaches and hypertension, but not in the form of diabetes or sleep loss. (Findings of Fact No. 1.) Based on these body parts/systems, the WCJ combined the corresponding ratings using the CVC and awarded 49 percent permanent partial disability.

Applicant challenges the findings as to both her diabetic condition and alleged sleep loss condition, noting that in both instances internal medicine Dr. Mahmoudi has identified industrial contribution. (Petition, at p. 4:2.) To the extent that the diabetic and sleep conditions are industrial, applicant further contends they should be added, rather than combined, as per the opinions of QME Dr. Mahmoudi. (*Id.* at p. 4:7.)

We begin our discussion with applicant's claim that her industrial injury contributed to her diabetic condition. Applicant specifically contends that her inactivity due to the industrial injury caused weight gain, which in turn "led to diabetes." (Petition, at p. 5:25.) Applicant asserts that the onset of diabetes followed a trend identified by Dr. Mahmoudi originating with inactivity, followed by weight gain and then diabetes. (*Id.* at p. 7:24.)

Applicant's diabetic condition was not identified in Dr. Mahmoudi's initial report of June 30, 2015, and appears to have been diagnosed some time in 2016 by applicant's personal physician Dr. Reddy. (Ex. J15, Report of Massoud Mahmoudi, D.O., Ph.D., dated May 1, 2017, at p. 12.) Applicant was noted to have three siblings with Type II diabetes. (*Id.* at p. 6.) After conducting a reevaluation of applicant on May 1, 2017, Dr. Mahmoudi identified industrial causation but did not explain *how* or *why* applicant's 2008 injury caused the onset of diabetes eight years later. (*Id.* at pp. 10, 12.)

The parties undertook the deposition of Dr. Mahmoudi on September 23, 2019, and inquired with respect to the relationship between applicant's industrial injury in 2008 and the onset of diabetes in 2016. The QME confirmed that not everyone who experiences weight gain following an injury will develop diabetes. (Ex. J19, Transcript of Deposition of Massoud Mahmoudi, D.O., dated September 23, 2019, at p. 35:20.) The QME observed, "[applicant is] a specific person with a specific injury, so many things happened after the musculoskeletal injury, gaining weight, put on a bunch of different medications, which ordinarily somebody who's obese does not take that much ibuprofen, and so we're talking about a specific person, so we cannot generalize it." (*Id.* at p. 37:1.)

In response to inquiries by the parties, Dr. Mahmoudi explained in a 2021 supplemental report that "the causation link is the fall, the diabetes followed a trend of inactivity, weight gain, and finally diabetes." (Ex. J18, Report of Massoud Mahmoudi, D.O., Ph.D., dated February 18, 2021, at p. 4.) The QME stated:

> The weight gain was also gradual. Now the question is why she was not diabetic prior to the injury with BMI of 28.7? The key response is threshold. Not every obese person with diabetic family becomes diabetic. The fact is that at some point the weight gain passes a certain threshold and that leads to diabetes. This threshold varies person to person. Sometimes a few [pounds] of weight gain would pass the threshold. However, in this particular case she weighed 180½ lbs. at the time of my second evaluation on 04-05-2017, and a few lbs. less in the first evaluation. This is approximately 30 lbs. weight gain. Therefore, the obvious factors (considering other factor(s) were the same) which changed post injury was the significant weight gain.

(*Ibid*.)

It is well established that any decision of the WCAB must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal. 3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal. 3d 372, 378-379 [35 Cal.Comp.Cases 525].) Whether a physician's opinion constitutes substantial

evidence "must be determined by the material facts upon which his opinion was based and by the reasons given for his opinion." (*Ibid*.)

Here, the QME reasons that applicant's industrial injury caused inactivity which in turn resulted in weight gain, which eight years after the injury crossed an unspecified threshold resulting in the onset of diabetes. In her Report, the WCJ weighs the evidence supporting the evidence responsive to each of these developments. The WCJ observes that applicant's weight fluctuated both before and after her industrial injury, with evidence of weight gain prior to the injury, and weight loss shortly thereafter. (Report, at p. 6.) Applicant initially reported to the QME that her weight prior to the injury as 135 lbs., but medical record from 2-3 days after the injury reflect a weight of 150 lbs. (Ex. J12, Report of Massoud Mahmoudi, D.O., Ph.D., dated June 30, 2015, at pp. 7, 19.) As of the time of the evaluation with Dr. Mahmoudi on June 30, 2015, applicant's weight was 174 lbs., and as of 2017, had reached 180 lbs. The WCJ observes that applicant returned to work shortly after her injury and continued to work for approximately eight years following the injury at which time she retired. (Report, at p. 9.)

