

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

RUZANNA MAGHAKYAN, *Applicant*

vs.

**MULTILINGUAL SOCIAL SERVICES and EMPLOYERS COMPENSATION
INSURANCE COMPANY, *Defendants***

**Adjudication Number: ADJ9640229
Van Nuys District Office**

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted applicant's and defendant's Petitions for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Applicant and defendant each seek reconsideration of the Amended Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on January 24, 2023, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her neck, thoracic spine, low back, psyche, and in the form of sleep disorder and scars on her right thigh; that the factors of disability should be combined not added, and that the injury caused 64% permanent disability.

Applicant contends that based on the reports from psychiatric qualified medical examiner (QME) Marc Nehorayan, M.D., her factors of disability should have been added, not combined, and that although the Finding of injury included applicant's neck, low back and in the form of scars on her right thigh, those body parts were not included in the Award.

¹ Commissioner Sweeney, who was on the panel that issued a prior decision in this matter, no longer serves on the Appeals Board. Another panelist has been assigned in her place.

Defendant contends that for a 2013 date of injury, an award of 64% permanent disability warrants payment of permanent disability indemnity for 383.25 weeks at the rate of \$270.00 per week for a total of \$103,477.50, and the 15% attorney fee should be based thereon.²

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending applicant's Petition be denied. We did not receive a Report addressing defendant's Petition. We received an Answer from applicant, and defendant's Petition includes an "Answer to Applicant's Petition for Reconsideration."

We have considered the allegations in the Petitions and the Answers, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will rescind the F&A and substitute a new Findings and Award, deferring the issues of permanent disability and attorney fees, and otherwise affirming the F&A formatted in a proper manner; and we will return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

The history of applicant's injury claim, relevant to the issues addressed herein, is summarized as follows:

Applicant claimed injury to her neck, thoracic spine, low back, psyche, and in the form of sleep disorder and, scars on her right thigh while employed by defendant as a social worker on October 8, 2013. Applicant received treatment from a number of providers and underwent various medical-legal evaluations.

Orthopedic QME Phillip H. Hay, M.D. evaluated applicant on May 2, 2014. (Joint Exh. X5, Phillip H. Hay, M.D., May 2, 2014.) Dr. Hay re-evaluated applicant on February 19, 2018. He determined that applicant's orthopedic condition had reached permanent and stationary status and that the injury caused 32% whole person impairment. (Joint Exh. X1, Phillip H. Hay, M.D., February 19, 2018, pp. 19 – 20.)

² The remaining arguments in defendant's Petition are in response to issues raised in applicant's Petition and do not dispute the F&A.

Psychiatric QME Dr. Nehorayan evaluated applicant on January 21, 2016. The doctor took a history, reviewed the medical record, and conducted psychological testing. Dr. Nehorayan diagnosed applicant as having post-traumatic stress disorder (PTSD) and assigned a Global Assessment of Function (GAF) score of 67. (App. Exh. 9, Marc Nehorayan, M.D., January 21, 2016, pp. 10 - 11.) Regarding the cause of applicant's psychiatric condition, Dr. Nehorayan stated:

The nature of her difficulties has a small component associated with the nature of her pain, but a much larger component associated with what was identified to be the psychological distress that the patient emanated associated with the fear and what it is that came out of the nature of the accident itself. That is, it was experiences and traumatic experiences the patient had noted to this physician as the very reasons as to why the patient has actually had the nature of not only response, but the very medications that the patient states that she had been given by the initial doctor that actually saw her over her first year of treatment orthopedically. ¶ The importance of identifying what it is that actually occurred and the mechanism of injury is because the issue at hand was one that the patient prefaced to be associated with the significance of conditions associated with helplessness that the patient endured at the injury site itself. (App. Exh. 9, p. 11.)

The parties proceeded to trial on January 23, 2019. The issues submitted for decision included parts of body injured and permanent disability. Minutes of Hearing and Summary of Evidence (MOH/SOE) January 23, 2019.) By his February 5, 2019 Findings and Order, the WCJ ordered, "... that the parties request supplemental reports to develop the record on pending issues ... These supplemental reports are needed from all physicians whose reports are in the MOH..." (See Findings and Order, February 5, 2019, p. 2.)

Dr. Nehorayan was provided the MOH/SOE and additional medical records to review. In his supplemental report the doctor reiterated and explained his opinion that applicant's psychiatric condition was the result of a traumatic and violent event. (App. Exh. 14, Marc Nehorayan, M.D., March 7, 2019, pp. 18 -9.)

The matter was tried and returned to the parties for development of the record a number of times during the period from October 27, 2020, through February 17, 2022.

