

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

MARIA HOUGH, *Applicant*

vs.

**MERCY SAN JUAN HOSPITAL, permissibly self-insured,
adjusted by SEDGWICK *Defendants***

Adjudication Numbers: ADJ9423906; ADJ10848294; ADJ11099036; ADJ10832194

Sacramento District Office

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.¹

Defendant seeks reconsideration of the “Findings, Award and Orders” (F&A) issued on November 10, 2020, by the workers’ compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that in ADJ11099036, applicant sustained industrial injury on a cumulative trauma basis to her psyche and awarded future medical care accordingly.

Defendant contends that the finding of psychiatric injury is in error as the reporting of the qualified medical examiner (QME) does not constitute substantial evidence.

We have received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer 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 10, 2020 Findings, Award and Orders and return this matter to the trial level for further proceedings consistent with this opinion.

¹ Commissioner Lowe was on the panel that issued the order granting reconsideration. Commissioner Lowe no longer serves on the Appeals Board. A new panel member has been appointed in her place.

FACTS

Applicant was employed as a phlebotomist for Mercy San Juan Hospital. (Minutes of Hearing and Summary of Evidence, August 6, 2020, p. 2, lines 10-13.) Over the course of her career, she sustained and claimed to have sustained multiple injuries. (*Id.* at p. 2, lines 15-26.) In 2014, she sustained injury to her neck and back and claimed to have sustained injury to her psyche. (*Ibid.*) In 2016 she sustained injury to her right wrist. (*Ibid.*) Applicant claimed to have sustained a specific injury on February 24, 2017, to her neck, back, lower extremities, and psyche. (*Ibid.*) Applicant further claimed to have sustained a cumulative injury through February 24, 2017, to her back, lower extremities, and psyche. (*Ibid.*)

Defendant's sole dispute on reconsideration is the WCJ's finding that applicant sustained a cumulative injury to her psyche through February 24, 2017 and the WCJ's subsequent award of future medical care to psyche.

Applicant was evaluated by QME Lawrence Petrakis, M.D., who authored two reports in evidence. (Applicant's Exhibits 5 and 6.) Dr. Petrakis took a history of applicant's injuries as follows:

She reports being injured on 2/5/14, tripping on a wire and falling to the ground. She said she fell forward and briefly lost consciousness. She said that when she became aware, she was seated on a chair. She was experiencing a lot of pain including her left knee, right ankle, neck, and right and left arm. She indicates that she did receive treatment but while she was off work, she had a heart attack and four stents were implanted. She said that the cause of the purported MI was unknown as all tests were negative.

(Exhibit 6, p. 2.)

She reports being injured on 3/28/16 when the cart that she was pushing flipped over and she twisted her right ankle. She was shaken up, trying to hold on to the cart and prevent it from turning. She said that she was sent home after the incident. She underwent physical therapy but did not get better.

She became more anxious about losing her job and her physical capabilities. In this setting, she was sent to environmental services to help with the clean up. This was supposed to be an easier task but she said that it was not. She said that because of her musculoskeletal symptoms, she underwent carpal tunnel surgery on the right side. She said that following the surgery she could no longer draw blood and was put on modified duty upon her return in 2017.

She said that on February 24, 2017, while attempting to draw blood but finding it difficult to find an appropriate vein, she had to twist her body and hold the arm of the patient out. She said that in the process of twisting her body and trying to draw the blood, she injured her neck, back, and both legs and was in a lot of pain. She said that she was able to draw some blood but does not know if it was good.

(*Id.* at p. 3.)

Dr. Petrakis, initially opined on causation of psychiatric injury as follows:

Predominant causation for the applicant's emotional distress is to the work injury of February 24, 2017, involving the neck, back, lower extremities, and now psyche. It is felt that she has sustained a compensable work injury for her psyche.

With respect to March 28, 2016 involving the right wrist and right ankle, I do not have enough information regarding the applicant's emotional state during those periods of time and hence this is an open question but certainly I have not seen any significant information regarding the applicant's emotional state following the right wrist and right ankle injury. During the course of the examination, she was not able to provide this sort of information. This certainly does not mean that it does not exist but she was not able to provide it. Thus, it is my strong opinion that the applicant does have a compensable work injury on a psychiatric basis that is as described.

(Exhibit 5, p. 11.)

Dr. Petrakis reviewed additional records and updated his opinion on causation as follows:

Thus, predominant causation for the applicant's emotional distress is related to the work injuries of 2014, 2016, and 2017. These become actual events of employment and are predominant as to all causes. Predominant causation is not an issue, at least to the undersigned.

