

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

CASSANDRA WASHINGTON, *Applicant*

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured,
administered by TRISTAR RISK MANAGEMENT, *Defendants***

**Adjudication Numbers: ADJ2755694; ADJ453468; ADJ3409238
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration¹ 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.

Applicant seeks reconsideration of the January 25, 2021 Findings, Award & Order (F&A), wherein the workers' compensation administrative law judge (WCJ) found in Case No. ADJ2755694 that applicant, while employed as a licensed vocational nurse on October 12, 2003, sustained industrial injury to her lumbar spine and bilateral shoulders, resulting in 5 percent permanent partial disability. In ADJ453468, the WCJ found that applicant, while similarly employed from September 15, 2002, to September 15, 2003, sustained industrial injury to the low back, heart, upper gastrointestinal system and sleep disorder, resulting in 34 percent permanent partial disability. In ADJ3409238, the WCJ determined that applicant, while similarly employed on June 23, 2004, did not sustain industrial injury.

Applicant contends the reporting of pain management physician Dr. Miller was improperly excluded from evidence and is admissible pursuant to Labor Code² section 4060. Applicant asserts that the record supports a finding of industrially related hypertension, industrially related sleep

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

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

dysfunction, and a period of temporary total disability. Applicant also asserts that the record should be developed with respect to applicant's claimed psychiatric injury.

We have received an Answer from defendant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted and that we return the matter to the trial level for development of the record with respect to applicant's claimed psychiatric injury, levels of permanent disability, and for consideration of the reporting of Dr. Miller.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will rescind the F&A and return the matter to the trial level for development of the record.

FACTS

Applicant has filed three pending cases. In Case No. ADJ2755694, applicant claimed injury to her low back, lumbar spine, right shoulder, left shoulder, heart, internal, right arm, fibromyalgia, respiratory system, anxiety, and psyche while employed as a licensed vocational nurse by defendant County of Los Angeles on October 12, 2003. Defendant admits injury to the low back, lumbar spine and bilateral shoulders, and denies liability for all remaining body parts.

In ADJ453468, applicant claimed injury to her low back, heart, upper gastrointestinal system, sleep disorder, psyche, fibromyalgia, high blood pressure and diabetes while similarly employed from September 15, 2002, to September 15, 2003. Defendant admits injury to the low back, heart, sleep upper gastrointestinal system and sleep disorder, and denies liability for all remaining body parts.

In ADJ3409238, applicant claimed injury to the psyche, and in the form of fibromyalgia, high blood pressure, and diabetes while similarly employed on June 23, 2004. Defendant denies injury arising out of and in the course of employment (AOE/COE).

The parties have selected Katelin Basett, M.D., as the agreed medical evaluator (AME) in psychiatry; Thomas M. Shery, M.D., as the AME in orthopedic medicine; and Jeffrey A. Hirsch, M.D., as the AME in internal medicine.

Applicant has also obtained medical treatment and reporting from Simon Lavi, D.O. in orthopedic medicine; Khalid Ahmed, M.D., in orthopedic medicine; Ronald Zlotolow, M.D., in

internal medicine; Warren Procci, M.D., Ph.D., in psychiatry; Pedram Navab, M.D. in sleep medicine; and Lawrence Miller, M.D., in pain management.

On August 27, 2018, the parties proceeded to trial. In ADJ2755694, for date of injury October 12, 2003, the parties framed for decision in relevant part issues of parts of body, temporary disability, permanent and stationary date, permanent disability, apportionment, and the admissibility and substantiality of the reporting of pain management physician Dr. Miller. (Minutes of Hearing, dated August 27, 2018, at p. 3:1.) In ADJ453468, for the cumulative injury ending September 15, 2003, the parties placed in issue, in relevant part, issues of parts of body (including diabetes), temporary disability, permanent and stationary date, permanent disability, apportionment, and the admissibility of substantiality of the reporting of Dr. Miller. (*Id.* at p. 3:18.) The parties also placed in issue the substantiality of the reporting of psychiatry AME Dr. Bassett. In ADJ3409238, for the June 23, 2004 date of injury, the parties placed in issue, in relevant part, injury AOE/COE, temporary disability, permanent and stationary date, permanent disability, apportionment, and the admissibility and substantiality of the reporting of Dr. Miller. (*Id.* at p. 4:12.)

