

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

SANDRA ANAYA, *Applicant*

vs.

**SANTA BARBARA UNIFIED SCHOOL DISTRICT,
Self-Insured Schools Bakersfield, *Defendants***

**Adjudication Number: ADJ17976590
Santa Barbara District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, 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 stated in the WCJ's Report as quoted in the attachment below, which we adopt and incorporate herein, we will deny reconsideration.

For the reasons stated in the WCJ's Report, we agree that the opinion of primary treating physician Amy Wickman, M.D., is substantial medical evidence upon which the WCJ properly relied. To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416-17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also 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. (*Yeager Construction 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, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.)) We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other

medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 22, 2024

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

**SANDRA ANAYA
GHITTERMAN, GHITTERMAN & FELD
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

PAG/abs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

INTRODUCTION

- | | |
|----------------------------------|--|
| 1. Date of Birth: | [] |
| Date(s) of Injury: | October 6, 2021 |
| Parts of Body Injured: | Lumbar spine |
| Manner in Which Injury Occurred: | Not in dispute. |
| 2. Identity of Petitioner: | Defendant |
| Timeliness: | The petition is timely. |
| Verification: | The petition is verified. |
| Service: | The petition was served on all parties. |
| 3. Date of Issuance: | April 29, 2024 |
| 4. Petitioner's Contentions: | 1) the Workers Compensation Judge (WCJ) erred in the Award of 25% permanent disability based on the PTP Dr. Wickman. |

II.

FACTS

The case came before the court when the applicant was **unrepresented**. A Stipulation with Request for Award was submitted for approval EAMS ID#76958396 dated May 14, 2023. The Stipulation with Request for Award at page 6 listed the permanent disability at 14% per DEU rating DEU17366026 using an 8% Whole Person Impairment (WPI) per Dr. Pearson (15.03.01.00-8-[1.4]11-214F-11-14). At page 7 under other stipulation, it indicated that, "Settlement is based on Dr. Steven Pearson QME report dated 01/23/2023."

The QME report of Dr. Pearson dated January 23, 2023, EAMS ID #77046382 was not on file at that time. What was on file was the PTP P&S report of Dr. Amy Wickman EAMS ID #50221328 dated October 7, 2022. That report under Impairment Rating and Pain Assessment found 14% WPI. The court rated that report to 25% (15.03.01.00-14-20-214F-20-25%).

An Order Suspending Action was issued dated July 31, 2023, for the reasons: "Stipulation at 14% is inadequate.

1. Stipulation on file is for 14% based on PQME reporting. The Board's file does not include the PQME medical report of Dr. Pearson referenced in the Stipulation.

2. .The medical report of PTP Dr. Wickman is on file and rates to 25%.
15.03.01.11-14-20-214F-20-25%

The Stipulation does not account for the higher rating of the PTP report from Dr. Wickman dated October 7, 2022. The Information and Assistance Officer has reached out to the claims adjuster regarding the rating of the PTP report and has not received a response. Court to set for Status Conference.”

The case was set for a Status Conference on August 17, 2023.

At every conference set on this case the Information and Assistance Officer (I&A) was present. At the August 17, 2023, conference, defendant requested time to obtain a supplemental report from the PTP to determine if Dr. Wickman’s finding of impairment, DRE category III was correct. The applicant was further interested in speaking with an attorney and the Minutes of Hearing under comments reflects: “Stipulation on file is for 14% based on PQME yet PTP rated to 25%. Applicant is interested in speaking with an attorney and defense is requesting a supplemental from PTP. Court continuing to Status Conference.”

The case was continued to September 28, 2023, and the supplemental report as requested by defendant from Dr. Amy Wickman dated August 25, 2023, EAMS ID #77194751 was filed September 27, 2023. The supplemental report from Dr. Wickman reflected the same opinion on impairment and pain assessment with a DRE category III with a WPI of 14% the same as in her October 7, 2022, EAMS ID #50221328 report. Defendant would not increase the PD from 14% and applicant was not in agreement to 14%. The case was moved to an MSC to October 19, 2024. The applicant was still interested in speaking with an attorney. The Information and Assistance Officer was on the teleconference line and discussed whether any attorney on the line might be interested in taking the case. The case was set for Trial on November 8, 2023. Applicant retained representation October 27, 2023. At the trial applicant’s new attorney requested time to review the file and the court found that good cause to take the case off calendar.

A DOR was later filed, and the case was set January 18, 2024, for an MSC at which time the case was set for trial February 14, 2024.

The pre-trial discussions included a review of the PTCS. As this WCJ is aware of all medical reports on file while the applicant was unrepresented, the court knew the supplemental report from Dr. Amy Wickman dated August 25, 2023, which was specifically requested by defendants was not listed by applicant attorney nor defendants. The court inquired whether that report had been served to the applicant attorney. Defendant indicated it had. Defendants objected to that be admitted as it was not listed by applicant’s attorney. This court advised defendants that all PTP reports need to be introduced for a complete medical record.

