WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ASTGHIK AJAMIAN, *Applicant*

vs.

COALINGA STATE HOSPITAL, Legally Uninsured, Administered by STATE COMPENSATION INSURANCE FUND, *Defendants*

Adjudication Number: ADJ16667156
Fresno District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Defendant filed a Petition for Reconsideration (Petition) of the Findings of Fact and Award (F&A) issued July 8, 2025, wherein the workers' compensation administrative law judge (WCJ) found that applicant sustained injury arising out of and occurring in the course of employment to the left foot, left ankle, and low back, resulting in 39% disability.

In the Petition, defendant contends the WCJ should have followed the parties' stipulation of 27% disability and that the WCJ's finding of 39% disability is not supported by substantial evidence.

Applicant did not file an Answer.

The WCJ's Report and Recommendation (Report) recommends the Petition be denied.

We have considered the allegations of the Petition and the contents of the Report of the WCJ with respect thereto.

Based on our review of the record and for the reasons discussed below, we will grant reconsideration, rescind the F&A and return the case to the WCJ to allow the parties an opportunity to provide evidence and argument regarding setting aside the stipulation of 27% disability and for further proceedings consistent with this decision.

I.

Former Labor Code section 5909[1] provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Former Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b) (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(Lab. Code, § 5909.)

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events the case was transmitted to the Appeals Board on August 15, 2025, and 60 days from the date of transmission is Tuesday, October 14, 2025. This decision issued by or on October 14, 2025, so that we have timely acted on the Petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report shall be notice of transmission.

[1] Unless otherwise stated, all further statutory references are to the Labor Code.

According to the proof of service, the Report was served on August 15, 2025, and the case was transmitted to the Appeals Board on August 15, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 15, 2025.

II.

The documentary record before us consists of three exhibits.

On June 12, 2024, applicant was evaluated by Panel Qualified Medical Examiner (PQME) Dr. Larry Woodcox, who issued a report dated July 10, 2024. The doctor notes an initial evaluation of applicant on January 23, 2023, with report of February 23, 2023, and a re-evaluation on September 6, 2023, with report of October 4, 2023. (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, pages 1-2.) PQME Dr. Woodcox's two earlier reports are not part of the record. The July 10, 2024, report contains a Questionnaire Concerning Activities of Daily Living (ADL) updated June 12, 2024. (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, pages 6-8.) The doctor provides multiple diagnoses for the left foot and ankle as well as "[l]umbalgia, post-chronic strain attributed to altered gait." The doctor provides opinions which include disability, impairment, combining disability, and apportionment. (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, pages 12-14.)

There is an IDL report, dated April 16, 2025, and a benefits-paid report, dated April 16, 2025, which do not appear pertinent to the issues raised in the Petition. (Joint Exhibits 1 and 2.)

The relevant procedural history includes an April 14, 2025, mandatory settlement conference where the parties agreed to stipulations and issues which were listed in the Pre-Trial Conference Statement (PTCS) when the case was set for trial.

At trial on May 6, 2025, the Minutes of Hearing and Summary of Evidence (MOH) follows the PTCS to include as stipulation number seven: "Parties agree to ratings based upon QME, Dr. Larry Woodcox, dated July 10, 2024, MMI report. String ratings as follows: Left lower extremity: 17.08.06.00-12 [1.4] 17-311F-17-21. Lumbar spine: 15.03.01.00-6-[1.4] 8-311G-9-12. 70% apportionment to industrial equates to 8%, the combined value of 21 and 8 is equivalent to 27%

final permanent disability." (MOH, May 6, 2025, page 2, lines 16-20.) The MOH includes issues of permanent disability and apportionment. (MOH, May 6, 2025, page 2, lines 22-23.)

The applicant testified at trial that her injured body parts have gotten worse over time, she has ankle pain, knee problems, constant back pain, her neck is constantly hurting, her achilles is damaged, and she has left foot pain. (MOH, May 6, 2025, page 4, lines 8-14.)

In the July 8, 2025, F&A the WCJ followed the parties' stipulations except stipulation number seven of 27% disability "because Dr. Woodcox's opinion on apportionment is not legal as it does not comply with the Escobedo case." (F&A, July 8, 2025, page 2.) Instead, the WCJ found 39% disability. (F&A, July 8, 2025, page 3.

III.

As found by the WCJ in the F&A, applicant while employed by defendant on April 11, 2022, as a Behavior Specialist II, sustained injury arising out of and occurring in the course of employment to the left foot, left ankle, and low back.

A.

