

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

SHARON HUGHES, *Applicant*

vs.

SUBSEQUENT INJURIES BENEFITS TRUST FUND, *Defendant*

**Adjudication Number: ADJ12141593
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Order (F&O) issued on October 24, 2025, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed on March 20, 2019, applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her neck, cervical spine, lumbar spine, bilateral shoulders and thoracic spine, and the parties settled the case via Compromise and Release based upon a split of the primary treating physician (PTP) report and the panel qualified medical evaluator (PQME) report; (2) applicant filed a timely Application for Subsequent Injuries Fund Benefits (SIBTF) ; (3) applicant failed to meet her evidentiary burden of proof that she was permanently partially disabled prior to her subsequent injury; and (4) defendant's objections to admitting applicant's exhibits 1, 2, 3, 4, 5 and 6 are overruled and the exhibits are admitted into evidence.

The WCJ thereafter ordered that applicant take nothing on her claim for SIBTF benefits.

Applicant contends that the WCJ erroneously failed to find that substantial medical evidence establishes that she had preexisting permanent partial disability. In the alternative, applicant contends that the record requires further development.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny applicant's Petition.

We have reviewed the contents of the Petition, the Answer, and the Report. Based upon our review of the record, and for the reasons discussed below, as our Decision After Reconsideration, we will rescind the F&O and substitute findings that (1) the issue of whether applicant had preexisting permanent disability of the bilateral wrist/hands and right shoulder is deferred; and (2) all other issues concerning whether applicant may establish eligibility for SIBTF benefits are deferred; and we will return the matter to the trial level for further proceedings consistent with this decision.

FACTUAL BACKGROUND

On March 7, 2024, applicant and defendant Groundworks Campaigns filed a compromise and release (C&R) regarding applicant's claim of injury occurring on March 20, 2019 to the neck, back, hips, hand and shoulder. (Signed Compromise and Release, March 7, 2024.) The C&R provided that applicant and defendant "split ratings of 36 + 58 to 47%." (*Id.*, p. 9.)

On March 24, 2023, a WCJ approved the C&R and an Order approving same issued on March 28, 2023. Applicant was awarded the sum of \$170,000.00, less payments previously made and less attorney's fees. Service of the Order approving the C&R was delegated to defendant. (Order Approving Compromise and Release, March 28, 2023.)

On June 1, 2023, applicant filed an application for SIBTF benefits, alleging that she sustained injury on March 20, 2019 to the back and bilateral shoulders, with resulting permanent disability, when considered alone and without regard to or adjustment for his occupation or age equal to 67% percent or more of her total disability. (Application for SIBTF Benefits, June 1, 2023, p. 6.) Applicant further alleged that she was permanently disabled from diabetes, hemorrhoids, and high blood pressure prior to the alleged injury of March 20, 2019, and that she previously filed a workers' compensation claim in ADJ2333041. (*Id.*, p. 7.)

On March 11, 2025, the WCJ set the matter for trial. (Minutes of Hearing, March 11, 2025.)

On August 5, 2025, the matter proceeded to trial. At trial, the parties stipulated that applicant claims to have sustained injury AOE/COE to her neck, thoracic spine, lumbar

spine, bilateral shoulders, and cervical spine while employed by defendant on March 20, 2019 as an organizer; the claims administrator for purposes of the SIBTF claim is the SIBTF; the employees earnings at the time of injury were \$359.94, and; the parties defer the issue of credit or offsets under Labor Code Section 4753.

The following issues were set for determination:

1. Whether apportionment applies to the 35% or 5% threshold.
2. Whether the applicant meets the 70% threshold.
3. Whether the applicant has a pre-existing permanent partial disability.

(Minutes of Hearing (Reporter), August 5, 2025, p. 2:4-17.)

The WCJ admitted into evidence the reports of PQME Zenia Cortes dated January 7, 2020, and July 27, 2020. (Joint Exhibits A, C.)

The January 7, 2020 report states:

PAST MEDICAL HISTORY:

Previous Injuries:

The patient sustained a work-related injury to the hand/arm in August 1997, while working for DPSS, County of Los Angeles. She was treated with surgery at Kaiser Permanente and her symptoms had resolved completely. She had missed time from work due to this injury. She was not awarded permanent disability.

The patient also sustained a work-related injury to the right shoulder due to repetitive work in February 2002, while working for Walmart. She was treated with Walmart doctor and her symptoms had resolved completely.

She had missed time from work due to this injury.

...

Surgeries/Hosp:

Bilateral carpal tunnel surgery in the 1990s, C-section, gallbladder surgery for gallstones, and right shoulder rotator cuff release in 2002.