On February 13, 2019, the WCJ heard testimony from applicant, and ordered the matter submitted for decision.

On February 27, 2019, the WCJ ordered the submission vacated, and set the matter for conference with respect to development of the record.

On September 10, 2020, the parties returned to trial on an augmented record. The matter was continued due to technical difficulties.

On November 19, 2020, the parties proceeded to trial at which time the WCJ heard additional testimony from applicant. (Minutes of Hearing (Further) and Summary of Evidence, dated November 19, 2020, at p. 2:2.) The WCJ ordered the matter submitted for decision the same day.

On January 25, 2021, the WCJ issued the F&A. Therein, the WCJ determined that in ADJ2755694, applicant sustained industrial injury to the lumbar spine and bilateral shoulders only, resulting in 5 percent permanent partial disability. (Finding of Fact Nos. 1 & 5.) In ADJ453468, applicant sustained industrial injury to the low back, heart, upper gastrointestinal system and sleep disorder only, resulting in 34 percent permanent partial disability. (Finding of Fact Nos. 2 & 6.) In ADJ3409238, the WCJ found that applicant did not sustain industrial injury. (Finding of Fact

No. 3.) The WCJ's accompanying Opinion on Decision explained in relevant part that because the record reflected no objection to a treating physician's report, there was no proper basis under former sections 4061 or 4062 for obtaining Qualified Medical Evaluator (QME) reporting from Dr. Miller. The WCJ excluded the reporting of Dr. Miller, accordingly. In addition, the WCJ determined that applicant had not established any periods of temporary total disability, or industrial injury in the form of hypertension, sleep dysfunction, or psychiatric injury.

Applicant's Petition contends the reporting of Dr. Miller is admissible because it was obtained under the auspices of section 4060 in response to a compensability dispute. As such, no objection letter to a treating physician was necessary. (Applicant's Petition, at p. 5:4.) Applicant further contends the evidentiary record supports applicant's claim of industrially related hypertension, noting that applicant's medical records reflect heightened blood pressure contemporaneous with industrial injury. (*Id.* at p. 6:9.) Applicant avers entitlement to temporary disability commencing June 23, 2004, because it arose out of both a prior heart attack and the industrial injury involving an assault by a patient on October 12, 2003. (*Id.* at p. 7:3.) Applicant challenges the reporting of AME Dr. Bassett as not substantial evidence and asserts that in any event, the WCJ should have developed the record rather than find no industrial injury. (*Id.* at p. 7:24.) Applicant also avers the WCJ improperly discounted a medical report in evidence documenting applicant's sleep disorder because it lacked a substantial apportionment analysis. Applicant avers it was error to disregard such reporting because apportionment is the burden of defendant. Applicant also contends the remedy for defective reporting is development of the record rather than dismissal of the reporting. (*Id.* at p. 9:8.)

Defendant's Answer responds to applicant's assertion that the reporting of Dr. Miller was obtained under the auspices of section 4060 by asserting that the evidentiary record does not contain a denial of the October 12, 2003 specific injury claim. (Answer, at p. 3:3.) In the alternative, defendant asserts the reporting of Dr. Miller is not substantial evidence. Defendant also observes that the opinions of Dr. Hirsch, the parties' AME, which address inter alia applicant's claim of sleep impairment, should be followed. (*Id.* at p. 4:1.) With reference to applicant's challenge to the substantiality of the reporting of psychiatric AME Dr. Bassett, defendant notes that applicant failed to challenge the conclusions reached by the AME in deposition or by requesting supplemental reporting. (*Id.* at p. 5:2.)