Neurology/Sleep Medicine QME Pedram Navab, D.O., submitted a supplemental report wherein he stated:

At this time, it is difficult to ascertain whether Ms. Maghakyany's sleep disorder, in the form of sleep onset and maintenance insomnia, is a result of her chronic post-traumatic, stress disorder, or orthopedic injuries, as the two appear to be intertwined. Based on the history that I have gathered from Ms. Maghakyany, it appears that her current sleep disability is inextricably bound, in that it would be impossible to estimate the degree of impairments that could be assigned to her various injuries, as it applies to the *Benson* apportionment. Hence, one hundred percent of the disability is the result of the two injuries, which cannot be separated for rating purposes, without apportionment to other pre-existing injuries. ¶ As such, it may be more appropriate to add her sleep impairment, pursuant to the *Kite* case, as this could have a synergistic effect. (App. Exh. 19, Pedram Navab, D.O., July 2, 2022, p. 2.)

Dr. Nehorayan was again asked to submit a supplemental report and in that report, he explained:

The importance of the answers in my [prior] supplement report is the delineation of the further analysis associated with the reasons as to why the applicant's psychological condition did not emanate as a compensable consequence of her orthopedic condition. ... ¶ The diagnosis of PTSD as noted by the DSM-V is recognized in a manner in which an event occurs in which individuals are exposed to actual threat serious injury or even death. The applicant's psychological condition occurred at the immediate time of the violent action. ... ¶ In fact, the trauma experience is also consistent with my medical opinion of the incident being a violent action. (App. Exh. 18, Marc Nehorayan, M.D., July 6, 2022, pp. 5 – 6.)

The doctor later stated:

The final discussion of the final question in the interrogatory that has been reviewed indicating "do you believe that all the applicants disability should be added together pursuant [sic] to the Kite case?" ¶ What I can opine upon is only the medical opinion within the scope of my specialty. It is my medical opinion based upon reasonable medical probability that the psychiatric impairment should be added to the orthopedic injury. ... (App. Exh. 18, p. 7.)

Dr. Nehorayan's deposition was taken on September 13, 2022. (App. Exh. 20, Marc Nehorayan, M.D., September 13, 2022, deposition transcript.) During his deposition the doctor repeatedly explained his previously stated opinion that applicant's psychiatric condition was the result of a traumatic and violent event. (See e.g. App. Exh. 20, pp. 26 – 27, p. 34.) He also reiterated

his opinion that applicant's psychiatric impairment should be added to her orthopedic impairment. (See App. Exh. 20, p. 36.)

At the November 15, 2022 trial, medical reports from Dr. Nehorayan and Dr. Navab and the transcript of Dr. Nehorayan's deposition were admitted into evidence and the matter was submitted for decision. (MOH, November 15, 2022.) An Amended Findings and Award was issued on January 3, 2023, and the January 24, 2023 Amended Findings and Award is the decision at issue herein.

DISCUSSION

We first note that a decision must include findings upon all facts at issue, and an award, order, or decision stating the rights of the parties (Lab. Code, § 5313.) Also, the grounds for filing a Petition for Reconsideration include, "That the findings of fact do not support the order, decision, or award." (Lab. Code, § 5903(e).) The F&A in this matter includes eleven "Findings of Fact" and the "Award" includes eight additional findings and an order that permanent disability be paid "from the last date of temporary disability paid." (See Award f.) Therefore, because the "Award" contains additional Findings, but does not include an award of any benefits, we are amending the Findings and Award to conform to proper format, including the actual award of benefits.

Having again reviewed the entire record, it appears that the only issue appropriate to be addressed is whether applicant's factors of disability should be added or combined. The disability values of multiple impairments may be added instead of combined, if adding the impairments provides an accurate rating of the injured worker's disability, particularly when there is no overlap, and when the synergistic or additive effect of the multiple disabilities support that method of rating the overall disability. (*Bookout v. Workers' Comp. Appeals Bd.* (1976) 62 Cal.App.3d 214 [41 Cal.Comp.Cases 595]; *Athens Administrators v. Workers' Comp. Appeals Bd. (Kite)* (2013) 78 Cal.Comp.Cases 213 [2013 Cal. Wrk. Comp. LEXIS 34] (writ den.); *De La Cerda v. Martin Selko & Co.* (2017) 83 Cal.Comp.Cases 567 (writ den.).) In a case similar to the present matter, an Appeals Board panel noted that the psychiatric medical evaluator and the orthopedic medical evaluator agreed that the psychiatric and orthopedic disabilities did not overlap, and that since the disabilities did not overlap, it was appropriate to add the injured worker's factors of disability. (See *Nohemi Taina v County of Santa Clara / Valley Medical Center* (July 5, 2018 ADJ8268219) [2018 Cal. Wrk. Comp. P.D. LEXIS --] (panel dec.).)