...

DIAGNOSES/ASSESSMENT:

1. Cervical degenerative disc disease
2. Cervical spinal stenosis
3. Congenital cervical fusion
4. Lumbar degenerative disc disease
5. Incomplete rotator cuff tear, left shoulder

6. Left shoulder acromioclavicular osteoarthritis
7. Osteoarthritis, bilateral fingers

DISCUSSION:

...

The patient does have a prior history of having a right shoulder industrial injury for which she required surgery. She states that her symptoms resolved. She also has had chronic stiffness of the left middle finger after having a trigger finger subsequent surgery but with residual stiffness.

Medical records have been reviewed. The patient was initially evaluated at Lakewood Regional Medical Center on March 20, 2019 after stumble and fall onto her right side. She complains of bilateral shoulder pain, greater on the left, neck and right buttock pain. She is diagnosed with contusion of the left shoulder. At her initial evaluation by Dr. Kwok at Kaiser on March 25, 2019, she complains of pain in neck, back, bilateral shoulders, wrists, hands, hips, and gluteal area. She is diagnosed with sprains of the neck, bilateral shoulders, bilateral hands, back spasms and bilateral hip contusion. She was placed on restricted work duties . . . X-rays of the right shoulder show mild degenerative joint disease at glenohumeral and acromioclavicular joints and calcific tendinitis. X-rays of bilateral hands show moderate wrist and finger joint degenerative joint disease, involving all joint groups with erosions and chondrocalcinosis throughout.

...

CAUSATION:

Based on the currently available information, including the patient's self-reported history of injury, the patient's symptomatology as well as my findings upon examination, it is my medical opinion that **only** the patient's current symptoms and objective findings related to **cervical spine, lumbar spine, bilateral shoulders, and bilateral hands** are a direct result of the industrial injury of **March 20, 2019**.

(Jt. Ex. A, Report of PQME Zenia Cortes, January 7, 2020, pp. 5, 22-23.)

The July 27, 2020 report states:

DIAGNOSES / ASSESSMENT:

1. Cervical disc herniation without myelopathy
2. Cervical degenerative disc disease
3. Cervical spinal stenosis
4. Congenital fusion
5. Lumbar degenerative disc disease
6. Incomplete rotator cuff tear, left shoulder
7. Primary osteoarthritis of acromioclavicular joint, left shoulder

8. Bilateral finger osteoarthritis

IMPAIRMENT RATING:

AMA Guides to Evaluation of Permanent Impairment, Fifth Edition, was used to compute the impairment rating for this case.

...

For the left shoulder, per page 476, figure 16-40, 2% upper extremity impairment is given for 150 degrees of flexion. Per page 477, figure 16-43, 1% upper extremity impairment is given for 150 degrees of abduction. Per page 479, figure 16-46, 5% upper extremity impairment for 0 degrees of internal rotation and per page 439 and table 16-3, 8% upper extremity impairment equals to 5% Whole Person Impairment.

For the right shoulder, per page 476, figure 16-40, 2% upper extremity impairment is given for 150 degrees of flexion. Per page 477, figure 16-43, 1% upper extremity impairment is given for 150 degrees of abduction. 7% upper extremity impairment is given for 20 degrees of internal rotation, and combining the 7% with 2% and 1% impairment equates to 10% upper extremity impairment, and per page 439 and table 16-3, 10% upper extremity impairment equals to 6% Whole Person Impairment.

For bilateral hands, 0% impairment is given.

Combining the above gives 38% Whole Person Impairment, which is the final rating.

...

APPORTIONMENT:

In my opinion, there is no apportionment indicated in this case for bilateral shoulders, and bilateral hands. There is no evidence of any preexisting condition or pathology that would lead to apportionment.

(Jt. Ex. C, Report of PQME Zenia Cortes, July 27, 2020, pp. 14-17.)

The WCJ also admitted into evidence the reports of Dr. Joseph Minkstein, dated September 7, 2023 and March 7, 2024 . (Exhibits 2, 3.)

The September 7, 2023 report of Dr. Minkstein states:

2. Were any previous or pre-existing permanent partial disabilities identified?

Based upon information provided by Ms. Sharon Hughes, my physical examination findings and review of the medical records, I have determined that Ms. Hughes has pre-existing labor disabling permanent impairments.

...

The pre-existing disabilities affected the following body parts, and the impairment ratings are listed below:

- Right Wrist/Hand – 17% WPI
- Left Wrist/Hand – 17% WPI
- Right Shoulder – 16% WPI

...

Available Medical Records and Review

...

Zenia Cortes, MD.

01-07-2019 - QME Report – Not MMI

03-03-2020 – QME Supplemental Report – Not MMI

(Ex. 2, Report of Dr. Minkstein, September 7, 2023, pp. 3, 14.)

The March 7, 2024 report of Dr. Minkstein states:

Available Medical Records to Review

...

Other Records:

Los Angeles Orthopedic Surgery Specialists

(Ex. 3, Report of Dr. Minkstein, March 7, 2024, pp. 10-11.)

In the Report, the WCJ states:

[T]he Applicant relied on medical reports from Dr. Minkstein, Dr. Kamkar, Dr. Hernandez and Dr. Drucker that were obtained after the applicant settled her subsequent injury [Exhibits: Applicants Exhibit 2, 3, 6, 4 and 5]. The doctors never reviewed the applicant's prior industrial injury medical reports or medical reports from her private physician prior to the subsequent injury.

...

Applicant did not submit into evidence any medical reports from her prior industrial injury or private physicians to substantiate any of their medical opinions. There was no substantial evidence submitted showing that the applicant was actually restricted in work activity prior to the industrial injury.

Applicant states Dr. Minkstein reviewed reports from the applicants QME and PTP, from the subsequent injury claim. However, he did not review records that would show the applicant was actually restricted in work activity prior to the industrial injury. . . . Applicant states Dr. Minkstein reviewed x-rays and MRI's, but they were from the QME in the subsequent injury case. Furthermore, the QME Dr. Cortes indicates the applicant had a right shoulder rotator cuff release in 2002 from an injury while working at Walmart where it is noted her symptoms resolved. Additionally, she had a claim while working at DPSS and bilateral carpal tunnel surgery in 1997

but was not awarded permanent disability as her symptoms resolved. [Joint Exhibit C, p 5] Then, 23 years later, Dr. Minkstein issued a report on September 7, 2023, where he assigns a 17% whole person impairment to her right shoulder and 17% for the right wrist/hand and 17% for the left wrist/hand. This WCJ did not find Dr. Minkstein's findings to be credible. The QME Dr. Cortes issued a report on July 7, 2020 and assigned a 6% whole person impairment to the right shoulder and 0% to the bilateral hands.

...

Ultimately, the undersigned WCJ considered these reports on permanent disability, in the absence of any evidence of any evaluations prior to the subsequent injury or review of records, to be speculation and conjecture, significantly lacking any credibility or substantiality. This evidence alone cannot constitute substantial medical evidence.

(Report, pp. 4-6.)

DISCUSSION

On July 13, 2026, the Legislature enacted SB 171, which amends the eligibility requirements for SIBTF benefits and alters the nature and extent of those benefits. The enactment added section 4758 to the Labor Code,¹ which provides in pertinent part:

4758. (a) This section applies to a claim for SIBTF benefits that meets any of the following criteria:

(1) Prior to June 1, 2026, the Workers' Compensation Appeals Board district office set a date for the trial regarding the claim for SIBTF benefits.

...

(b) For claims described in subdivision (a), all of the following provisions shall apply in lieu of Sections 4751, 4753, 4753.5, and 4754, as those sections were amended by the act that added this section:

(1) If an employee who is permanently partially disabled receives a subsequent compensable injury resulting in additional permanent partial disability so that the degree of disability caused by the combination of both disabilities is greater than that which would have resulted from the subsequent injury alone, and the combined effect of the last injury and the previous disability or impairment is a permanent disability equal to 70 percent or more of total, they shall be paid in addition to the compensation due under this code for the permanent partial disability caused by the last injury compensation for the remainder of the combined permanent disability existing after the last injury as provided in this article; provided, that either (a) the previous disability or impairment affected a hand, an arm, a foot, a leg, or an eye, and the permanent disability resulting from the subsequent injury affects the opposite and corresponding member, and such

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

latter permanent disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee, is equal to 5 percent or more of total, or (b) the permanent disability resulting from the subsequent injury, when considered alone and without regard to or adjustment for the occupation or the age of the employee, is equal to 35 percent or more of total.

...

(4) The appeals board shall fix and award the amounts of special additional compensation to be paid under this article, and shall direct the director, as trustee or administrator of SIBTF, to pay the additional compensation so awarded. Such additional compensation may be paid only from funds appropriated for such purpose. Out of any such appropriation the fund may reimburse itself for the cost of service rendered in payment of compensation awards pursuant to this article and maintenance of accounts and records pertaining thereto, which cost shall not exceed 5 percent of the amount of award paid.

(c) Sections 4750, 4754.1, 4754.2, 4754.3, and 4757, as amended by the act that added this section, shall not apply to claims described in subdivision (a).

