

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

JANET GONZALEZ, *Applicant*

vs.

**HECTOR LOYA and STATE FARM INSURANCE COMPANY, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ11166525; ADJ11166526; ADJ11781053
Los Angeles District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the March 27, 2024 Opinion and Order Granting Petition for Reconsideration and Decision After Reconsideration (O&O), wherein the Workers' Compensation Appeals Board (WCAB) granted reconsideration of the January 30, 2024 Joint Findings, Award and Order (F&A). Our decision found, in relevant part, that applicant had sustained 70 percent permanent disability.

Applicant contends that our permanent disability ratings contained clerical error and did not reflect the WCJ's addition of certain combined disabilities as identified in the underlying F&A.

We have received an Answer from defendant.

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons discussed below, we will grant applicant's petition and amend our O&O to reflect that applicant is entitled to 82 percent permanent disability.

Applicant first contends error in our rating of applicant's psychiatric disability insofar as the rating string failed to adjust for age and occupation. We agree. The correct rating for applicant's psychiatric disability is 14.01.00.00 - 11 - 15 - 340D - 12 - 15%. We will grant applicant's petition to amend our ratings to reflect the correct rating string.

Applicant further contends our rating failed to reflect the addition of certain disability percentages as described by Agreed Medical Evaluator (AME) Dr. Heskiaoff. Applicant observes that in his deposition testimony, the AME opined that applicant's bilateral wrist disabilities should be added to the spinal disabilities. (Applicant's Petition for Reconsideration (Petition), dated April 5, 2024, at p. 2:2.) Defendant's Answer avers that while the AME's testimony is not a model of clarity, the most reasonable interpretation is that "the doctor meant for the bilateral wrists to be added in the absence of applicant undergoing surgery." (Defendant's Answer, at p. 3:17.)

We observe that in formulating his original rating, the WCJ carefully reviewed the medical-legal testimony of Dr. Heskiaoff and concluded that the approach advocated by the AME involved adding the combined bilateral wrist disability to the combined spinal disability. The resulting spinal and wrist disability was then combined with the shoulder and psychiatric disability. (Opinion on Decision, dated January 30, 2024, at p. 10.) Thus, the WCJ combined the right and left wrist disability of 13 percent and 8 percent, respectively, yielding 20 percent for the bilateral wrists. The WCJ then combined the cervical and lumbar spine disability of 13 percent and 19 percent, respectively, yielding 30 percent for the spine. The WCJ then *added* the 20 percent wrist disability and 30 percent spinal disability as per the AME opinion, yielding 50 percent disability. The WCJ then combined the 50 percent spine and wrists percentage with 6 percent disability for the right shoulder and 9 percent psychiatric disability. The final rating was thus 50C6C9=58 percent final permanent disability.

Neither party challenged the WCJ's interpretation of the AME's opinions with regard to the addition of the combined bilateral wrist and the combined spine disability.

However, our O&O failed to carry forward the WCJ's ratings approach and following our independent review of the record occasioned by applicant's Petition, we see no reason to disturb the WCJ's interpretation of the medical evidence in this regard. Accordingly, we will further amend our O&O to reflect a rating that adds the combined bilateral wrist disability to the combined spinal disability, and then combines the shoulder and corrected psychiatric disability, as follows:

Right Wrist: 16.04.01.00 - 12 - 17 - 340F - 17 - 21%

Left Wrist: 16.04.01.00 - 8 - 11 - 340F - 11 - 14%

21C14=32%

Cervical Spine: 15.01.01.00 - 18 - 25 - 340G - 28 - 34%

Lumbar Spine: 15.03.01.00 - 8 - 11 - 340G - 13 - 16%

34C16=45%

Adding the combined bilateral wrist disability of 32 percent to the combined spinal disability of 45 percent yields 77 percent permanent disability. We will then combine the 77 percent disability with the shoulder disability of 8 percent, and the corrected psychiatric disability of 15 percent:

Right Shoulder: 16.02.01.00 - 4 - 6 - 340F - 6 - 8%

Psyche: 14.01.00.00 - 11 - 15 - 340D - 12 - 15%

77C8C15=82%

Accordingly, we will amend Finding of Fact No. 7 to reflect that applicant has sustained 82 percent permanent disability, as reflective of the corrected psychiatric disability rating, and the AME's opinion with respect to the combination of the disability ratings.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of March 27, 2024 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of March 27, 2024 is **AMENDED** as follows:

FINDINGS OF FACT

...

7. Applicant's cumulative injury caused 82 percent permanent disability, entitling applicant to 625.25 weeks of permanent disability, payable beginning June 22, 2018, at the rate of \$290.00 per week in the total sum of \$181,322.50 less credit for permanent disability advances, and less 15% attorney's fees as set forth in paragraph 10 below; applicant is thereafter entitled to a life pension, the rate of that compensation is deferred pending resolution by the parties.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 29, 2024

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

**JANET GONZALEZ
THE CLAYTON PERRY LAW OFFICE FOR INJURED WORKERS, APC
ROSENBERG YUDIN LLP**

SAR/abs

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