WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ASSADOUR ASSADOURIAN, *Applicant*

vs.

ARI G. MINASSIAN SCHOOL;
STATE COMPENSATION INSURANCE FUND;
CHURCH MUTUAL INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ7894308; ADJ7661229; ADJ9465603
Van Nuys District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration[1] in this matter to provide an opportunity to further study the legal and factual issues raised by the Petition for Reconsideration. Having completed our review, we now issue our Decision After Reconsideration.

Defendants Church Mutual Insurance Company (Church Mutual) and State Compensation Insurance Fund (SCIF) both seek reconsideration of the January 31, 2021 Findings of Fact, Award and Order (F&A), wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a school principal from August 1, 1996 to July 31, 2008, sustained industrial injury to his cardiovascular system, psyche, sleep, urologic system in the form of voiding, and sexual dysfunction, and did not sustain injury in the form of headaches. The WCJ found that applicant sustained permanent partial disability of 70 percent after nonindustrial apportionment.

Church Mutual contends that the WCJ erred in not allowing the apportionment provided by the Qualified Medical Evaluator (QME) in psychology for applicant's contract non-renewal, and by not providing pass-through apportionment as against the sleep impairment provided by the neurology QME.

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[1] Commissioner Sweeney, who was previously a member of this panel, no longer serves on the Workers' Compensation Appeals Board. Another panelist has been assigned in her place.

SCIF contends that applicant's receipt of a notice that his contract would not be renewed was not an actual event of employment, and that applicant's sleep-related disability is subject to apportionment.

We have received an Answer from applicant. The WCJ has prepared a separate Report and Recommendation on Petition for Reconsideration corresponding to each Petition, in both instances recommending that the Petitions be denied but also recommending that the Workers' Compensation Appeals Board (WCAB) grant reconsideration on its own motion to amend the apportionment applicable to sleep-related disability.

We have considered both Petitions for Reconsideration, the Answer, and the contents of both Reports, and we have reviewed the record in this matter. For the reasons discussed below, we will amend the decision to reflect applicant's entitlement to unapportioned sleep and psychiatric impairment with a corresponding amendment to the final percentages of permanent disability. We will defer issues of attorney fees and any necessary commutation to be adjusted by the parties, with jurisdiction reserved to the WCJ, and otherwise affirm the F&A.

FACTS

Applicant claimed injury to his cardiovascular system, psyche, sleep disorder, and sexual dysfunction, while employed as a school principal by defendant Ari G. Minassian School from August 1, 1996 to July 31, 2008. The parties have stipulated the employer was insured by SCIF from July 1, 2003 to September 1, 2007, and by Church Mutual from September 14, 2007 to September 14, 2008. (Minutes of Hearing and Summary of Evidence, dated February 23, 2015, at p. 2:17.)

The parties have obtained medical-legal reporting from regular physician Paul Grodan, M.D., in internal medicine, and QMEs Leine Delker, Ph.D., in psychology, Barton Wachs, M.D., in urology, and Mark Pulera, M.D., in neurology.

On February 23, 2015, the parties proceeded to trial on issues including, in relevant part, injury arising out of and in the course of employment (AOE/COE), permanent disability, and apportionment. The WCJ heard testimony from the applicant and ordered the matter submitted for decision.

On April 13, 2015, the WCJ issued a decision, and on April 22, 2015, Church Mutual sought reconsideration thereof.

On June 12, 2015, we granted defendant's petition and returned the matter to trial level for development of the record with respect to the number and nature of injuries sustained by applicant. (Opinion and Orders Granting Petition for Reconsideration; Granting Reconsideration on Board Motion; and Decision After Reconsideration, dated June 12, 2015.)

On July 13, 2020, the parties proceeded to trial on issues including, in relevant part, permanent disability and apportionment. The WCJ ordered the matter submitted for decision the same day.

On January 13, 2021, the WCJ issued his F&A, determining in relevant part that applicant sustained injury AOE/COE to his cardiovascular system, psyche, sleep, and urologic system in the form of voiding and sexual dysfunction, and did not sustain injury in the form of headaches. (Finding of Fact No. 1.) The WCJ determined that applicant's permanent disability was subject to nonindustrial apportionment of 20 percent for cardiac conditions, 10 percent for urological conditions, 30 percent for sleep-related disability, and 16 percent for psychiatric disability. In evaluating the psychiatric apportionment, the WCJ determined that applicant's receipt of notice that his employment contract would not be renewed was an actual event of employment, and that any disability arising therefrom was not an appropriate basis for nonindustrial apportionment. (Opinion on Decision, at p. 8.) The WCJ awarded 70 percent permanent partial disability after nonindustrial apportionment.