(§ 4758.)

Here, applicant's claim for SIBTF benefits was set for trial on March 11, 2025, a date prior to June 1, 2026. (Minutes of Hearing, March 11, 2025.) It follows that applicant's claim for SIBTF benefits falls under section 4758(b).

Under section 4758(b), applicant is entitled to SIBTF benefits upon establishing the eligibility requirements set forth by section 4751 (before amendment) as explicated in *Todd v. Subsequent Injuries Benefits Trust Fund* (2020) 85 Cal.Comp.Cases 576, 581-582 [2020 Cal. Wrk. Comp. LEXIS 35] (Appeals Board en banc). Specifically, applicant must prove the following elements:

(1) a preexisting permanent partial disability;

(2) a subsequent compensable injury resulting in additional permanent partial disability:

(a) if the previous permanent partial disability affected a hand, an arm, a foot, a leg, or an eye, the subsequent permanent disability must affect the opposite and corresponding member, and this subsequent permanent disability must equal to 5% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or age of the employee; or

(b) the subsequent permanent disability must equal to 35% or more of the total disability, when considered alone and without regard to, or adjustment for, the occupation or the age of the employee;

(3) the combined preexisting and subsequent permanent partial disability is greater than the subsequent permanent partial disability alone; and

(4) the combined preexisting and subsequent permanent partial disability is equal to 70% or more. ([Lab. Code] § 4751.)

(*Todd, supra*, at pp. 581-582 (Appeals Board en banc).)

In *Ferguson v. Industrial Acc. Com.* (1958) 50 Cal.2d 469 [23 Cal.Comp.Cases 108], the Supreme Court held that the "previous disability or impairment" contemplated by section 4751 "must be actually 'labor disabling,' and that such disablement, rather than 'employer knowledge,' is the pertinent factor to be considered in determining whether the employee is entitled to subsequent injuries payments under the terms of section 4751." (*Ferguson, supra*, at p. 477.) The Court further noted that "the prior injury under most statutes should be one which, if industrial, would be independently capable of supporting an award. It need not, of course, be reflected in actual disability in the form of loss of earnings [as this court has already held in *Smith v. Industrial Acc. Com.* (1955) 44 Cal.2d 364, 367 [288 P.2d 64]], but if it is not, it should at least be of a kind which could ground an award of permanent partial disability." (*Ferguson, supra*, (quoting Larson's Workmen's Compensation Law (1952) § 59.33, vol. 2, p. 63).)

Further, the preexisting disability "need not have interfered with the employee's ability to work at his employment in the particular field in which he was working at the time of the subsequent injury. [citations]" (*Franklin v. Workers' Comp. Appeals Bd.* (1978) 79 Cal.App3d 224, 238.) "The ability of the injured to carry on some type of gainful employment under work conditions congenial to the preexisting disability does not require a finding that the preexisting disability does not exist. [citations]." (*Id.*)

Hence, an injured worker may establish entitlement to SIBTF benefits based upon a showing that he or she had a preexisting disability which either actually interfered with or would have actually interfered with any type of work activity at the time of subsequent injury, regardless of whether the disability was industrial or nonindustrial in origin, or

whether it developed from a congenital, developmental, pathological, or traumatic source. (*Franklin, supra*, at p. 238; see *Escobedo v. Marshalls, CNA Ins. Co.*, (2005) 70 Cal.Comp.Cases 604, 619 (citing *Subsequent Injuries Fund v. Workmen's Comp. Appeals Bd. (Talcott)* (1970) 2 Cal.3d 56, 62 [35 Cal.Comp.Cases 80].)

The first question before us, then, is whether applicant presented substantial medical evidence of preexisting permanent disability under these authorities. (*Todd, supra*.)

To constitute substantial evidence "... 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." (*Escobedo, supra*.) "Medical opinion ... 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, 97].)

In this regard, the parties framed the issues for trial to include whether apportionment applies to the 35% or 5% threshold and whether applicant had preexisting permanent disability of unspecified body parts² instead of applying the *Todd* analytical framework. (Minutes of Hearing (Reporter), August 5, 2025, p. 2:14-17.) This framing confused the issues of apportionment with preexisting permanent disability, effectively precluding the WCJ from developing and evaluating the record of whether applicant had preexisting disability of the bilateral hands/wrists and right shoulder.

Specifically, the framing led the WCJ to rely upon PQME Dr. Cortes's apportionment opinion that there was "no evidence of any preexisting condition or pathology that would lead to apportionment" to conclude that there was no "evidence . . . showing that . . . applicant was actually restricted in work activity prior to the industrial injury." (Jt. Ex. C, Report of PQME Zenia Cortes, July 27, 2020, p. 17; Report, p. 5.) But PQME Dr. Cortes opined that applicant "missed work" as a result of her bilateral hands/arms injury (carpal tunnel) in 1997 and her right shoulder injury (rotator cuff) in 2002. (Jt. Ex. A, Report of PQME Zenia Cortes, January 7, 2020, p. 5.)

² We note that the application for SIBTF benefits only alleges that applicant had preexisting disability in the form of diabetes, hemorrhoids, and high blood pressure. (Application for SIBTF Benefits, June 1, 2023, p. 7.)

Although not based upon contemporaneous medical records, PQME Dr. Cortes's opinion in this regard is framed in terms of reasonable medical probability and based on pertinent facts and an adequate examination and history, and, therefore, is substantial evidence that applicant had a labor-disabling restriction prior to the subsequent injury.

Because the record evidences that applicant had a labor-disabling restriction prior to the subsequent injury, the question before us is whether applicant had "a preexisting disability which either actually interfered with or would have actually interfered with any type of work activity at the time of subsequent injury." (*Franklin, supra*, at p. 238.)

In this regard, Dr. Minkstein opined that applicant had preexisting disability of the right wrist/hand, left wrist/hand, and right shoulder, but did not explain how, if at all, the clinical information he obtained supported his conclusions. (Ex. 2, Report of Dr. Minkstein, September 7, 2023, pp. 3, 14.) Although his reporting shows that he reviewed PQME Dr. Cortes's opinion that applicant was actually restricted in work activity prior to the subsequent injury, it does not show that he reviewed any medical records reflecting applicant's medical condition prior to subsequent injury nor explain his grounds for concluding that applicant had preexisting permanent disability of the bilateral wrists and hands rated at 17% and of the right shoulder rated at 16% despite PQME Cortes's ratings of 0% for the bilateral hands and 6% for the right shoulder. (Report, p. 5.) Notably, Dr. Minkstein's reporting states that there were other records available to review from Los Angeles Orthopedic Surgery Specialists without disclosing their service dates and without asserting that he actually reviewed them. (Ex. 3, Report of Dr. Minkstein, March 7, 2024, p. 11.)

Thus, we agree with the WCJ that Dr. Minkstein's reporting as to the issue of preexisting permanent disability does not constitute substantial medical evidence. (See *Escobedo, supra*.)

Because the record suggests that applicant had a labor-disabling condition prior to her subsequent injury but is unclear as to whether and to what extent she had preexisting permanent disability of the bilateral hands/wrists and right shoulder, we conclude that the WCJ's conclusion that applicant does not have preexisting permanent disability was in error.

Accordingly, we will rescind the F&O.

The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or when appropriate to fully adjudicate the issues. (§§ 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].)

Because the record is unclear as to whether applicant had preexisting permanent disability of the bilateral hands/wrists and right shoulder, we conclude that the record requires further development.

Accordingly, we will substitute a finding that defers the issue of whether of applicant had preexisting permanent disability of the bilateral wrist/hands and right shoulder.

Accordingly, as our Decision After Reconsideration, we will rescind the F&O and substitute findings that (1) the issue of whether applicant had preexisting permanent disability of the bilateral wrist/hands and right shoulder is deferred; and (2) all other issues concerning whether applicant may establish eligibility for SIBTF benefits are deferred; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on October 24, 2025 is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Applicant, born _____, while employed on March 20, 2019 as an organizer at Long Beach, California by Groundworks Campaigns, sustained injury arising out of and occurring in the course of employment to her neck, cervical spine, lumbar spine, bilateral shoulders, and thoracic spine where the parties settled the case via Compromise and Release based upon a split of the PTP report and the PQME report.

2. Applicant filed a timely Petition For Benefits from the Subsequent Injuries Benefits Trust Fund.

3. As to proposed Applicant Exhibits marked 1, 2, 3, 4, 5 and 6 for identification, Defendant's objections to admitting Applicant's 1,2, 3, 4, 5 and 6 are overruled and they are admitted into evidence.

4. The issue of whether applicant had preexisting permanent disability of the bilateral wrist/hands and right shoulder is deferred.

5. All other issues concerning whether applicant may establish eligibility for SIBTF benefits are deferred.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 11, 2026

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

**SHARON HUGHES
LAW OFFICE OF JAMIE A. BLUNT
OFFICE OF THE DIRECTOR – LEGAL UNIT
SUBSEQUENT INJURIES BENEFITS TRUST FUND**

SRO/*kl*

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