At trial the issues were PD, attorney fees and adequacy of the settlement submitted when the applicant was unrepresented dated May 15, 2023. The applicant attorney also made a motion to amend the Pre-Trial Conference Statement (PTCS) to add the issue of occupational group number. This was apparently communicated to defense counsel the week prior to the trial.

A Findings and Award issued April 29, 2024, and as to the issues before the court:

“5. It is found that the applicant’s Occupational Group number is 214.

6. It is found that the Stipulation with Request for Award dated May 15, 2023, is inadequate.

7. It is found the injury caused permanent disability of 25% equivalent to 100.75 weeks of indemnity payable at the rate of \$290.00 per week, in the total sum of \$29,217.50 payable commencing the first day after the last payment of TTD, less credit for sums previously paid and less attorney fees as stated below.

8. It is found that applicant attorney is entitled to a fee of 15% from the difference between 14% (\$13,412.50) and 25% (\$29,217.50) or 15% of \$15,805.00 a total of \$2,370.75 to be commuted from the far end of the award.”

Defendant now files their Petition for Reconsideration from that Award.

III. **DISCUSSIONS**

It should be noted that the Opinion on Decision clearly states the basis for each issue decided. All medical reporting, transcript and documentary evidence relied upon is clearly identified. However, to the extent that the Opinion on Decision may seem skeletal, pursuant to *Smales v. WCAB* (1980) 45 CCC 1026, the Report and Recommendation cures those defects.

Defendant take issue with the finding of 25% permanent disability and therefore an attorney fee.

In this case the applicant was unrepresented when entering into a Stipulation with Request for Award at 14% PD based on the Panel Qualified Medical Evaluation (QME) report of Dr. Pearson. Also in existence at the time was a report from the Primary Treating Physician (PTP) Dr. Wickman which rated higher at 25%. It's difficult to comprehend how an applicant would readily agree to a settlement based on the PQME if she was aware of the opinions of her PTP Dr. Wickman. Luckily 8 CCR §9927(d) mandates that the Information and Assistance Officer (I&A) review the settlement documents and determine that the employee understands what she is signing.

Defendant would argue that the applicant should be bound by her agreement even if she didn't understand what she was signing nor the significance of what she signed and after discussing with I&A, wasn't in agreement. If that were the case, why have §9927(d)? Unrepresented injured workers can be taken advantage of if not watched and the WCJ has a duty to ensure that settlements are accurate, adequate and that the applicant is not being taken advantage of. In this case it appeared she was. The stipulation made no reference to a PTP report from Dr. Wickman and only referenced the QME and based the settlement on the QME. Defendant had filed the PTP report but one has to wonder if it was intentional or by mistake. They did not file the QME report on which the stipulation was based.

... [T]his WCJ found the stipulation inadequate and found the PTP opinions of Dr. Wickman more persuasive and awarded the applicant 25% PD.

Dr. Wickman's specialty is orthopedic surgery, and she produced a comprehensive MMI report. Her supplemental report confirmed her opinions on impairment and was persuasive and found to be substantial medical evidence. Dr. Wickman supported her opinion on impairment in her supplemental report requested by defendants dated August 25, 2023, where she stated:

"In regards to the P&S for Sandra Anaya, the report on 10/07/2022 did have a typo in it and the patient is a DRE III with 13% WPI and 1% additional for pain for a total of 14% WPI. This is due to the continued back pain with paresthesias in her leg, as shown in the physician exam". Her October 7, 2022 report stated in error DRE II instead of DRE III but with the same percentage 13% and 1% for pain. The typo was II instead of III and that was clarified by this supplemental report.

Defense would argue that QME Pearson explains why a DRE III is not warranted based on a normal EMG/NCS. However, Dr. Wickman was aware of those studies and referenced them in her October 7, 2022, report yet based on her clinical history and examination with complaints of back pain and left radiculopathy improved but not resolved found 13% with an additional 1% impairment. That rated to 25%. The PTP reports were more persuasive than the QME.

As the applicant was awarded 25% permanent disability, which was above the 14% previously offered, the applicant's attorney is entitled to an attorney fee of 15% of the difference between the two indemnity amounts.

Applicant Attorney has filed correspondence requesting a fee from the entire Award so as not to discourage attorneys from taking these kinds of cases. While it was a benefit to the applicant to retain competent representation, as 14% or \$13,412.50 had been offered to the applicant prior to representation it appeared appropriate to award a 15% fee from the difference between the dollar amount of 14% and 25%.

IV. RECOMMENDATION

It is respectfully recommended that the defendant's Petition for Reconsideration be denied in its entirety.

DATE: May 31, 2024

Deborah Rothschilder
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE