WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

MARIA LORENZANA, ***Applicant***

vs.

AEGIS SENIOR COMMUNITIES;
THE HARTFORD,
Defendants

Adjudication Number: ADJ16452926
Oakland District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers compensation administrative law judge (WCJ) on February 11, 2025, wherein the WCJ found that that applicant sustained injury arising out of and in the course of employment to her right wrist and thumb and fingers, and that applicant's injury caused permanent disability of 28%.

Defendant alleges that the medical reporting is not substantial evidence.

We have not received an answer from applicant.

The WCJ issued a Report and Recommendation recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and Recommendation (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, which we adopt and incorporate, we will deny reconsideration.

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. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

[1] All further references are to the Labor Code, unless otherwise stated.

> (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.

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 March 18, 2025 and 60 days from the date of transmission is Saturday, May 17, 2025. The next business day that is 60 days from the date of transmission is Monday, May 19, 2025. (See Cal. Code Regs., tit. 8, § 10600(b).)[2] This decision is issued by or on Monday, May 19, 2025, so that we have timely acted on the petition as required by Labor Code 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 and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers' compensation administrative law judge, the Report was served on March 18, 2025, and the case was transmitted to the Appeals Board on March 18, 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

[2] WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

> Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

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 March 18, 2025.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 19, 2025

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

MARIA LORENZANA
PACIFIC WORKERS
LEWIS BRISBOIS

LN/md

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

By a timely and verified Petition for Reconsideration (Petition) filed on March 3, 2025, defendant seeks reconsideration of my February 11, 2025 Findings and Award, wherein I found, among other things, that applicant, while employed during the cumulative trauma period from June 13, 2012 through July 7, 2022 as a caregiver in California, by Aegis Senior Communities, LLC, sustained injury arising out of and in the course of employment to her right wrist and thumb and fingers, and that applicant's injury caused permanent disability of 28%. In doing so, I relied upon the opinion of the primary treating physician, Dr. Adam Stoller.

Defendant contends: (1) Dr. Stoller's reporting is not substantial evidence because he improperly provided a 2% Whole Person Impairment (WPI) of 2%; (2) Dr. Stoller's opinion from his "early evaluations of applicant" are insubstantial because they were not performed in person: (3) Dr. Stoller did not discuss applicant's ADLs'; (4) the opinion of Dr. Stoller is incomplete because multiple reports of Dr. Stoller are missing: and (5) the record should have been further developed by the trial judge. Applicant has not yet filed an answer. I have reviewed defendant's Petition and the entire record in this matter. Based upon my review, I recommend that reconsideration be denied, for the following reasons.

FACTUAL BACKGROUND

The factual background of this case, excerpted in relevant part from pages 1-4 of the Opinion on Decision (Opinion), is as follows:

The parties submitted this matter primarily due to a disagreement over the formulation of the permanent disability pursuant to the opinions of the Panel Qualified Medical Examiner (QME), Dr. John Welborn, and the primary treating physician, Dr. Adam Stoller. The difference in the reports concerns the assessment and ratability of applicant's loss of grip strength.

* * *

In his August 25, 2023 report (Exh. C), Dr. Welborn found that she has reached maximum medical improvement (MMI). He found 8% whole person impairment (WPI) based upon her surgery and thumb impairment, related to her right wrist and thumb injury. He found loss of grip strength, but determined that it is not a ratable impairment because of her pain with gripping. He also

apportioned various percentages of her impairment to pre-existing ligamentous laxity, an unidentified specific date of injury, the admitted cumulative trauma injury, and further unidentified activities or events described simply as "at home."

Dr. Stoller found in his November 21, 2023 report (Exh. 4) that she also has similar impairment as Dr. Welborn, but also found loss of grip strength. Dr. Stoller added additional WPI for pain, but did not address whether that impacted his rating for loss of grip strength. Dr. Stoller only found 10% apportionment to degenerative arthritis. Lastly, Dr. Stoller indicated that he did not yet consider applicant to be MMI, because he expected her to improve with therapy following her surgery.

In his January 23, 2024 report (Exh. B), Dr. Welborn addressed the disagreement between his opinion and that of Dr. Stoller. Dr. Welborn stated that his opinion regarding apportionment to pre-existing ligamentous laxity and pre-existing arthritis has not changed. He further stated, "I also think apportionment is medically reasonable to activities at home for her CT injury." He did not, however, explain what the activities are home were, or how and why they support apportionment. He also documented his disagreement over Dr. Stoller's rating for loss of grip strength, because she had pain with gripping and CMC arthroplasty and fusion impairments account for the weakness and pain.

