

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

**RAQUEL MONTEJANO, *Applicant***

**vs.**

**LOS ANGELES COUNTY PROBATION; Permissibly Self-Insured,  
Administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ8153160  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report and the opinion on decision 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 and the opinion on decision, both of which we adopt and incorporate, we will deny reconsideration.

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



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

**February 25, 2021**

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

**RAQUEL MONTEJANO  
KOSZDIN, FIELDS, SHERRY & KATZ  
TESTAN LAW**

**PAG/ara**

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**

**I.**  
**INTRODUCTION**

This matter previously settled by way of Stipulated Award dated March 23, 2016. Therein, it was stipulated that the applicant sustained industrial injuries to her cervical spine, lumbar spine, right shoulder, left hip, psyche, IBS, gastrointestinal and sleep while employed as a contract program auditor for the COLA/Probation Department from September 15, 2010 through September 15, 2011. The Stipulated Award was for 69% permanent disability.

This matter came before the undersigned for trial regarding the applicant's Petition to Reopen for New and Further Disability. Ultimately, the undersigned issued Findings & Award dated December 10, 2020. Therein, the applicant's Petition to Reopen for New and Further Disability was granted, and a finding was made that the applicant's injuries caused permanent total disability of 100%.

The defendant filed a timely Petition for Reconsideration dated December 29, 2020 asserting that the evidence does not justify the Findings of Fact, the Findings of Fact do not support the Order, decision or Award, and that by the Order, Decision, or Award, the Appeals Board acted without or in excess of its power.

At the time of the preparation of this report, the applicant had not filed an Answer thereto.

**II.**  
**DISCUSSION**

The PDRS provides that the CVC is generally used to combine multiple disabilities; however, other methodology may be used depending upon the relevant circumstances. The medical experts make a medical determination as to how to combine the separate impairments.

The impairments may be added if substantial medical evidence supports the physician's opinion that adding them will result in a more accurate rating of the applicant's level of disability, than the rating resulting from utilizing the CVC. The Agreed Medical Evaluator's opinion on the most accurate method for rating applicant's impairment should be followed if he/she provides a reasonably articulated medical basis, absent good reason to find that opinion unpersuasive. (*See, Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal. App. 3d. 775 [51 Cal. Comp. Cases 114, 117, *De La Cerda v. Martin Selko & Co.*, 2017 Cal. Wrk. Comp. P.D. LEXIS 533, 83 Cal. Comp. Cases 567)

Agreed Medical Evaluator Dr. Nathan stated in his May 12, 2017 report:

“In considering the applicant as a whole and her multisystem problems and her diminished capacity to work in the open labor market, it is my impression the applicant is permanently impaired from returning to the open labor market. The applicant’s overall impairment with her multiple body parts because of their synergistic effect upon one another should be added together in order to obtain a more accurate total disability rating. I would recommend that the applicant undergo vocational assessment to determine her level of functionality in the open labor market.” (Joint Exhibit EE, page 28, first paragraph)

Dr. Nathan further discussed the addition method for the applicant’s permanent disability in his deposition on January 5, 2018 (Joint Exhibit CC):

A WELL, IF YOU DON’T ADD, SHE MIGHT REACH A POINT WHERE SOMEONE IS GOING TO SAY WITH HER 65 OR 60% DISABILITY SHE IS GOING TO BE ABLE TO COMPETE IN THE OPEN LABOR MARKET. (Page 25, lines 12-15)

...

Q OKAY, BUT MY POINT IS THAT THAT BEING THE CASE THAT THERE IS A WORSENING IN ALL OF HER SYSTEMS, WOULDN’T THAT MAKE MORE SENSE, WOULD THAT BE ANOTHER REASON FOR YOU TO RECOMMEND THAT HER PERMANENT DISABILITY IN PSYCHIATRY BE ADDED INSTEAD OF COMBINED UNDER THE CVC CHART?

A YES.

Q YOU SAID—WELL, LET ME ASK YOU. DO YOU BELIEVE SHE CAN COMPETE IN THE OPEN LABOR MARKET, AS YOU HAVE—BASED ON YOUR LAST EXAMINATION OF HER?

A NO. I DON’T THINK SHE COULD COMPETE IN THE OPEN LABOR MARKET BASED UPON MY LAST EXAMINATION. AND-- I AM OBLIGATED TO FOLLOW THE RULES AND RATE HER IN TERMS OF WORK FUNCTION IMPAIRMENT FORM AND- -

Q WELL—

A I COULD MAYBE GIVE HER A FEW MORE POINTS ON THE WORK FUNCTION ON—AND PERMANENT DISABILITY, BUT I REALLY DON'T THINK THAT REALLY MAKES VERY MUCH OF A DIFFERENCE OVERALL IN TERMS OF HER—HER INABILITY TO COMPETE. At THIS POINT I DON'T THINK SHE COULD GO BACK TO WORK. (Page 27, lines 7-25 through page 28, lines 1-2)

The Petitioner also asserts that Agreed Medical Evaluator Dr. Nathan noted exaggerated responses in the psychological testing and that the responses were not internally valid. The Petitioner contends that the alleged disputed validity of the test results calls into question whether the overall psychiatric findings can be considered substantial medical evidence.