In the Petition, defendant states "Applicant's Attorney and Defense Counsel agreed to a stipulated impairment rating with apportionment." (Petition, page 2, lines 20-21.) "However, Applicant declined to accept Defendant's settlement offer" and the parties "filed a Joint Pretrial Conference Statement (PTCS) stipulating to the impairment ratings with apportionment." (Petition, page 3, lines 1-3.) This stipulation was reflected as stipulation number seven by the WCJ in the MOH.

Defendant asserts as error the WCJ not following the parties' stipulation as the "parties entered into the stipulated rating with knowledge and awareness of the facts and law, and there has been no change in the underlying conditions that could not have been anticipated. The parties chose not to seek a supplemental report, deposition, or DEU rating and instead agreed on the level of permanent disability and apportionment based on the QME's opinions." (Petition, page 6, lines 1-5.)

Stipulations further the public policies of settling disputes and expediting trials. (Lab. Code §5702; *County of Sacramento v. Workers' Comp. Appeals Bd.*, (*Weatherall*) (2000) 77 Cal. App. 4th 1114, 1119, [65 Cal.Comp.Cases 1].) "[W]hile stipulations are permissible in workers'

compensation cases and are treated as evidence in the nature of an admission, they are not binding on the WCJ or the WCAB. (*Turner Gas Co. v. Workmen's Comp. Appeals Bd.* (1975) 47 Cal.App.3d 286, 290-291 [40 Cal.Comp.Cases 253]; see also *Draper v. Workers' Comp. Appeals Bd.* (1983) 147 Cal.App.3d 502, 508, fn. 4 [48 Cal.Comp.Cases 748], (Workers' Compensation Appeals Board does not exceed its authority in making a finding contrary to a stipulation), and *Robinson v. Workers' Comp. Appeals Bd.*, (1987) 194 Cal. App. 3d 784, 790 [52 Cal.Comp.Cases 419] (stipulations which arise in workers' compensation cases are not necessarily binding on the WCAB).)

Parties to a workers' compensation proceeding, however, retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "one of 'the rudiments of fair play' assured to every litigant...." (*Id*. at p. 158.) As stated by the Supreme Court of California in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "the commission...must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id*. at p. 577.) A fair hearing includes, but is not limited to, the opportunity to offer evidence in rebuttal. (*Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584].)

Here, the WCJ included the parties' stipulation regarding permanent disability in the MOH but then declined to follow the stipulation in the F&A. It appears the parties were not noticed in advance that the stipulation would not be followed. Defendant asserts that the parties relied on the permanent disability stipulation in deciding not to seek a supplemental report, deposition, or DEU rating. Consistent with this assertion, the WCJ notes that at trial "the defendant did not ask any questions and rested after applicant's direct examination." (Report, page 4). In addition, applicant has not filed an Answer which deprives us of further clarification on applicant's position regarding the stipulation.

Although the parties placed permanent disability and apportionment at issue, it is unclear if the parties were seeking an independent review of these issues or merely a mechanism to obtain a finding on these issues in accordance with their stipulation to disability of 27%.

Due process requires the parties be afforded "the opportunity to offer evidence in rebuttal." (*Gangwish*, *supra*.) For this reason, we rescind the F&A and will return this matter to allow the

parties the opportunity to develop the record and offer evidence in rebuttal of setting aside the parties' stipulation.

Further, in the future we note the WCJ may issue a notice of intention for any proper purpose. (Cal. Code Regs., tit. 8, § 10832). In situations such as these, the WCJ could have vacated submission and issued a notice of intention to set aside the disability stipulation to allow the parties notice and an opportunity to object.

B.

In the Petition defendant asserts the finding of 39% disability is not supported by substantial evidence. In support, defendant states "the QME's discussion of the various percentages of whole person impairment that might apply was progressive, not collective." (Petition page 6, lines 7-14.) Defendant also states the "ratings are contrary to the AMA guides." (Petition, page 8, line 1.)

In contrast the WCJ noted "Dr. Woodcox, provided a well-reasoned detailed explanation of why the alternative Almaraz/Guzman rating method is more appropriate." (F&A, Opinion on Decision, page 4; Report, page 5.)

Permanent disability in workers' compensation cases is determined using the Permanent Disability Ratings Schedule (PDRS), which is prima facie evidence of applicant's level of permanent disability. (Lab. Code, §§ 4660(c), 4660.1(d).) However, the PDRS is rebuttable. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) As the Court stated in *Guzman*:

> Section 4660, subdivision (b)(1), recognizes the variety and unpredictability of medical situations by requiring *incorporation* of the descriptions, measurements, and corresponding percentages in the Guides for each impairment, not their mechanical application without regard to how accurately and completely they reflect the actual impairment sustained by the patient.