Dr. Stoller then provided his final report of July 29, 2024 (Exh. 1), wherein he found she had reached MMI status. He stated that she has participated in further physical therapy, and "is no longer feeling any deficits or pain with gripping, grasping, and holding with her right hand, [and it is] only with pushing firmly with her right thumb that she experiences any pain. This is a change since I last saw her." Dr. Stoller provided: 2% upper extremity impairment related to her thumb, which converts to 1% upper extremity impairment WPI pursuant to Table 16-3 of the AMA Guides; 11% upper extremity impairment for her resection arthroplasty, which converts to 7% WPI pursuant to Table 16-3; and 20% upper extremity impairment for the reduction in grip strength, which converts to 12% WPI per Table 16-3. He agreed that there should be some apportionment of the permanent impairment to applicant's ligamentous laxity, at 25% to this non- industrial condition. This rates out as follows:

Thumb: .75 (16.06.01.04 – 1% [1.4] - 1% - 311G – 2 –3%) 2%
Arthroplasty: .75 (16.04.02.00 - 7% [1.4] – 10% - 311 –12 – 16) 12%
Grip: .75 (16.01.04.00 – 12% [1.4] – 17% - 311F – 17 –22%) 17%
CVC = 28%

With respect to the issue of the grip loss rating page 508, the AMA Guides state, "Decreased strength cannot be rated in the presence of decreased motion, painful conditions, deformities, or absence of parts that prevent effective application of maximal force in the region being evaluated." This is confirmed

in numerous cases, such as *Gutierrez v. WCAB* (2018) 83 CCC 1578 (writ denied), where in is was determined that a grip loss rating is impermissible under AMA guides when applicant loses range of motion and has documented wrist pain upon grip strength testing. Dr. Welborn last saw the applicant in August 2023, just a few months removed from surgery. At that time, he noted that she had pain with gripping. In Dr. Stoller's report of July 29, 2024, he noted that her pain had decreased, and he no longer assigned a 2% pain add on which he originally included in his November 11, 2023 report. He reported that she had no pain with grip strength at the July, 2024 evaluation. As Dr. Stoller noted on page 7 of his July 2024 report: "Dr. Welborn does not include the grip strength because she has pain with gripping on his exam, but that was some almost 12 months ago." I agree with applicant's assertion that it seems perfectly reasonable that her pain subsided as she recovered from surgery, and that by the time she was rated by Dr. Stoller when he found her MMI, her pain did not limit her ability to apply maximal force in the region being evaluated.

Because there is no pain in grip strength when measured by Dr. Stoller in his final report on July of 2024, there is no prohibition to include the impairment for loss of grip strength. I also find his assessment of 25% apportionment much more consistent and logical than Dr. Welborn's apportionment determination, which gives numerous apportionment percentages which are unclear and lacking evidentiary support. Moreover, Dr. Welborn's apportionment determination also falls short of addressing the "how and why" of each factor he apportioned, as required by *Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 611 (en banc).

DISCUSSION

My review of defendant's Petition does not cause me to change my opinion. In addition to the reasons set forth in my Opinion on Decision, I observe that defendant's primary contention regarding the opinion of Dr. Stoller's opinion fundamentally misstates the final opinion of Dr. Stoller. Defendant contends that Dr. Stoller inappropriately provided a 2% WPI add-on for pain. While Dr. Stoller mentioned a 2% add-on for pain in his pre-MMI report of November 21, 2023, Dr. Stoller noted in his MMI report of July 29, 2024 that applicant's level of pain had improved post-surgery. In fact, Dr. Stoller no longer discussed any add-on for pain in his MMI report. Moreover, I did not include any pain add-on in my rating of the permanent disability as the basis for the 28% permanent disability awarded.

With respect to the early reporting of Dr. Stoller being conduced by telehealth, I note that defendant failed to consider the post-COVID changes to the regulations applicable to medical examinations which allowed for telehealth after applicant's injury for the cumulative period ending on July 7, 2022.

Defendant also asserts at p. 4 of the Petition, "Dr. Stoller does not review the medical records from this surgery," but does not state which records were not reviewed and how that impacts Dr. Stoller's opinion. Defendant's allegation at p. 4 of the Petition that Dr. Stoller provides "no details regarding ADL's complained of or other relevant details" is belied by the summary of applicant's ability to perform chopping, twisting jars and doorknobs, typing, working a full day, filing, answering phones and typing, at p. 2 of the July 29, 2024 report of Dr. Stoller.

Lastly, defendant's claim that multiple reports from Dr. Stoller are missing is unpersuasive, and does not indicate what reports are allegedly missing and how any missing reports would impact Dr. Stoller's opinion.

Any decision by the Appeals Board or a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280–281 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 637 [35 Cal.Comp.Cases 16]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 419 [33 Cal.Comp.Cases 659].) The opinion of a single physician may constitute substantial evidence, unless it is erroneous, beyond the physician's expertise, no longer germane, or based on an inadequate history, surmise, speculation, conjecture, or guess. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; see also *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620–621 (Appeals Board en banc).) Here, the opinion of Dr. Stoller is not erroneous, as it is based on an adequate history and is not based on surmise, speculation, conjecture, or guess. Therefore, because the opinion of Dr. Stoller is substantial evidence, there is no need to further develop the record.

RECOMMENDATION

Based upon the foregoing, it is respectfully recommended that applicant's Petition for Reconsideration be denied.

[…]

Date: 3/18/2025

JAMES GRIFFIN
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE