

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

**JOANNE PORTER NEWMAN, *Applicant***

**vs.**

**CLINICA SIERRA VISTA; BETA HEALTHCARE GROUP, *Defendants***

**Adjudication Number: ADJ14464272  
Bakersfield District Office**

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

Defendant Beta Healthcare Group seeks reconsideration of the March 11, 2024 Findings, Orders and Award, wherein the workers' compensation administrative law judge (WCJ) found that applicant Joanne Porter Newman sustained permanent disability of 24% based on the report of Richard Scheinberg, M.D., and that applicant was not entitled to the Supplemental Job Displacement Benefits Voucher (SJDB).

Defendant contends that applicant's credibility is questionable and that the opinions of Dr. Scheinberg are not substantial evidence.

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

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration, amend the Findings, Orders and Award to defer the issue of permanent disability, and return the matter for further development of the record.

**FACTS**

As the WCJ stated in his Report,

Petitioner, Defendant Clinica Sierra Vista, seeks relief from the March 11, 2024, Findings, Orders and Award (Award) by filing a timely, verified Petition for Reconsideration (Petition).

Applicant, Joanne Porter Newman, 45 years old on the day of injury, while employed on February 17, 2021, as a home attendant, occupational group 340, sustained injury to the left ankle and both knees arising out of and in the course of employment by Clinica Sierra Vista.

The Petition's listing of statutory authority for filing is consistent with Labor Code §5903, sections (c) and (e) since it recites those provisions.

The Petition contends, generally, that the Award should have been based on the report of Dr. Jayprakash Shah rather than that of Dr. Scheinberg. [footnote omitted.]

Specifically, the Petition claims:

that there was no discussion as to why the Award was based on the opinion of Dr. Scheinberg rather than that of Dr. Jayprakash Shah; [footnote omitted]

that Dr. Scheinberg did not receive an accurate medical history from Applicant, [footnote omitted]

that Dr. Scheinberg did not benefit from an in-person evaluation when [performing] his assessment for the MMI report. [footnote omitted.] (Report, p. 1.)

## DISCUSSION

The WCJ erroneously stated, “An award need not list medical evidence not relied upon, nor list why that evidence was not relied upon. The Award did not discuss why the reporting of Dr. Shaw was not relied upon, nor did it need to.” (Report, p. 2.)

A decision “must be based on admitted evidence in the record” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 478 (Appeals Board en banc)), and must be supported by substantial evidence. (§§ 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]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) In order to constitute substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) “[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. (citations) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citations)”

(*Gatten, supra*, at p. 928.) “A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)” (*Kyle v. Workers’ Comp. Appeals Bd (City and County of San Francisco)* (1987) 195 Cal.App.3d 614, 621.)

Here, defendant challenges the reliance on Dr. Scheinberg’s reports and urges that the reports of Jayprakash Shah, M.D. are more reliable. Under *Hamilton, supra*, the WCJ must provide his reasons for why he relied on Dr. Scheinberg’s reports instead of Dr. Shah’s reports. It is only then that we can meaningfully evaluate the reasons or grounds upon which the court’s decisions were made. (Lab. Code, § 5313; see also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIS 74].) Accordingly, we grant reconsideration, amend the Findings, Orders and Award to defer the issue of permanent disability, and return the matter for further development of the record.

Additionally, to the extent that applicant’s contention that the WCJ erred in denying applicant a SJDB voucher can be construed as a petition for reconsideration, it is untimely.

For the foregoing reasons,

**IT IS ORDERED** that defendant Beta Healthcare Group’s Petition for Reconsideration of the March 11, 2024 Findings, Orders and Award is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers’ Compensation Appeals Board, that the March 11, 2024 is **AFFIRMED EXCEPT** that it is **AMENDED** as follows:

### **FINDINGS OF FACT**

...

5. The issue of applicant’s permanent and stationary date is deferred.
6. The issue of apportionment is deferred.
7. The issue of applicant’s permanent disability is deferred.

...

10. The issue of attorney’s fees is deferred.

...

**AWARDS**

(a) Award on the issue of permanent disability is deferred.

...

(c) Award on the issue of attorneys' fees is deferred.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**May 24, 2024**

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

**JOANNE PORTER NEWMAN  
TERRELL FIRM  
DUNCAN, CASSIO, LUCCHESI, BINKLEY & VAN DOREN**

**LSM/oo**

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