The Petitioner further argues that vocational expert Ms. Wilson relied upon Agreed Medical Evaluator Dr. Nathan's findings and psychiatric diagnosis regarding complaints that were subjective in nature and exaggerated, and contends the substantiality of the expert's conclusions.

In the opinion of the undersigned, these arguments are not persuasive. The Agreed Medical Evaluator Dr. Nathan testified during his deposition:

Q SO THERE IS SOME LEVEL OF EXAGGERATION FOR HER INANSWERING—

A WELL, THAT IS—THAT IS CERTAINLY NOT SURPRISING IN TERMS OF A SEVERELY ILL WOMAN—

Q OKAY.

A--WHO—SHE RESPONDS IN AN EXAGGERATED MANNER TO THE PSYCHOLOGICAL TEST. IT'S NOT SURPRISING AT ALL.

Q SURE.

A AND SHE—I THINK THE FIRST TIME I SAW HER I THOUGHT THERE WAS SOME EXAGGERATION, BUT I DIDN'T FEEL THIS WAS A WOMAN WHO WAS MALINGERING (page 20, lines 24-25 through page 21, lines 1-11)

...

A AND I FIND IT VERY COMMON FOR—ESPECIALLY SEVERELY INJURED PEOPLE, TO EXAGGERATE THEIR RESPONSES ON THESE PSYCHOLOGICAL TESTS.

Q SO NOTHING ALARMING ABOUT THE RESULTS?

A NO, NOTHING WAS ALARMING. AND I- -I DIDN'T—I DIDN'T CONSIDER THE APPLICANT TO BE ACTUALLY EXAGGERATING WHEN SHE WAS TALKING TO ME. (Page 22, lines 9-15)

The Petitioner further asserts that the applicant's vocational expert incorrectly categorized the applicant's job history, and the defendants contend that the orthopedic work restrictions are not so limiting as to preclude the applicant from reasonable vocational rehabilitation. However, the defendant did not obtain a rebuttal vocational report, or provide sufficient substantial evidence to support its assertions.

The undersigned does not find the petitioner's argument to be persuasive that when Agreed Medical Evaluator Dr. Nathan's slightly increased the GAF in his supplemental record review report March 12, 2018 (Joint Exhibit DD), that the doctor no longer intended to consider the synergistic effect, and that the applicant was no longer totally permanently disabled. Indeed, Agreed Medical Evaluator Dr. Nathan states in said report: "There are no other changes or alterations that I wish to make in my reports after having an opportunity to review these additional medical records." (Joint Exhibit DD, page 2, last paragraph). Accordingly, Dr. Nathan's prior opinions still remain.

The Petitioner does not cite to any case or statutory law to support its contention that a finding of total permanent disability cannot be established in the presence of nonindustrial apportionment. In the case at hand, utilizing the addition method, the applicant's permanent disability totals more than 100% disability, regardless of apportionment to nonindustrial causes.

Notwithstanding the foregoing, when the undersigned made the determination regarding the appropriate amount of permanent disability to award in this case, consideration was given in light of the entire record as a whole.

The undersigned found the applicant to be a very credible witness. The psychiatric Agreed Medical Evaluator Dr. Nathan found the applicant to be 100% permanently totally disabled, regardless of the addition method for her disabilities. Notwithstanding, the Agreed Medical Evaluator Dr. Nathan recommended the addition of the ratings, which equates to 100%. In the opinion of the undersigned, Agreed Medical Evaluator Dr. Nathan provided a reasonably articulated medical basis for his opinion that the addition method will result in a more accurate rating of the applicant's level of disability. The undersigned finds no good reason to find the Agreed Medical Evaluator's opinion unpersuasive.

Further, the un rebutted vocational expert Laura Wilson opined that the applicant is not amenable to vocational rehabilitation, is not able to sustain gainful employment,

is not able to complete in the open labor market, and that the applicant has at present no consistent and stable future earning capacity. (Applicant's Exhibit 1, page 34, first paragraph)

In light of the entire record, and based upon the foregoing, the undersigned found the applicant to be 100% permanently totally disabled.

The Petitioner disputes the utilization of Occupational Group Number 212. The Petitioner indicates that the specialist did not know how often the fieldwork was generally required, and that they specialist indicated that a formal job analysis would be helpful in formulating her opinion.