Defendant Church Mutual asserts that psychology QME Dr. Delker apportioned 20 percent of applicant's psychiatric disability to the termination of applicant's employment, and that the WCJ erred in declining to apportion applicant's psychological disability on that basis. (Church Mutual Petition, at p. 2:22.) Church Mutual further contends that per QME Dr. Pulera, applicant's sleep-related disability was similarly subject to nonindustrial apportionment of 20 percent due to the emotional stress of termination.

Defendant SCIF contends that because applicant's generalized anxiety regarding his future employment is not an "actual event of employment" as required by Labor Code[2] section 3208.3, applicant has not met the predominance threshold necessary to maintain a compensable claim of psychiatric injury. (SCIF Petition, at p. 2:23.) SCIF further avers entitlement to 20 percent "pass-through" apportionment between applicant's cardiac disability and resulting sleep-related impairment. (*Id.* at p. 3:13.)

[2] All further references are to the Labor Code unless otherwise noted.

Applicant's Answer distinguishes the factors relating to the predominance threshold described in section 3208.3(b)(1) from factors applicable to an apportionment analysis required under section 4663, observing that factors relevant to each analysis are not interchangeable. (Answer, at p. 2:15.)

DISCUSSION

I.

We first address the issue of whether applicant has met his burden of establishing that actual events of employment were a predominant cause of his psychiatric disability.

When an employee claims psychiatric injury, section 3208.3(b)(1) requires that the employee "demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." (Cal. Lab. Code, § 3208.3(b)(1).) "Predominant as to all causes" for purposes of section 3208.3(b)(1) has been interpreted to mean more than 50 percent of the psychiatric injury was caused by actual events of employment. (*Dept. of Corr. v. Workers' Comp. Appeals Bd.* (*Garcia*) (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356]; *Watts v. Workers' Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

Although section 3208.3(b)(1) does not define "actual events of employment," the Court of Appeal has considered the issue in *Pacific Gas and Electric Co. v. Workers' Comp. Appeals Bd.* (*Bryan*) (2004) 114 Cal.App4th 1174 [69 Cal.Comp.Cases 21] (*Bryan*). Therein, applicant claimed psychiatric disability, requiring consideration of the issue of predominance under section 3208.3(b)(1). The WCAB identified four factors contributing to applicant's disability: (1) the downsizing of applicant's employer; (2) applicant's daily interactions with irate customers; (3) loss of value in employer's stock held by applicant; and (4) concern about the company's future viability. Finding that all four factors were "actual events of employment," the Appeals Board determined that applicant had met his burden of establishing predominant cause. The Court of Appeal disagreed, observing that:

> The statutory language indicates that two conditions must be satisfied before a particular factor can support an award of benefits under section 3208.3, subdivision (b)(1). First, the factor must be an "event" i.e. it must be "something that takes place" (American Heritage Dict. (4th ed. 2000) p. 616) in the

> employment relationship. Second, the event must be "of employment", i.e., it must arise out of an employee's working relationship with his or her employer. As we will explain, potential stress factors that arise from broad societal events or trends do not satisfy this requirement of section 3208.3 subdivision (b)(1) because they cannot reasonably be said to be events which arise out of the employment relationship.

(*Bryan, supra*, 114 Cal.App.4th 1174, 1181.) Applying this rubric to the four identified factors, the court in *Bryan* determined that only applicant's daily interactions with irate customers would qualify as an actual event of employment and annulled the underlying decision.

Here, applicant was employed as a school principal over the course of the claimed cumulative injury period of August 1, 1996 through July 31, 2008. Applicant testified at trial to the following:

> Applicant's last day of work with Ari G. Minassian School was 8/31/08. Applicant had been told by the employer that his employment at the school would be over at the end of that year's contract on 8/31/08. He believes he was notified of his contract termination one to two months prior to the end of the contract. On additional questioning he agrees it could have been as early as May 2008 when he was informed of his upcoming termination. When Applicant found out his contract was not going to be renewed, he was shocked and surprised.

(Minutes of Hearing and Summary of Evidence, dated February 23, 2015, at p. 10:15.)