(*Ibid*, emphasis in the original.)

"Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93].

PQME Dr. Woodcox provides a straight AMA rating of the left foot and ankle due to left calf atrophy resulting in 2%. The doctor notes this rating does not consider posttraumatic arthrofibrosis of the left ankle or arthrofibrosis of the left subtalar joint, as "both are contributing to a loss of activities of daily living", nor does it "take into consideration the loss of activities of daily living from her plantar fasciitis." (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, page 13.)

The doctor also references the American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition, (AMA Guides), which states on page 11 that in situations "where impairment ratings are not provided, the Guides suggest that physician use clinical judgment, comparing measurable impairments resulting from the unlisted condition to measurable impairments resulting from a similar condition with *similar impairment of function in performing activities of daily living*." (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, page 13, emphasis added; AMA Guides, page 11.)

Here, PQME Dr. Woodcox declined to add lumbar disability with the left foot/ankle disability, because of the "*overlap in terms of negative effects on activities of daily living between her left foot and ankle and lumbar spine*, especially in terms of pushing, pulling, and lifting." (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, page 14, emphasis added.) Although the doctor's report contains a Questionnaire Concerning Activities of Daily Living, on the surface the report appears to be applicant's subjective reporting without clinical assessment of validity nor discussion of which body part(s) effect which activity of daily living. (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, pages 6-8.)

Significantly, PQME Dr. Woodcox states applicant's ADLs are part of the basis for his "Almaraz/Guzman" rating. (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, pages 13-14.) We are unable to determine what the doctor found were the impacted ADLs for the left ankle/foot nor how such ADLs along with a comparison of measurable impairments support his conclusions. This is especially troublesome when the doctor clearly states there is overlap between the lumbar and left foot/ankle ADLs. Clarification of ADLs and measurable impairments is required.

While not fully addressed here, we note there are additional areas of PQME Dr. Woodcox's report regarding disability that would benefit from further development.

For instance, and in broad terms, it is unclear if the PQME intended the Class II 10% impairment for "plantar fasciitis complicated by the other intrinsic pathology in her ankle and subtalar joint" to fully describe applicant's ankle/foot condition, or if this impairment was intended to be added to a previously provided 7% for "plantar fasciitis". (Joint Exhibit 1, PQME Dr. Larry Woodcox, July 10, 2024, pages 6-8.)

It is also unclear why the PQME provides 7% for gait derangement from AMA Guides Chapter 17 "The Lower Extremities", and 10% for station, gait and movement disorders from AMA Guides Chapter 13 "The Central and Peripheral Nervous System." Using two gait-based conditions appears to counter the AMA Guides's direction to "[a]void combining methods that rate the same condition," and "[i]f more than one method can be used, the method that provides the higher rating should be adopted." (AMA Guides, page 526.) In accordance with the AMA Guides, adopting the method that provides the highest rating for a condition would appear to be the appropriate starting place for an "Almaraz/Guzman" rating.

A decision must be based on admitted evidence in the record and must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16].) Where the issue in dispute is a medical one, expert medical evidence is ordinarily needed to resolve the issue. (*Insurance Co. of North America v. Workers' Comp. Appeals Bd.* (1981) 122 Cal.App.3d 905, 912 [46 Cal.Comp.Cases 913]; *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Here, after review, we are not convinced the July 10, 2024, report of PQME Dr. Woodcox is substantial evidence on the issue of disability.

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the

case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138, 142 (Appeals Board en banc).)

IV.

Following our independent review of the record occasioned by defendant's Petition, we are persuaded that due process requires further proceedings to address setting aside the parties' stipulation regarding permanent disability. If the stipulation is set aside further development of the record is necessary. Before the record is developed, the WCJ may entertain any new stipulations the parties offer that further the public policies of settling disputes and expediting trials.

We express no opinion as to the ultimate resolution of any issue in this matter.

Accordingly, we grant defendant's Petition for Reconsideration, rescind the July 8, 2025, F&A, and return the case to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that the defendant's Petition for Reconsideration of the July 8, 2025, Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 7, 2025, Findings and Award is **RESCINDED**, and the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 14, 2025

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

ASTGHIK AJAMIAN
QUINLAN, KERSHAW & FANUCCHI
STATE COMPENSATION INSURANCE FUND

PS/oo

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