The undersigned does not find the Petitioner's arguments to be persuasive. The specialist testified that just one minute of fieldwork would put the applicant in Group 212, and that if the applicant just did fieldwork on just one occasion that the applicant would be in Group 212. If there was a larger percentage, the applicant would be in a higher Occupational Group Number. Further, the specialist testified that she reviewed the job descriptions in the doctors' reports, and that she does this all the time. The specialist testified that she feels comfortable that she had sufficient descriptions of the job duties provided by the Agreed Medical Evaluator reports that she could arrive at Occupational Group 212. (MOH, February 19, 2020, page 3, line 14 through page 4, line 4)

### **III.** **RECOMMENDATION**

Therefore, it is respectfully recommended that the Petition for Reconsideration be denied.

DATE: January 11, 2021

**Robin A. Brown**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

## **OPINION ON DECISION**

### **OCCUPATION**

The cross examination of the disability evaluation specialist did not demonstrate error by the rater with regard to her expert opinion that the appropriate occupational group number is 212. Based upon applicant's descriptions of her job duties to the agreed medical evaluators utilized herein, which are set forth by reference in the permanent disability rating instructions, and the opinion of the disability evaluation specialist, which the undersigned is in agreement with, it is found that appropriate occupational group number in this matter is 212.

### **PERMANENT DISABILITY**

The cross examination of the disability evaluation specialist did not demonstrate error by the rater regarding the corrected/amended ratings.

The undersigned found the applicant to be a credible witness. The factors of permanent disability are based upon applicant's testimony, the medical record herein including agreed medical evaluations from Jeffrey Berman, M.D., Jeffrey Hirsch M.D., the medical evaluations and deposition transcript from AME Myron Nathan M.D., and the Vocational Evaluation Report from Laura Wilson dated November 14, 2018.

The psychiatric AME Myron Nathan M.D. opines that the applicant is permanently totally disabled, and that applicant's disability should be added, as per *Athens Administrators v. WCAB (Kite) (2013) 78 CCC 213 (writ denied)*.

In addition, Ms. Wilson opined that the applicant is not amenable to vocational rehabilitation and is not able to sustain gainful employment, and therefore is not able to compete in the open labor market as a result of her industrial injuries.

The undersigned is in agreement with the recommended ratings provided by the disability evaluation specialist, and finds permanent impairment in accordance therewith as follows:

GASTROINTESTINAL: 75% (06.01.00.00 – 6 – [6]8 – 212F – 8 – 9) 7 PD (A)  
SLEEP DISORDER: 50% (13.03.00.00 – 14 – [6]18 -212H – 22 – 23) 12 PD (A)  
IBS: 06.02.00.00 – 7 – [6]9 – 212F – 9 – 10 PD (A)  
LUMBAR: 15.03.01.00 – 7 – [5]9 – 212E – 8 – 9 PD (A)  
R SHOULDER: 16.02.02.00 – 3 – [7]4 – 212F – 4 – 4 – PD (A)  
L HIP: 17.03.06.00 – 12 – [5]15 – 212E – 14 – 15 PD (A)  
CERVICAL ROM: 90% (15.01.02.02 – 10 – [5]13 – 212E – 12 – 13) 12 PD (A)  
PSYCHE: 90% (14.01.00.00 – 42 – [8]59 – 212J – 71 – 73) 66 PD (A)

(A)66 + 15 + 13 + 12 + 10 + 9 + 7 + 4 =(136) = 100 FINAL PDAFTER  
APPORTIONMENT

Accordingly, it is found that the applicant is entitled to a permanent disability award of 100%, equivalent to lifetime indemnity payable at the initial rate of \$798.61 per week, payable commencing as of September 12, 2013. Further, the applicant is entitled to annual cost of living adjustments (COLAs) based on the state average weekly wage (SAWW) as per Labor Code §4659(c).

### **APPORTIONMENT**

Based upon the medical report of AME Dr. Hirsch M.D. dated March 11, 2014, it is found that there is apportionment for IBS is 100% industrial, sleep impairment is 50% industrial, 50% nonindustrial, and GI is 75% industrial, 25% nonindustrial. Based upon the medical report of AME Dr. Berman dated September 11, 2014 apportionment regarding the neck is 90% industrial, 10% nonindustrial. The lumbar spine, right shoulder, and left hip are 100% industrial.

Based upon the medical report from AME Dr. Nathan dated March 12, 2019, apportionment regarding the psyche is 90% industrial, 10% nonindustrial.

### **OTHER ISSUES**

The applicant's Petition to Reopen is hereby granted, based upon the foregoing.

The document marked for identification purposes as Applicant's Exhibit 2 is excluded from evidence, as it was not listed on the pre-trial conference statement.

### **ATTORNEY FEES**

Based on the Title 8, California code of Regulations §10775, and the attorney fee commutation, it is found that a reasonable attorney fee is \$270,062.80.

DATE: December 10, 2020

**Robin A. Brown**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE