

1 **WORKERS' COMPENSATION APPEALS BOARD**
2 **STATE OF CALIFORNIA**
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5 **EDWARD FRAZIER,**

6 *Applicant,*

7 **vs.**

8 **STATE OF CALIFORNIA, CDCR –**
9 **CORRECTIONAL TRAINING FACILITY,**

10 *Defendants.*

Case No. ADJ8008017
(Salinas District Office)

ORDER DENYING
PETITION FOR
RECONSIDERATION

11 We have considered the allegations of the Petition for Reconsideration and the contents of the
12 report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our
13 review of the record, and for the reasons stated in said report which we adopt and incorporate, we will
14 deny reconsideration.
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16 In denying defendant's petition, we observe that, if anything, the WCJ might have been warranted
17 in issuing a higher permanent disability rating, as discussed at page four of his Report.

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1 For the foregoing reasons,

2 **IT IS ORDERED** that said Petition for Reconsideration be, and it hereby is, **DENIED**.

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4 **WORKERS' COMPENSATION APPEALS BOARD**

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DEPUTY

7 **NEIL P. SULLIVAN**

8 **I CONCUR,**

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12 **RONNIE G. CAPLANE**



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15 **FRANK M. BRASS**

16
17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **AUG 29 2013**

19
20 **SERVICE MADE ON THE ABOVE DATE ON THE PERSONS LISTED BELOW AT THEIR**
21 **ADDRESSES SHOWN ON THE CURRENT OFFICIAL ADDRESS RECORD.**

22 **EDWARD FRAZIER**
23 **STATE COMPENSATION INSURANCE FUND**
24 **VIC REDULA**

25 *jp*

EDWARD FRAZIER
ADJ8008017

v.

STATE OF CALIFORNIA, CDCR - CTF
S.C.I.F.

DANIEL H. ASTURIAS
Workers' Compensation
Administrative Law Judge

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Defendant, State of California, CDCR – Correctional Training Facility, has filed a timely and verified Petition for Reconsideration from the Findings and Award issued on 6/18/2013. The Petition raises the statutory grounds.

II

CONTENTIONS

While agreeing that *Almaraz/Guzman* should be applied in this case, Defendant contends that the Board misapplied the *Almaraz/Guzman* language of the report of the Agreed Medical Examiner (AME), Dr. Ng when determining applicant's permanent disability.

III

FACTS AND DISCUSSION

Applicant, a peace officer with the Department of Corrections, has presumptive (L.C. 3212.10) industrial heart trouble with diagnosed hypertensive heart disease accompanied by mild left ventricular hypertrophy. Dr. Ng, who is the AME, who examined the applicant, in his final report of 1/23/13 provided an analysis that in his opinion that under the *American Medical Association Guides to the Evaluation of Permanent Impairment, Fifth Edition*, (hereinafter *AMA Guides 5th Edition*) Table 4-2, (Criteria for Rating Permanent Impairment Due To Hypertensive Cardiovascular Disease *AMA 5th edition*) would require a finding that he has a 30% Whole Person Impairment (WPI).

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However, doctor is of the opinion that this WPI while appropriate is not an accurate representation of the injured worker's impairment. It is the conclusion of this WCJ that he intended to us 24%WPI as the adjusted impairment rating.

Citing to the 6th District Court of appeals decision, *Milpitas Unified School District v. WCAB (2010) 187 Cal. App. 4th 808 828,829*:

"If the physician expresses the opinion that the chapter applicable to a particular kind of injury does not describe the employee's injury, but all other chapters address completely different biological systems or body parts, it would likely be difficult to demonstrate that that alternative chapter supplies substantial, relevant evidence of an alternative WPI rating. In order to support the case for rebuttal, the physician must be permitted to explain why departure from the impairment percentages is necessary and how he or she arrived at a different rating. That explanation necessarily takes into account the physician's skill, knowledge, and experience, as well as other considerations unique to the injury at issue. In our view, a physician's explanation of the basis for deviating from the percentages provided in the applicable Guides chapter should not a priori be deemed insufficient merely because his or her opinion is derived from, or at least supported by, extrinsic resources. The physician should be free to acknowledge his or her reliance on standard texts or recent research data as a basis for his or her medical conclusions, and the WCJ should be permitted to hear that evidence."