It is unclear from our review of the record what specific evidence ties applicant's weight gain in the eight years following her 2008 injury to alleged injury-related inactivity. Applicant offers no evidence that addresses deconditioning or other diminution in her physical state as a direct outgrowth of her 2008 injury and applicant provided no trial testimony in this regard. Moreover, the QME appears to reason that because applicant gained weight after the injury and developed diabetes she must have crossed an unspecified threshold for weight gain which in turn cause the diabetes. (Ex. J18, Report of Massoud Mahmoudi, D.O., Ph.D., dated February 18, 2021, at p. 4.) The scientific or medical basis for this conclusion is unclear. While the QME acknowledges that weight gain does not result in the onset of diabetes for every injured worker, he nonetheless opines that applicant's weight contributed to the onset of her diabetic condition without further explication.

The injured employee has the burden of proof to prove permanent disability caused by industrial injury with substantial evidence. (Lab. Code, § 3202.5; *Sweeney v. Industrial Accident Comm.* (*Sweeney*) (1951) 107 Cal.App.2d 155, 158 [16 Cal.Comp.Cases 264].) Permanent disability is a question of fact determined by the Appeals Board. (*Zenith Insurance Co. v. Workers' Comp. Appeals Bd.* (*Cugini*) (2008) 159 Cal.App.4th 483, 495 [71 Cal. Rptr. 3d 724].) The Appeals Board may determine permanent disability by resolving conflicts in the medical evidence. (*Idaho*

Maryland Mines Corp. v. Industrial Accident Commission (*Duncan*) (1951) 104 Cal.App.2d 567, 570 [16 Cal.Comp.Cases 146].) Section 3202.5 provides that all parties and lien claimants shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence, which is "evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth." (Lab. Code, § 3202.5.)

Here, the WCJ has carefully weighed the evidence and determined that the reasoning of the internal medicine QME with respect to applicant's allegation of industrially-related onset of diabetes is insufficient to support a finding of industrial causation. Following our review of the entire record occasioned by applicant's petition, we conclude the WCJ reasonably determined the issue based on the admitted evidence and we discern no other persuasive evidence that warrants disturbing the WCJ's findings in this regard.

Applicant further contends that her industrial injury caused the development of a sleep disorder. Applicant's Petition avers she "has consistently reported to her doctors that she has frequent and persistent sleep disturbances due to her injury," and that "the reports of PQME Dr. Mahmoudi [establish] that severe, chronic pain from Applicant's work injury has resulted in frequent and persistent sleep disturbance." (Petition, at p. 9:25.) Applicant reported to Dr. Mahmoudi that she requires "medication to sleep; that her sleep remains fitful every night as reported by her husband; that Applicant complains of nightmares in which she is being stabbed in the neck; that when Applicant wakes in the morning, she is unrefreshed and neck pain is present; and that especially poor incidents of disturbed sleep coincided with 'handwriting at work' and [working] longer hours around the holidays." (Petition, at p. 10:16.)

Defendant's Answer responds, however, that "[a]ll evidence cited by Applicant within the Petition relies upon the alleged subjective complaints raised by Applicant related to sleep disturbances." (Answer, at p. 6:8.)

The WCJ agreed, observing that in his initial evaluation in 2015 Dr. Mahmoudi administered an Epworth Sleepiness Scale test, wherein applicant scored 0 out of 24 points. (Ex. J12, Report of Massoud Mahmoudi, D.O., Ph.D., dated June 30, 2015, at p. 7.) This result was consistent with a prior administration of the Epworth testing as administered by Charles Martin, D.C., on February 9, 2015, also scored at 0 out of 24. (*Ibid*.) Dr. Mahmoudi nonetheless noted that "[a]lthough the Epworth was zero, due to sedation during the day, snoring, and weight gain I recommend a sleep study." (*Id.* at p. 19.)

However, the resulting October 2, 2015 polysomnography study revealed "[n]o evidence of obstructive sleep apnea or periodic limb movement's (sic) disorder in this study," and that "a review of the sleep efficiency, cardiac rhythm, and EEG did not reveal any unexpected abnormalities." (Ex. J15, Report of Massoud Mahmoudi, D.O., Ph.D., dated May 1, 2017, at pp. 8-9.) Applicant's Epworth score as of her 2017 evaluation increased to 11, a result which Dr. Mahmoudi characterized as reflecting borderline insomnia. (*Id.* at p. 11.)