The WCJ's Report initially addresses the issue of the admissibility of the reporting of Dr. Miller, which was excluded from evidence because there was no evidence that a party first objected to a treating physician report as required under section 4061 and 4062. The Report observes, however, that the record contains a notice of denial of applicant's claimed injury of October 12, 2003, and that the report of Dr. Miller should have been admitted into evidence on the basis that it was obtained to address a compensability dispute under section 4060. (Report, at p. 3.) The WCJ thus concludes the reporting of Dr. Miller should have been received in evidence. Regarding applicant's claim of industrial sleep impairment, the WCJ observes that the reporting of AME Dr. Hirsch did not find industrial injury, and that the WCJ found the AME reporting to be the more persuasive and well-reasoned. (*Id.* at p. 5.) With respect to applicant's claim of psychiatric injury, the WCJ noted that none of the psychiatric reporting in evidence constituted substantial medical evidence, and as such, that it was error not to develop the record. (*Id.* at p. 6.) Accordingly, the WCJ recommends that we return the matter to the trial level for development of the record with respect to the claimed psychological injury and permanent disability, and for consideration of the weight of the reporting of Dr. Miller. (*Id.* at p. 8.)

DISCUSSION

We first address the issue of the admissibility of the July 14, 2014 reporting of applicant's QME Dr. Miller. Defendant challenges the admissibility of the report as not having been obtained pursuant to the requirements of sections 4061 or 4062. (Opinion on Decision, at p. 3.) Accordingly, the parties placed in issue the admissibility and weight of the reporting of Dr. Miller at trial. (Minutes of Hearing, dated August 27, 2018, at pp. 3:14; 4:6; 4:23.) The WCJ observed that sections 4061 and 4062 required a party to object to a treating physician report prior to obtaining a QME. (Opinion on Decision, at p. 3.) Here, the record reflected no objection to a treating physician report, leading the WCJ to conclude that the reporting had been obtained outside the requirements of section 4061 or 4062.

However, upon further review of the record occasioned by applicant's Petition, the WCJ noted that the record contained a notice of denial of applicant's claimed injury of October 12, 2003. (Report, at p. 3; Ex. B, Notice of Denial of Claim, dated April 6, 2007.) The WCJ further noted that although the claim was admitted as of the time of trial setting in March, 2018, the record does not disclose evidence that the claim was admitted by the time of the Dr. Miller evaluation on

July 14, 2014. Accordingly, the WCJ concluded that the report was appropriately obtained under the auspices of section 4060, which at the time of the claimed injury provided that for compensability disputes, “each party may select a qualified medical evaluator to conduct a comprehensive medical-legal evaluation.” (Lab. Code, § 4060(c) (2003).) Accordingly, the WCJ concludes “it is clear that [the Dr. Miller] report should have been admitted into evidence.” (Report, at p. 7.)

We agree with the WCJ’s analysis, and to the extent that the reporting may impact multiple disputed issues, including the nature and extent of the claimed injuries, we will rescind the F&A and return this matter to the trial level for further proceedings and decision by the WCJ.

In so doing, we also observe that the July 14, 2014 report of Dr. Miller was marked for identification at trial but was not admitted into evidence, with the issue of the admissibility of the reporting deferred. (Minutes of Hearing, dated August 27, 2018, at p. 6:13.) The current WCJ’s nonbinding Opinion on Decision states that the report is “ruled to be inadmissible,” but there is no corresponding order or finding of fact in the F&A. Although we are rescinding the F&A and returning this matter to the trial level for further proceedings, when the WCJ issues a new decision the issue of the admissibility of the reporting of Dr. Miller should be addressed in both a Findings of Fact/Order and the Opinion on Decision.