The parties have selected Dr. Delker to act as the QME in psychology. Dr. Delker evaluated applicant and diagnosed a Major Depressive Disorder and Post-Traumatic Stress Disorder (resolved). (Ex. 7, Report of Leine Delker, Ph.D., dated May 16, 2016, at p. 18.) In subsequent deposition testimony, Dr. Delker attributed 80 percent of applicant's psychiatric disability to his underlying cardiac condition, and 20 percent to the notice that applicant's contract would not be renewed. (Ex. 8, Transcript of the Deposition of Leine Delker, Ph.D., dated December 5, 2016, at p. 19:1.)

The WCJ's Opinion on Decision determined, however, that applicant's "contract non-renewal was an actual event of employment." (Opinion on Decision, at p. 8.) Both defendants challenge this assertion, citing to *Bryan, supra*, 114 Cal.App.4th 1174, for the proposition that generalized anxiety of job loss cannot reasonably support an award of benefits. (Church Mutual Petition, at p. 3:1; SCIF Petition at 2:23.)

We find defendant's argument in this respect to be unpersuasive, however, because the undisputed evidence establishes that applicant's psychiatric disability did not arise out of a generalized anxiety or fear of job loss. Rather, applicant's psychiatric disability arose in part from *actual notice* of non-renewal of his employment contract that occurred some three to four months prior to his last day worked. Framed in terms of the analysis of the Court of Appeal in *Bryan*, the notice of non-renewal was "something that [took] place" in the employment relationship and arose "out of an employee's working relationship with his or her employer." (*Bryan, supra*, 114 Cal.App.4th 1174, 1181.)

We therefore agree with the WCJ that the notice of non-renewal of applicant's contract was an actual event of employment that occurred as early as May, 2008. Moreover, applicant continued to work for defendant for an additional three to four months following his receipt of the notice of non-renewal. (Minutes of Hearing and Summary of Evidence, dated February 23, 2015, at p. 10:15.) We thus find the facts of this matter distinguish it from the reasoning set forth in *Bryan, supra*.

Because we agree with the WCJ that the notice of contract non-renewal was an actual event of employment, we will affirm the WCJ's determination that applicant has sustained his burden of establishing that actual events of employment were the predominant cause of the residual psychiatric disability.

II.

We next address the issue of apportionment. Regular physician Dr. Grodan has determined that 20 percent of applicant's cardiac-related disability arises out of hyperlipidemia, a preexisting nonindustrial factor. (Ex. 1, Report of Paul Grodan, M.D., dated September 2, 2015, at p. 26.) The remaining 80 percent is attributable to applicant's industrial exposures.

QME Dr. Delker has indicated that applicant's psychiatric disability arises in part out of applicant's concerns regarding his cardiac condition, and that as a result, the QME would "follow" the apportionment analysis of Dr. Grodan. (Ex. 8, Transcript of the Deposition of Leine Delker, Ph.D., dated December 5, 2016, at p. 19:1.)

Similarly, neurology QME Dr. Pulera has opined that 70 percent of applicant's sleep-related disability arises out of the "emotional sequelae secondary to the cardiac disease." (Ex. 5, Report of Mark Pulera, M.D., dated January 19, 2017, at p. 47.)

Thus, the QMEs in psychology and neurology/sleep have both ascribed causation of permanent disability within their specialties to applicant's psychiatric response to his cardiac condition.

Both Church Mutual and SCIF argue that the WCJ erred in not finding "pass through" apportionment based on Dr. Grodan's underlying apportionment of applicant's cardiac condition. That is, both defendants assert that to the extent that applicant's sleep-related and psychiatric disability arise out of his cardiac condition, and to the extent that the cardiac condition is subject to 20 percent nonindustrial apportionment, the 20 percent apportionment should "pass through" and apply to the resulting sleep and psychiatric disability. (Church Mutual Petition, at p. 3:26; SCIF Petition, at p. 3:13.)

We note, in the first instance however, that "section 4663(a)'s statement that the apportionment of permanent disability shall be based on 'causation' refers to the causation of the permanent disability, not causation of the injury, and the analysis of the causal factors of permanent disability for purposes of apportionment may be different from the analysis of the causal factors of the injury itself." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 607 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc) (*Escobedo*).) Thus, while a reviewing physician may identify an injured body part or system as causing a collateral injury, correct legal apportionment requires an analysis of causation of the disability rather than causation of the injury.

In *Mayorga v. Dexter Axle Chassis Group* (June 25, 2015, ADJ364166 (LAO 0879384), ADJ3925942 (LAO 0881103) [2015 Cal. Wrk. Comp. P.D. LEXIS 359] (*Mayorga*),[3] both the psychiatric and internal medicine QMEs adopted or "passed through" the underlying orthopedic apportionment in lieu of an independent analysis. We held this practice to be inconsistent with correct principles of apportionment:

> Causation of disability is not to be confused with causation of injury. (*Id*. at 611.) In this case, multiple doctors opined that applicant's *injury* to psyche and hypertension were caused, in part, by applicant's orthopedic injuries. No doctor provided a substantial opinion outlining what portion of the psyche or hypertension *disability* was caused by the orthopedic injuries. For this reason,

[3] Unlike en banc decisions, panel decisions are not binding precedent on other Appeals Board panels and WCJs. (See *Gee v. Workers' Comp. Appeals Bd.* (2002) 96 Cal.App.4th 1418, 1425, fn. 6 [67 Cal.Comp.Cases 236].) However, panel decisions are citable authority and we consider these decisions to the extent that we find their reasoning persuasive, particularly on issues of contemporaneous administrative construction of statutory language. (See *Guitron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 (Appeals Board en banc); *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145].)

the psyche and hypertension apportionment opinions do not constitute substantial evidence.

It is the responsibility of each medical evaluator to determine apportionment for the body parts or body systems within his or her area of expertise. Where a sequela is caused by the combined effects of multiple orthopedic injuries, each individual doctor must independently determine whether apportionment from the orthopedic injuries carries over to the sequela. If apportionment is found, the doctor must provide an independent and substantial opinion. Doctors cannot simply mirror the apportionment opinions of other doctors in a case without providing independent justification for their opinion. To do so fails to meet the requirements of substantial evidence. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 620–621 (Appeals Board en banc opinion) and *E.L. Yeager Construction v. Workers' Comp. Appeals Bd*. (*Gatten*) (2006) 145 Cal. App. 4th 922, 928 [52 Cal. Rptr. 3d 133, 71 Cal. Comp. Cases 1687].) In some cases apportionment may mirror; in other cases it may differ; in some cases the doctor may find no apportionment or that the disability is inextricably intertwined between the dates of injury such that apportionment cannot be stated with reasonable medical probability. However, the apportionment opinion of each doctor must be an independent judgment and must meet the requirements of substantial medical evidence.

In those cases where the doctor is unable or unwilling to make an apportionment determination, the parties should follow section 4663(c), which states:

> If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(*Id.* at pp. 16-18.)

Here, both psychology QME Dr. Delker and neurology QME Dr. Pulera have limited their analyses to causation of applicant's psychiatric and sleep-related injuries, respectively. Neither physician has adequately engaged in the substantive analysis of causation of permanent disability required under section 4663 and *Escobedo, supra*.

Accordingly, based on both the facts of this case as well as our jurisprudence in this area, we conclude that the "pass-through apportionment" urged by defendants in both pending Petitions is incompatible with principles of proper legal apportionment and is otherwise unsupported in the evidentiary record.

III.

Following the grant of reconsideration, the Appeals Board has the authority to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it. As we observed in *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, fn. 7 [2006 Cal. Wrk. Comp. LEXIS 35, 51-17] (Appeals Board en banc), section 5906 provides that "[u]pon the filing of a petition for reconsideration . . . the appeals board may, with or without further proceedings and with or without notice affirm, rescind, alter, or amend the order, decision, or award made and filed by the appeals board or the workers' compensation judge…." (Lab. Code, § 5906.) Similarly, section 5908 provides that "[a]fter . . . a consideration of all the facts the appeals board may affirm, rescind, alter, or amend the original order, decision, or award." (Lab. Code, § 5908.) Thus, "it is settled law that a grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com.* (*Savercool*) (1923) 191 Cal. 724, 729 [218 P. 1009] [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*Pasquotto, supra,* citing *State Comp. Ins. Fund v. Industrial Acc. Com.* (*George*) (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].)

Here, following our independent review of the record occasioned by defendants' Petitions, we are not persuaded that the apportionment to nonindustrial factors described by QME Dr. Delker and QME Dr. Pulera constitutes substantial medical evidence. Section 4663 sets out the requirements for the apportionment of permanent disability and provides, in relevant part, as follows:

> (a) Apportionment of permanent disability shall be based on causation.
>
> (b) Any physician who prepares a report addressing the issue of permanent disability due to a claimed industrial injury shall in that report address the issue of causation of the permanent disability.
>
> (c) In order for a physician's report to be considered complete on the issue of permanent disability, it must include an apportionment determination. A physician shall make an apportionment determination by finding what approximate percentage of the permanent disability was caused by the direct result of injury arising out of and occurring in the course of employment and what approximate percentage of the permanent disability was caused by other factors both before and subsequent to the industrial injury, including prior

> industrial injuries. If the physician is unable to include an apportionment determination in his or her report, the physician shall state the specific reasons why the physician could not make a determination of the effect of that prior condition on the permanent disability arising from the injury. The physician shall then consult with other physicians or refer the employee to another physician from whom the employee is authorized to seek treatment or evaluation in accordance with this division in order to make the final determination.

(Lab. Code, § 4663.)

In order to comply with section 4663, a physician's report in which permanent disability is addressed must also address apportionment of that permanent disability. (*Escobedo, supra,* 70 Cal.Comp.Cases 604, 611.) However, the mere fact that a physician's report addresses the issue of causation of permanent disability and makes an apportionment determination by finding the approximate respective percentages of industrial and non-industrial causation does not necessarily render the report substantial evidence upon which we may rely. Rather, the report must disclose familiarity with the concepts of apportionment, describe in detail the exact nature of the apportionable disability, and *set forth the basis for the opinion that factors other than the industrial injury at issue caused permanent disability.* (*Id.* at p. 621.) Our decision in *Escobedo* summed up the minimum requirements for an apportionment analysis as follows:

> [T]o be substantial evidence on the issue of the approximate percentages of permanent disability due to the direct results of the injury and the approximate percentage of permanent disability due to other factors, 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.
>
> For example, if a physician opines that approximately 50% of an employee's back disability is directly caused by the industrial injury, the physician must explain how and why the disability is causally related to the industrial injury (e.g., the industrial injury resulted in surgery which caused vulnerability that necessitates certain restrictions) and how and why the injury is responsible for approximately 50% of the disability. And, if a physician opines that 50% of an employee's back disability is caused by degenerative disc disease, the physician must explain the nature of the degenerative disc disease, *how* and *why* it is causing permanent disability at the time of the evaluation, and *how* and *why* it is responsible for approximately 50% of the disability.

(*Ibid.*, italics added.)

Here, psychology QME Dr. Delker's deposition apportions 80 percent of applicant's disability to "cardiac-related" factors, and 20 percent to applicant's receipt of notice of non-renewal of his contract. (Ex. 8, Transcript of the Deposition of Lelaine Delker, Ph.D., dated December 5, 2016, at p. 19:1.)

With respect to the cardiac-related component, we have declined herein to apply the Dr. Grodan's cardiac apportionment to applicant's psychiatric permanent disability on a "pass-through" basis.

With respect to applicant's receipt of notice of non-renewal of his contract, we have discussed, infra, why this factor was an actual event of employment. As an actual event of employment, the notice of non-renewal cannot be considered a factor "both before [or] subsequent to the industrial injury," as described in section 4663(c). That is, because the notice of non-renewal was an actual event of applicant's employment, it is not a proper basis for apportionment to factors occurring either before or after that employment. Because apportionment from applicant's cardiac injury cannot "pass-through" without a specific analysis by the evaluating physician, and because applicant's receipt of notice of non-renewal of his contract was an inappropriate factor of apportionment, we conclude applicant is entitled to unapportioned psychiatric disability. (*Escobedo, supra,* 70 Cal.Comp.Cases 604, 621.)

Similarly, Dr. Pulera describes apportions 70 percent of applicant's sleep-related disability to the emotional sequelae secondary to cardiac disease, 20 percent to "emotional stress of termination," and 10 percent to amalgamated "nonindustrial factors," which include *but are not limited to* age, genetics, smoking, heart disease and nonindustrial psychiatric factors. (Ex. 5, Report of Mark Pulera, M.D., dated January 9, 2017, at p. 47.) As with the analysis of Dr. Delker, we decline to endorse "pass-through apportionment" from applicant's underlying cardiac injury and further note that the notice of non-renewal of applicant's contract is not subject to legal apportionment. With regard to the final 10 percent attributable to "nonindustrial factors," we observe that the QME has impermissibly amalgamated at least five independent factors of causation into single factor of apportionment. (*Ibid*.) Moreover, the QME describes the various factors as being "potential" and does not adequately explain how any of the factors are presently manifesting as permanent disability, either individually or in the aggregate. The opinion lacks specificity as to whether the risk factors identified for "heart disease" align or diverge from the apportionment analysis of regular physician Dr. Grodan and fails to identify with specificity the

