

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

3
4 **MARGARET BATTEN,**

5 *Applicant,*

6 **vs.**

7 **LONG BEACH MEMORIAL HOSPITAL,**
8 **Permissibly Self-Insured,**

9 *Defendant.*

Case No. **ADJ3781289 (MON 0347653)**
 (San Luis Obispo District Office)

OPINION AND DECISION
 AFTER RECONSIDERATION

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11 On July 25, 2013, we granted reconsideration in this matter in order to allow us time to further
12 study the factual and legal issues in this case. We now issue our Opinion and Decision After
13 Reconsideration. Defendant sought reconsideration of the May 7, 2013 Findings and Award issued by
14 the workers' compensation administrative law judge (WCJ). In that decision, the WCJ found that the
15 report of Gary Stanwyck, M.D., is admissible; that applicant sustained injury arising out of and occurring
16 in the course of employment (AOE/COE) to her right ankle; that applicant is unable to compete in the
17 open labor market; that the injury herein caused 92% permanent disability; that the issue of increase of
18 permanent disability under Labor Code¹ section 4658(d) is deferred; and that "[a]pplicant is entitled to
19 further medical treatment [sic] including her psyche." The parties previously stipulated that applicant
20 sustained admitted industrial injury to her jaw, shoulders, knees, neck, hands, and low back, and claims
21 to have sustained industrial injury to her psyche and right ankle while employed as a registered nurse on
22 December 24, 2006.

23 Defendant contends that the WCJ erred in finding industrial psychiatric injury and related
24 permanent disability arguing that the reports of Dr. Stanwyck are inadmissible and that the WCJ should
25 have relied on the opinion of psychiatric panel qualified medical examiner (PQME) Joseph Stapen, M.D.

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¹ All further statutory references are to the Labor Code, unless otherwise noted.

1 Defendant further contends that the WCJ erred in relying on the opinion of vocational expert
2 Ann Wallace, Ph.D., in finding applicant unable to compete in the open labor market. Finally, defendant
3 contends that the WCJ should have determined the issue of increase under section 4658(d) on the current
4 record.

5 Applicant filed an Answer. The WCJ issued a Report of Workers' Compensation Administrative
6 Law Judge on Petition for Reconsideration (Report) recommending that we deny reconsideration.

7 Based on our review of the record and for the reasons discussed below, we will rescind the WCJ's
8 decision and return this matter to the trial level.

9 We will first address the admissibility of Dr. Stanwyck's report. In 2012, former section 4064(d)²
10 allowed self-procured medical-legal reports, except those obtained under section 4060, which addresses
11 compensability of an injury where no part or parts of the body have been accepted. This case, however,
12 involves an admitted injury with disputed body parts, including the claimed psychiatric injury.
13 Therefore, Dr. Stanwyck's report, obtained under section 4062, was admissible under former section
14 4064(d).

15 However, Senate Bill (SB) 863 was passed by the Legislature on August 31, 2012, signed into
16 law by Governor Brown on September 19, 2012, and took effect on January 1, 2013, making wide-
17 ranging changes to the California Workers' Compensation system. Among those changes, SB 863
18 amended section 4064(d) to provide that medical-legal evaluations obtained outside the procedures of
19 sections 4060, 4061, 4062, 4062.1, and 4062 are not admissible.³ Moreover, uncodified section 84 of
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21 ² Former section 4064(d) stated: "The employer shall not be liable for the cost of any comprehensive medical evaluations
22 obtained by the employee other than those authorized pursuant to Sections 4060, 4061, and 4062. However, no party is
23 prohibited from obtaining any medical evaluation or consultation at the party's own expense. In no event shall an employer or
24 employee be liable for an evaluation obtained in violation of subdivision (b) of Section 4060. All comprehensive medical
evaluations obtained by any party shall be admissible in any proceeding before the appeals board *except as provided in*
subdivisions (d) and (m) of Section 4061 and subdivisions (b) and (e) of Section 4062. (Former Lab. Code, §
4064(d) emphasis added.)

25 ³ Current section 4064(d) states: "The employer shall not be liable for the cost of any comprehensive medical evaluations
26 obtained by the employee other than those authorized pursuant to Sections 4060, 4061, and 4062. However, no party is
27 prohibited from obtaining any medical evaluation or consultation at the party's own expense. In no event shall an employer or
employee be liable for an evaluation obtained in violation of subdivision (b) of Section 4060. All comprehensive medical
evaluations obtained by any party shall be admissible in any proceeding before the appeals board *except as provided in*
Section 4060, 4061, 4062, 4062.1, or 4062." (Lab. Code, § 4064(d), emphasis added.)

1 SB 863 provides, in relevant part, that "[t]his act shall apply to all pending matters, regardless of date of
2 injury, unless otherwise specified in this act, but shall not be a basis to rescind, alter, amend, or reopen
3 any final award of workers' compensation benefits." Therefore, given that this case is still pending
4 (i.e., it is not "final" subject only to the Appeals Board's continuing jurisdiction under sections 5803 and
5 5804), as of January 1, 2013, the provisions of new section 4064(d) became applicable to this matter.
6 (*Rio Linda Union School Dist. v. Workers' Comp. Appeals Bd. (Scheftner)* (2005) 131 Cal.App.4th 517,
7 531 [70 Cal.Comp.Cases 999].) This is true even though the WCJ authorized applicant to obtain
8 Dr. Stanwyck's report in August 2012, given the WCJ's order was not a "final" order under the holding
9 of *Scheftner*, and even though the report was admissible under section 4062 at the time it was obtained.
10 Dr. Stanwyck's reports were not admissible as of January 1, 2013 and should not have been relied upon
11 by the WCJ.

12 Accordingly, we will rescind the WCJ's decision and return this matter to him to readdress the
13 issue of permanent disability on the current record, without reliance on Dr. Stanwyck's opinion, and to
14 also address the other issue raised by defendant on reconsideration. He should then issue a new decision
15 consistent with this opinion.

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1 For the foregoing reasons,

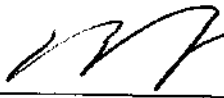
2 **IT IS ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals
3 Board, that the May 7, 2013 Findings and Award is **RESCINDED** and that this matter is **RETURNED**
4 to the trial level for further proceedings and decision by the WCJ consistent with this opinion.
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6 **WORKERS' COMPENSATION APPEALS BOARD**

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9 **RONNIE G. CAPLANE**

10 I CONCUR,

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13 **ACTING DEPUTY**

14 **MERLE C. RABINE**

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16 **ALFONSO J. MORESI**



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

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19 **FEB 20 2014**

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

22 **MARGARET BATTEN**
23 **WILLIAM HERRERAS**
24 **JANE WOODCOCK**
25 **EDD**

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27 **PAG/sye**

BATTEN, Margaret

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