Here, psychiatric QME Dr. Nehorayan stated that applicant's psychiatric disability should be added to her orthopedic disability. (App. Exh. 18, p. 7; App. Exh. 20, p. 36.) Also, neurology/sleep medicine QME Dr. Navab stated, "... [I]t may be more appropriate to add her sleep impairment, pursuant to the *Kite* case, as this could have a synergistic effect." (App. Exh. 19, p. 2.) However, orthopedic QME Dr. Hay did not address and/or provide an opinion as to whether applicant's orthopedic impairment should be added to, or combined with, her other factors of impairment. Absent the doctor's opinion addressing that issue, the record does not contain substantial evidence regarding the level of permanent disability caused by applicant's injury. Also, Dr. Navab's opinion that it may be appropriate to add her sleep impairment is not substantial evidence on that issue.

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 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].) Under the circumstances of this matter, as discussed above, it is appropriate that the matter be returned to the WCJ for development of the record, limited to the issue of whether the factors of applicant's disability caused by her injury, should be added, or combined. Normally, when the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Therefore, upon return of this matter, we recommend that the parties request Dr. Hay, Dr. Nehorayan, and Dr. Navab submit reports addressing and explaining their respective opinions as to the issue of whether applicant's disability would be more accurately identified if the factors of disability were added or combined. Again, the doctors' opinions/reports must be limited to the issue of adding or combining applicant's factors of disability.

Accordingly, we rescind the F&A and substitute a new Findings and Award, deferring the issues of permanent disability and attorney fees, and otherwise affirming the F&A formatted in a proper manner; and we return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 24, 2023 Amended Findings and Award, is **RESCINDED** and the following is **SUBSTITUTED** therefor:

FINDINGS OF FACT

1. Ruzanna Maghakyan, at 46 years old, while employed on October 8, 2013, as a social worker, at Covina, California, by Multilingual Social Services, sustained an injury arising out of and occurring in the course of employment to her neck, thoracic spine, low back, psyche, and in the form of sleep disorder and, scars on her right thigh.
2. At the time of injury, the employer's workers' compensation carrier was Employers Compensation Insurance Company.
3. Based upon the parties' stipulation, the Occupational Group number used for the permanent disability rating is 311.
4. Based upon the parties' stipulations, applicant's actual earnings at the time of injury were \$417.38 per week warranting indemnity rates of \$278.25 per week for temporary disability indemnity, and up to \$278.25 per week for permanent partial disability indemnity.
5. The injury caused periods of temporary total disability for which applicant has been fully compensated; and an additional period of temporary total disability beginning October 9, 2013, through October 19, 2013, for which applicant is entitled to payment of temporary disability benefits.
6. Applicant's psychiatric injury and injury in the form of sleep impairment were the result of the actual events of applicant's employment; they are "direct" injuries, not a result of a physical injury; the disability caused by those injuries will include/be increased by the psychiatric and sleep injury impairment.
7. The trial record must be further developed because it does not contain substantial evidence regarding the issue of whether the factors of applicant's permanent disability should be combined or added to accurately rate the disability caused by her injury.
8. The issue of whether the factors of impairment will be combined or added is deferred; the issue of the level of permanent disability caused by applicant's injury is deferred.

9. Defendant did not meet its burden of proof on apportionment to non-industrial permanent disability; applicant is entitled to an un-apportioned Award of permanent disability indemnity.

10. Applicant is in need of further medical treatment to cure or relieve from the effects of the injury herein.

11. The issue of the reasonable value of the services performed by applicant's attorney is deferred pending development of the record regarding applicant's permanent disability.

AWARD

AWARD IS MADE in favor of **RUZANNA MAGHAKYAN** and against **MULTILINGUAL SOCIAL SERVICES** and **EMPLOYERS COMPENSATION INSURANCE COMPANY** as follows:

a. All further medical treatment reasonably required to cure or relieve from the effects of the injury herein.

b. Temporary disability indemnity at the rate of \$278.25 per week beginning October 9, 2013, to and including October 19, 2013; in addition to the temporary disability indemnity previously paid to and received by applicant.

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 26, 2024

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

**RUZANNA MAGHAKYAN
LAW OFFICE OF DENNIS J. HERSHEWE
TOBIN & LUCKS LLP**

TLH/mc

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