The F&A also determined that the reporting of treating psychiatrist Dr. Procci and psychiatric AME Dr. Bassett are “insufficient” based on a lack of diagnostic testing. (Opinion on Decision, at p. 3.) The WCJ observed that none of the reports contained “objective testing” to support a psychiatric diagnosis, and that applicant therefore did not meet her burden of establishing psychiatric injury. (*Ibid.*)

Applicant challenges the conclusions of AME Dr. Bassett as inconsistent with the evidentiary record. (Petition, at pp. 8-9.) Applicant also asserts that insofar as the WCJ determined that the record lacked evidence responsive to an issue raised and submitted by the parties, the WCJ has an affirmative obligation to develop the record. (*Id.* at p. 9.)

The WCJ’s Report agrees, noting that “once the parties have filed for reconsideration, the trier of fact may then consider whether the duty to develop the record is required for accurate fact-finding ... [s]ince none of the psychologists wrote a report that constituted substantial evidence of a mental injury, the *McDuffie vs. MTA* [(en banc, 2002) 67 CCC 138] case would apply and the parties should be permitted to obtain supplemental reports from these doctors that contain an

analysis of the MMPI results so that a report that constitutes substantial evidence may be entered into the record.” (Report, at p. 7.)

In *Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473, 476 [2001 Cal.Wrk.Comp. LEXIS 4947] (Appeals Bd. en banc) (*Hamilton*) we explained that, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at 475.) The purpose of this requirement is to enable “the parties, and the Board if reconsideration is sought, [to] ascertain the basis for the decision[.]” (*Hamilton, supra*, at 476, citing *Evans v. Workmen’s Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350].)

Additionally, it is well established that decisions by the Appeals Board 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].) The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that “[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . . the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete.” (*Id.* at p. 141.) The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers’ compensation claims. (*Tyler v. Workers Compensation Appeals Bd., supra*, at 928.)

Here, as was the case in both *Tyler* and *McClune*, the WCJ finds that the record does not adequately address the issue of psychiatric injury as specifically raised and submitted for decision by the parties. When the record is inadequate to address the issues framed by the parties, “the WCJ has a duty to develop an adequate record.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79

Cal. App. 4th 396, 403 [65 Cal.Comp.Cases 264]; *McClune, supra*, 62 Cal.App.4th at p. 1120.) The duty arises out of the Board's obligation to completely adjudicate the issues submitted for decision by the parties, consistent with principles of due process. (*Telles Transport v. Workers' Comp. Appeals Bd. (Zuniga)* (2001) 92 Cal.App.4th 1159, 1165 [112 Cal. Rptr. 2d 540, 66 Cal.Comp.Cases 1290].)

We thus agree with the WCJ's observation that in the absence of adequate reporting addressing applicant's claimed psychiatric injury, development of the record is required. (Report, at p. 7.) Following the return of this matter to the trial level, the WCJ should address development of the record with respect to the psychiatric medical-legal reporting in accordance with the protocols set forth in *McDuffie, supra*, 67 Cal.Comp.Cases 138.

In summary, we agree with the WCJ's determination that the reporting of Dr. Miller should be considered and weighed in the determination of the submitted issues, including issues related to permanent disability and need for future medical care. In addition, we concur with the WCJ's conclusion that the lack of substantial psychiatric medical reporting in evidence requires development of the record.

Accordingly, we will rescind the F&A and return this matter to the trial level for development of the record, and for further proceedings and decision by the WCJ as is necessary.

In so doing, we acknowledge the filing in the Electronic Adjudication Management System (EAMS) of a death certificate that appears to correspond to applicant. Although we do not have occasion herein to address issues related to these factual developments transpiring after the filing of applicant's Petition, we strongly encourage the parties to negotiate the outstanding issues, including an assessment of potential accrued benefits, with a goal of reaching an amicable resolution to the instant claim for benefits.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 25, 2021 Findings, Award & Order is **RESCINDED** and that this matter is **RETURNED** to the trial level for such further proceedings and decisions by the WCJ as may be required, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 15, 2025

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

**CASSANDRA WASHINGTON
SAKEYA FORD
MOORE AND ASSOCIATES
LAW OFFICES OF MICHAEL P. BARNARD**

SAR/abs

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