The WCJ's report surveys the submitted medical record and concludes that the QME did not adequately explain the basis for his attribution of industrial causation to applicant's alleged sleep disturbance condition. The WCJ noted that Dr. Mahmoudi relied on applicant's self-reported subjective complaints that were inconsistent with her self-reported Epworth scores. Importantly, the QME did not adequately reconcile the contrary Epworth and polysomnography studies to his ultimate conclusions that applicant had a ratable sleep impairment arising out of her industrial injury in 2008. (Report, at p. 8.) Following our independent review of the entire evidentiary record, we discern no substantial evidence that merits disturbing the WCJ's weighing of the evidence with respect to applicant's claimed sleep disorder.

Applicant next contends that inasmuch as she has sustained industrial injury in the form of hypertension, diabetes, and sleep disturbance, QME Dr. Mahmoudi has opined that the resulting impairments should be added, rather than combined using the CVC. (Petition, at p. 14:10.)

The Permanent Disability Rating Schedule (PDRS) is prima facie evidence of an injured employee's permanent disability. (Lab. Code, §§ 4660, 4660.1; *Ogilvie v. Workers' Comp. Appeals Bd.* (2011) 197 Cal.App.4th 1262, 1274–1277 [76 Cal.Comp.Cases 624] (*Ogilvie*).) The PDRS provides that the ratings for multiple body parts arising out of the same injury are "generally" combined using the Combined Values Chart (CVC), which is appended to the PDRS. (2005 PDRS, at p. 1-10.) Yet, because it is part of the PDRS, the CVC is rebuttable and a reporting physician is not precluded from utilizing a method other than the CVC to determine an employee's whole person impairment so long as the physician's opinion remains within the four corners of the AMA Guides. (Lab. Code, § 4660; *Guzman*, *supra*, 187 Cal.App.4th at pp. 818–829.)

Accordingly, the use of the multiple disabilities table is discretionary depending upon whether it produces a rating that fully compensates an applicant for the effects of his or her injury. (*Mihesuah v. Workers' Comp. Appeals Bd.* (1976) 55 Cal.App.3d 720, 728 [41 Cal.Comp.Cases 81, 87] (*Mihesuah*).)

In *Vigil v. County of Kern* (2024) 89 Cal.Comp.Cases 686 [2024 Cal. Wrk. Comp. LEXIS 23] (Appeals Board en banc), we discussed the two primary analyses used in combining permanent disability percentages:

> In the first approach, the CVC has been rebutted where there was evidence showing no actual overlap between the effects on ADLs as between the body parts rated. In the second approach, the CVC has also been rebutted where there is overlap, but the overlap creates a synergistic effect upon the ADLs.
>
> **a. No overlap of ADLs.**
>
> The first method for rebuttal of the CVC is to show that the multiple impairments, in fact, have no overlap upon the effects of the ADLs. (See e.g., *Devereux v. State Comp. Ins. Fund*, 2018 Cal.Wrk.Comp. P.D. LEXIS 592; *Guandique v. State of California*, 2019 Cal.Wrk.Comp. P.D. LEXIS 53.) We believe that one significant point of confusion on the issue of overlap is that the analysis should focus on overlapping ADLs, not body parts. Although the formula for the CVC is from the AMA Guides, the chart used to calculate the CVC is from the PDRS.
>
> In determining whether the application of the CVC table has been rebutted in a case, an applicant must present evidence explaining what impact applicant's impairments have had upon their ADLs. Where the medical evidence demonstrates that the impact upon the ADLs overlaps, without more, an applicant has not rebutted the CVC table. Where the medical evidence demonstrates that there is effectively an absence of overlap, the CVC table is rebutted, and it need not be used.
>
> …
>
> **b. Overlapping ADLs with a Synergistic Effect**
>
> The next method for rebutting the CVC was first discussed in *Kite*, where applicant was awarded permanent disability by adding the impairment to each hip and not by combining the impairments as ordinarily required by the PDRS under the CVC. (*Kite, supra*, 78 Cal.Comp.Cases 213.) In *Kite*, the CVC was rebutted by substantial medical evidence showing the synergistic effect of the two impairments on applicant.
>
> 'Synergy' is "(1) the interaction of two or more agents or forces so that their combined effect is greater than the sum of their individual effects; or (2) Cooperative interaction among groups. . . that creates an enhanced combined effect." (American Heritage Dict. (Fifth Edition, 2022).) In some cases, two impairments overlap with one another in their effect on ADLs to the extent that they amplify one another to cause further impairment than what is anticipated in

> the AMA Guides. Thus, it is permissible to add impairments where a synergistic amplification of ADLs is shown. For example, if applicant had an impairment in the dominant hand, an evaluator might find that the impairment impacts the ADL of non-specialized hand activities, such as being able to button a shirt. If applicant's impairment was to both hands, one might expect the ability to button a shirt to be even more difficult. The purpose of the CVC, avoiding duplication, does not apply in such cases as the impairments are not duplicative, because the two impairments together are worse than having a single impairment.
>
> We cannot emphasize enough that 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**." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc), (emphasis added).) The term 'synergy' is not a "magic word" that immediately rebuts the use of the CVC. Instead, a physician must set forth a reasoned analysis explaining how and why synergistic ADL overlap exists. If parties are searching for a magic word to use during a doctor's deposition, that word is "Why?". Rather than focusing on whether a specific term, including the term synergy, was used, it is imperative that parties focus on an analysis that applies critical thinking based on the principles articulated in *Escobedo* to support a conclusion based on the facts of the case. Such an analysis must include a detailed description of the impact of ADLs and how those ADLs interact.

(*Vigil, supra*, at pp. 691-693, emphasis original.)

We thus held in *Vigil* that where an applicant seeks to rebut the CVC, they must establish the following:

1. The ADLs impacted by each impairment to be added, and
2. Either:
    a. The ADLs do not overlap, or
    b. The ADLs overlap in a way that increases or amplifies the impact on the overlapping ADLs.

(*Id.* at pp. 688-689.)

Here, Dr. Mahmoudi's September 23, 2019 deposition testimony addressed the issue of the rating of applicant's internal medicine conditions as follows:

> Q. Okay. And so finally, again, just to reiterate, your medical opinion or rationale for using *Kite* is that we're dealing with the different systems, different body parts that should be added together rather than combined; is that correct?

> A. Yes, including the synergistic effect that the several different impairment give you a higher impairment as opposed to each one separately so, in fact, make the person more impaired.
>
> Q. What would be the synergistic effect between the insomnia, hypertension, and diabetes?
>
> A. So it all adds up. They are both in the same body. And just for example, if you are sleepy and sleep, you maybe miss your meal. Sugar goes up. You may forget your blood pressure medication. If you're blood pressure is very high, you may not be able to sleep. It's all -- all affect each other. So if you have more impairment then synergistically, you have more problems.

(Ex. J19, Transcript of the Deposition of Massoud Mahmoudi, D.O., dated September 23, 2019, at p. 45:2.)

Dr. Mahmoudi thus opines that the impairment arising out of applicant's hypertensive, diabetic, and sleep impairment conditions should be added together. However, the WCJ has determined that applicant has not sustained her burden of establishing the latter two conditions of diabetes and sleep impairment are industrial, a determination which we affirm herein. Accordingly, there is no basis for the addition of the internal medicine conditions pursuant to *Kite*, *supra*, 78 Cal.Comp.Cases 213, or *Vigil*, *supra,* 89 Cal.Comp.Cases 686. Moreover, to the extent that applicant avers that her orthopedic or other impairment ratings should be added to her hypertension impairment rating, the record offers no specific, persuasive discussion from Dr. Mahmoudi or the other medical-legal evaluators addressing *why* the combination of the various ratings using the CVC is contraindicated, or why the addition of the hypertension rating to other *specified* body parts/systems is a more accurate reflection of applicant's overall disability. A generalized assertion that impairments from different body parts are "different" from each other and should thus be added (e.g., Ex. J19, Transcript of the Deposition of Massoud Mahmoudi, D.O., dated September 23, 2019, at p. 42:23) is not a sufficient basis upon which to rebut the PDRS. (*Vigil, supra*, 89 Cal.Comp.Cases at pp. 691-693.) Consequently, we do not identify a reasonable basis to depart from the application of the CVC as described in the permanent disability rating schedule.

In summary, the WCJ has carefully reviewed the submitted and medical record and determined that the medical-legal record supports a finding of industrial causation of applicant's hypertensive condition, but not the claimed diabetic or sleep disturbance conditions. Based on the evidence before us we conclude the WCJ appropriately weighed the medical evidence with respect to the claimed injured body parts and reached a reasonable determination based on the comparative

weight of that evidence. Given the WCJ's determination as to the nonindustrial nature of the diabetic and sleep disturbance conditions, we need not address applicant's contentions regarding addition of the resulting impairments. Finally, because the evidentiary record reasonably addresses the disputed body parts, and because applicant has sustained her burden of proof with respect to some claimed body parts but not as to others, we agree that the evidentiary record does not require development. (*San Bernardino Community Hospital v. Workers' Compensation Appeals Board* (*McKernan*) (1999) 74 Cal. App. 4th 928 [64 Cal.Comp.Cases 986]; *Telles Transport, Inc. v. Workers' Comp. Appeals. Bd.* (*Zuniga*) (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290].

We will affirm the F&A, accordingly.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 2, 2022 Findings and Award is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 29, 2026

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

MARIE TALLEY
DILLES LAW GROUP
HERMANSON, GUZMAN & WACHOWIAK

SAR/abs

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