Doctor Ng referred to the new AMA Guides 6th Edition as a "standard text or recent research data" to support his conclusion that 30%WPI was too high. He concluded the writers of this recent publication decided that the 30% WPI was too high for asymptomatic mild ventricular hypertrophy. The 6th edition he states shows that for a gentleman with the same mild left ventricular hypertrophy an impairment of 23% WPI is recommended. He concludes that the authors of the AMA guides sixth edition have recognized the accuracy problem (in the 5th edition) and reduced the whole person impairment to a rating of 24% for left ventricular hypertrophy. By inference it is his clinical judgment this lower WPI is more accurate.

He also analogized mild and generally asymptomatic left ventricular hypertrophy with a patient using the medication Coumadin (its generic name is warfarin). He pointed out that a patient on Coumadin is similarly symptom free, however, there are certain risks associated with the use of Coumadin such as CNS (central nervous system) bleeding and noted that early mild

ventricular hypertrophy which is, for the most part, asymptomatic impacts on the risk of future significant cardiac events such as arrhythmia, coronary artery disease, angina, myocardial infarction, congestive heart failure, and sudden cardiac death. He noted that the risk from the use of Coumadin ends when the use of the medication is stopped; however, he states that ventricular hypertrophy is not easily reversed. Reviewing paragraph 9.6 C, Hematopoietic System (AMA Guides 5th edition) he notes that that paragraph mentions that anticoagulant therapy with warfarin (Coumadin) constitutes an impairment of at least 10%. He then states that "in this particular case the left ventricle hypertrophy according to left ventricular mass index is mild and I would therefore put him at 20% impairment of the whole person." This 20% impairment rating is not related to any particular chart or alternative chapter in the AMA guides fifth edition relating to hypertension, but appears to be based solely upon his clinical judgment and experience.

Doctor then proceeded to insert into his report a chart from the AMA guides sixth edition *Table 4- 11 criteria for rating impairment due to hypertensive cardiovascular disease*. In reviewing that chart Dr. concludes that **"given the applicant's mild left ventricular hypertrophy quote I would put him at 24% impairment of the whole person."** This was placed in bold text and was likely considered the most accurate percentage to describe the applicant's impairment though the doctor did not expressly state that.

This percentage is consistent the Coumadin analogy, i.e. the WPI should be lower than the traditional 30% WPI and the doctor's clinical conclusion that the sixth edition of the Guides as new research and new data is a more accurate description of the applicant's impairment.

The defendant would have the WCJ ignore the AME's analysis and final conclusion regarding the applicable WPI and instead only apply that part of the analysis that would result in the lower 20% WPI. Doctor chose 24% as the most accurate description of this injured workers impairment. This percentage is a combination of his consideration of the analysis of the writers of the AMA 6th edition, his clinical judgment as well as his analogizing with the Coumadin paragraph 9.6C of the AMA 5th edition which has a lower impairment for asymptomatic conditions with serious health risks.

If the board concludes that this analysis gets too close to importing AMA Guides 6th edition then board should disregard this *Almaraz Guzman* analysis and apply the traditional analysis to the applicant's rating which is a 30% whole person impairment. In that event, the rating would be as follows:

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However, in this instance Dr. Ng has successfully treaded lightly between the two editions of the AMA Guides. He used a chapter of the AMA Guides 5th to argue that the WPI should be less than the 30% WPI recommended in the Hypertension section of the 5th edition be referring to Paragraph 9.6C of the AMA Guides 5th edition and used the research and recent data from the AMA Guides 6th edition as a method to determine what in his clinical judgment is the most accurate final 24%WPI; a Whole Person Impairment that is as it turns out in the range between 20% and 30%.

IV

CONCLUSION

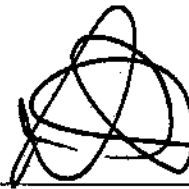
The 24% impairment after the formal rating results in a permanent partial disability of 44%; this is based upon the careful analysis of Dr. Ng and not upon a blind application of the AMA 5th edition. There is no sound legal basis or factual basis for reversing this decision.

V

RECOMMENDATION

It is recommended that the Petition for Reconsideration be Denied.

Respectfully submitted,



DANIEL H. ASTURIAS
Workers' Compensation
Administrative Law Judge