(Exhibit 5, p. 8.)

Dr. Petrakis concludes his supplemental report by stating: "Thus, based on the information available, I see no reason to change or amend the opinions that I have previously set forth." (*Id.* at p. 8.)

DISCUSSION

Labor Code section 5313 requires a WCJ to state the “reasons or grounds upon which the determination was made.” The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc), citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton, supra*, at p. 478), and 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]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].)

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).) “When the foundation of an expert’s testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions.” (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

In *Rolda v. Pitney Bowes, Inc.* (2001), 66 Cal.Comp.Cases 241, 245-246 (Appeals Board en banc), we addressed the factors that a psychological evaluator must consider in opining on causation of psychological injury and disability under section 3208.3. Per *Rolda*, the evaluator is required to list all factors causing psychological injury, address the percentage of causation that each factor contributes to psychological injury, list all factors causing psychological permanent disability, and address the percentage of causation that each factor contributes to permanent disability.

Once the evaluator issues a *Rolda* compliant report, the WCJ should then determine whether the alleged injury involved actual events of employment, and whether each actual event of employment constituted a lawful, non-discriminatory, good faith personnel action. (§ 3208.3(h).) If the psychological injury is predominantly caused (51% or more) by actual events of employment (or 35% or more in cases of injury caused by violent act or exposure to a violent

act), the psychological injury is compensable, unless the injury is substantially caused by lawful, nondiscriminatory, good faith personnel actions, in which case the injury is not compensable. (§ 3208.3.)

Prior to SB899 and the amendment to section 4663, apportionment of permanent disability via a successive injury was governed primarily by the holding in *Wilkinson v. Workers' Comp. Appeals Bd.* (1977) 19 Cal.3d 491 [42 Cal.Comp.Cases 406]. Under *Wilkinson* apportionment to a successive injury did not apply unless the “. . . successive injury resulted in an identifiable level of disability. To do so would result in an award which did not fairly reflect the actual disability existing at the time the injured worker became permanent and stationary.” (*Benson v. The Permanente Medical Group*, (2007) 72 Cal.Comp.Cases 1620, 1626 (Appeals Board en banc).) We disapproved of the *Wilkinson* doctrine in *Benson*, but noted that in certain cases *Wilkinson* is still valid.

We hold that the rule in *Wilkinson* is not consistent with the new requirement that apportionment be based on causation and, therefore, *Wilkinson* is no longer generally applicable. Rather, we now must determine and apportion to the cause of disability for each industrial injury. Therefore, all potential causes of disability—whether from a current industrial injury, a prior or subsequent industrial injury, or a prior or subsequent non-industrial injury or condition— must be taken into consideration. We observe, however, that there may be limited circumstances, not present here, where the evaluating physicians cannot parcel out, with reasonable medical probability, the approximate percentages to which each successive injury causally contributed to the employee’s overall permanent disability. Under these limited circumstances, a combined award of permanent disability may still be justified.

(*Id.* at 1622-1623.)

Labor Code, section 3208.2 contains the anti-merger provision of workers' compensation, which states:

When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

(§ 3208.2.)

Here the QME's reporting does not adequately address causation of applicant's psychological injury. The QME initially opined that applicant's psychological injury was caused by her 2017 injury, however, applicant sustained two injuries in 2017, a specific and a cumulative. The QME failed to address which 2017 injury caused the psychological sequela. The QME's opinion on causation was conclusory, without explanation, and failed to comply with the specific requirements of *Rolda*. The WCJ's decision to assign disability to one of the 2017 injuries and not the other was not based upon substantial evidence.

Next, the QME changed his opinion on causation to state that all of applicant's dates of injury contributed to her psychological injury. Then, the QME expressly refused to address predominant causation. The QME failed to break down how each of applicant's injuries impacted her psyche. Accordingly, the QME's subsequent opinion is conclusory and does not constitute substantial medical evidence.

No *Rolda* analysis was performed in this case. No substantial medical evidence exists to establish predominant causation of psychological injury.

Accordingly, as our Decision After Reconsideration we will rescind the November 10, 2020 Findings, Award and Orders and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings, Award and Orders issued on November 10, 2020, is **RESCINDED** and the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

KATHERINE A. ZALEWSKI, CHAIR
CONCURRING, NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 8, 2024

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

**MARIA HOUGH
MASTAGNI HOLSTEDT
TIMOTHY HUBER, ESQ.**

EDL/mc

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