nonindustrial psychiatric factors" being referenced or how they align or diverge from the factors identified by psychology QME Dr. Delker. Because apportionment from applicant's cardiac injury cannot "pass-through" without a specific analysis by the evaluating physician, because applicant's receipt of notice of non-renewal of his contract was not an appropriate factor of apportionment, and because the remaining 10 percent apportionment improperly aggregates independent factors of causation, we conclude applicant is entitled to unapportioned psychiatric disability.

Having determined that the apportionment identified by both Dr. Delker and Dr. Pulera is not legally sustainable, we will amend the F&A to reflect applicant's entitlement to unapportioned permanent disability insofar as it arises out of psychiatric and sleep-related injuries.

The permanent disability ratings underlying the F&A are set forth in the November 20, 2020, Amended Report of Permanent Disability, following the WCJ's Rating Memorandum of the same date, and served on parties on December 2, 2020. The ratings are set forth as follows:

CORONARY ARTERY DISEASE:
80% (03.02.00.00 - 10 - [5]13 - 2120- 15 - 19) 15 PD (A)

HEMORRHAGIC DISORDER:
80% (09.01.00.00 - 5 - [2]6 - 212F - 6 - 8) 6 PD (A)

UROLOGIC:
10% (07.05.00.00-20[2]-23-212F-23-29) 3 PD (A)
10% (07.03.00.00-10[2]-11-212F-11-15) 2 PD (A)

SLEEP:
70% (13.03.00.00 - 10 - [6]13 - 212H- 17 - 21) 15 PD (A)

PSYCHE:
84% (14.01.00.00 - 30 - [8]42 - 2121 - 55 - 63) 53 PD (A)

(A) 53 C 15 C 15 C 6 C 3 C 2 = 70 FINAL PD AFTER APPORTIONMENT

Based on our determination that applicant is entitled to unapportioned psychiatric and sleep-related disability, applicant's permanent disability ratings for sleep and psyche are now:

SLEEP

100% (13.03.00.00 - 10 - [6]13 - 212H- 17 – 21) 21 PD (A)

PSYCHE:

100% (14.01.00.00 - 30 - [8]42 - 2121 - 55 - 63) 63 PD (A)

Applicant's combined disability rates to:

15 C 6 C 3 C 2 C 21 C 63 = 78 FINAL PD

Accordingly, and pursuant to our authority to review the entire record following the grant of reconsideration, we conclude that applicant is entitled to an award of 78 percent permanent partial disability. We will amend the F&A to reflect the corrected permanent disability percentage and defer the issue of attorney's fees to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

In summary, we are persuaded that applicant's receipt of notice of that his contract would not be renewed was an actual event of employment, and that the WCJ properly determined that actual events of employment were the predominant cause of applicant's psychiatric injury. We also conclude that so-called "pass-through" apportionment is not legally sustainable on the facts of this case, and that applicant is otherwise entitled to unapportioned permanent disability for his psychiatric and sleep-related injuries. We will therefore affirm the F&A, except that we will amend it to reflect that applicant sustained 78 percent permanent disability with the issue of attorney's fees to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute. We will otherwise affirm the F&A.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 13, 2021 Findings of Fact, Award and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

…

4. The injury caused permanent disability of 78 percent, after apportionment, equivalent to 561.25 weeks of indemnity payable at $270.00 per week, commencing on January 16, 2009 in the total sum of $151,537.50, and thereafter a life pension of $139.15 per week for life, subject to statutory L.C. §4659(c) SAWW COLA adjustments, less credit for all sums paid on account thereof heretofore by defendants, and less reasonable attorney fees to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

…

8. The issue of reasonable attorney's fees is to be adjusted by the parties with jurisdiction reserved to the WCJ in the event of a dispute.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 20, 2025

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

ASSADOUR ASSADOURIAN
LAW OFFICES OF SCOTT B. SOLIS
GOLDMAN, MAGDALIN & KRIKES
STATE COMPENSATION INSURANCE FUND

SAR/abs

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