

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

TERRI GLASGOW, *Applicant*

vs.

**MASSIE DIAGNOSTIC IMAGING;
STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ1651527 (SBR 0314707)
San Bernardino District Office**

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant seeks reconsideration of the January 20, 2023 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant sustained injury arising out of and in the course of employment to her neck, back, bilateral feet, left knee, bilateral wrists, right hand, right shoulder, psyche, and bladder causing permanent disability of 97%.

Applicant contends that the WCJ failed to rate her bladder injury and that the WCJ failed to consider the opinion of the vocational experts.

We have received an answer from defendant State Compensation Insurance Fund. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we grant reconsideration, rescind the January 20, 2023 Findings and Award and return this matter to the trial level for further proceedings consistent with this Opinion.

FACTS

As the WCJ stated in the Report:

Applicant, while working during the period December 23, 2001 through December 23, 2002, as an ultrasound technician by Massie Diagnostic Imaging sustained injury to her neck, back, bilateral feet, left knee, bilateral wrist, right hand, right shoulder, psyche, bladder, and heart. As a result of the lumbar spine injury and surgeries that followed, Applicant developed urinary stress incontinence. Dr. Agatstein, the Panel Qualified Medical Evaluator in Urology, provided work restrictions for urinary stress incontinence. The case proceeded to trial. A Findings and Award issued on January 20, 2023 which found Applicant had permanent disability of ninety-seven percent (97%). It is from the Findings and Award issued on January 20, 2023 which found permanent disability of ninety-seven percent (97%) that Applicant now seeks reconsideration. (Report, pp. 1-2.)

In the Opinion on Decision, the WCJ stated,

Based on the Applicant’s testimony and the medical reports of Dr. Watkin, dated April 22, 2013, September 24, 2013, April 27, 2015, March 16, 2017, April 21, 2017, July 3, 2018, November 30, 2020, and the deposition transcript of Dr. Watkin dated July 23, 2018, and medical report from Dr. Wood dated August 17, 2020, Dr. Agatstein dated November 27, 2018, January 8, 2019, March 9, 2021, and March 22, 2021, and reports of Dr. Levister dated June 25, 2015, November 10, 2020, and medical report from Dr. Ahmed dated June 26, 2017, the Applicant sustained permanent impairment to her neck, back, bilateral feet, left knee, bilateral wrist, right hand, right shoulder, psyche, heart, and bladder. I did not find it necessary to refer this matter to the Disability Evaluation Unit for a rating. I have rated the Applicant’s disability as follows:

11.3 – 10 – 212G – 12 – 13

12.1 – 85 – 212E – 83 – 87

7. – 15 – 212F – 15 – 16

80% (1.4 – 25 – 212J - 36 – 38) 33

MDT 97

(Opinion on Decision, p. 2.)

In the Report, the WCJ addressed applicant’s contentions as follows:

The undersigned, rated the Applicant’s work restriction for urinary stress incontinence as follows. The lumbar spine restrictions of sedentary work with need for a brace and cane was a 75 standard. The restriction of “needing to be placed near toileting facilities to allow her to empty her

bladder as needed” was given a 30 standard. Consistent with the pyramid principles the undersigned used 100% of the 75 standard and took 1/2 of the lesser 30 standard and for a 15 standard. Of the 15% standard that remained 50% was apportioned to non-industrial causation. That left 50% or 7.5 apportioned to the applicant’s lumbar sacral orthopedic disease. Consistent with the 1997 PDRS the 7.5 was rounded to 10. The 10 for urinary stress incontinence was added to the 75 and created a standard rating for the lumbar spine as well as urinary stress incontinence of 85. Dr. Agatstein opined the Applicant’s urinary stress incontinence was due to the sacral neuropathy as a result of lumbar spine nerve injury. As a result it was not necessary to provide a separate rating for the bladder or urinary stress incontinence. The 85 standard rated to 87 percent permanent disability after adjustment for age, and occupation. (Report, pp. 2-3.)

As to applicant’s contention regarding the WCJ’s failure to consider the opinion of vocational experts, the WCJ responded as follows:

In this case, both Drs. Agatstein and Watkin found what the undersigned considered was valid legal apportionment. Based on the holdings in *Brodie v. Workers’ Comp. Appeals Bd.* And *Acme Steel v. Workers’ Comp. Appeals Bd.*, noted above, the court felt constrained to award total permanent disability based on vocational experts, without considering medical experts opinions on apportionment. In light of the above, the undersigned found 97% permanent disability after apportionment. (Report, pp. 3-4.)

DISCUSSION

Section 5313 requires the WCJ to,

. . . make and file findings upon all facts involved in the controversy and an award, order, or decision stating the determination as to the rights of the parties. Together with the findings, decision, order or award there shall be served upon all the parties to the proceedings a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made. (§ 5313.)

Section 5313 requires the WCJ to state the “reasons or grounds upon which the [court’s] determination was made.” (See also *Blackledge v. Bank of America* (2010) 75 Cal.Comp.Cases 613, 621-22 [2010 Cal. Wrk. Comp. LEXIA 74] (Appeals Board en banc).) The WCJ’s opinion on decision “enables the parties, and the Board if reconsideration is sought, to ascertain the basis for the decision, and makes the right of seeking reconsideration more meaningful.” (*Hamilton v. Lockheed Corporation* (Hamilton) (2001) 66 Cal.Comp.Cases 473, 476 (Appeals Board en banc),

citing *Evans v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 753, 755 [33 Cal.Comp.Cases 350, 351].) A decision “must be based on admitted evidence in the record” (*Hamilton*, at p. 478), and must be supported by substantial evidence. (§§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) As required by section 5313 and explained in *Hamilton*, “the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision.” (*Hamilton, supra*, at p. 475.)

Furthermore, the WCJ is charged with preparing the minutes of hearing and a summary of evidence at the conclusion of each hearing. (Cal. Code Regs., tit. 8, § 10566; *Hamilton, supra*, at p. 476.) The minutes of hearing and summary of evidence must include all interlocutory orders, admissions and stipulations, the issues and matters in controversy, a descriptive listing of all exhibits received for identification or in evidence, the disposition of the matter, and a fair and unbiased summary of the testimony given by each witness. (Cal. Code Regs., tit. 8, § 10566; *Hamilton, supra*, at p. 476.)

Here, the WCJ found that applicant sustained permanent impairment to her neck, back, bilateral feet, left knee, bilateral wrists, right hand, right shoulder, psyche, heart, and bladder but provided permanent disability rating strings that include cardiovascular disability (11.3), neck, back, or pelvis disability (12.1), shoulders and arms (7.), and psychiatric disability (1.4). While some disabilities may be subsumed with other disabilities, we are unable to tell from the Opinion on Decision or from the Report the basis for which the WCJ derived at these rating strings. While the WCJ is correct that he is not required to refer this matter to the Disability Evaluation Unit (DEU) for a rating, given the many injuries applicant sustained and the complexity of applying the 1997 Schedule for Rating Permanent Disabilities (1997 PDRS), we recommend the involvement of the DEU with rating instructions from the WCJ. (*Blackledge, supra*, 75 Cal. Comp. Cases 613.)

Furthermore, the WCJ's basis for rating applicant's bladder disability is incorrect. The WCJ folded applicant's restriction of “needing to be placed near toileting facilities to allow her to empty her bladder as needed” into the lumbar spine restriction of sedentary work with need for a brace because Dr. Agatstein opined that applicant's urinary stress incontinence was due to a sacral neuropathy as a result of a lumbar spine nerve injury. The WCJ added the lumbar spine standard

rating with half of the apportioned bladder standard rating under the auspices of the pyramiding principle. (Report, pp. 2-3.) However, the pyramiding formula of adding the greatest disability to half the lesser disability is for *objective disabilities* for the purpose of avoiding pyramiding for a *single extremity*. (1997 PDRS, p. 1-9.) Applicant's lumbar and bladder restrictions are not objective disabilities, which is defined as loss of motion or amputation. (1997 PDRS, p. 1-7.) Nor are applicant's lumbar and bladder restrictions a single extremity from which the formula of adding the greatest disability to half of the lesser disability is applied. (1997 PDRS, p. 1-9.) Indeed, the pyramiding section of the 1997 PDRS has a separate section for avoiding pyramiding for multiple parts of the body, such as the lumbar and bladder.

To avoid pyramiding for multiple parts of the body:

- 1) Rate the disability for each area of the body as if it stood alone. (For each area of the body, follow instructions for a single extremity listed above.) Duplication of disability between areas of the body must also be considered before arriving at the final rating for each body part.
- 2) To avoid pyramiding, the Multiple Disabilities Table (MDT) is generally used as a guide. The MDT retains the value of the greatest disability and systematically reduces the lesser disabilities to maintain a reasonable relationship between the level of overall disability and the maximum disability possible for a single injury (100%). See Combining Multiple Disabilities on page 7-12. (1997 PDRS, p. 1-9.)

Moreover, in 2018 Dr. Agatstein recommended a cystoscopy and Marshall test to assess the severity of applicant's stress urinary incontinence, as well as complex urodynamics and sphincteric electromyography to assess whether there is evidence of neurogenic bladder with perhaps sensory changes. (Joint Exhibit X4, Dr. Agatstein report dated November 27, 2018, p. 24.) On January 8, 2019, Dr. Agatstein reported that applicant underwent a non-invasive electronic uroflowmetry, a cystoscopy, and a complex urodynamics. (Board Exhibit X1, Dr. Agatstein report dated January 8, 2019, p. 2.) But Dr. Agatstein does not provide explanation as to how the results of these tests provide the basis for his apportionment of 50% nerve injury and 50% non-industrial factors such as applicant's age, prior hysterectomy and prior pregnancies. (Board Exhibit X1, Dr. Agatstein report dated January 8, 2019, p. 3; Board Exhibit X2, Dr. Agatstein report dated March 9, 2021, p. 6.)

Lastly, the WCJ misapplied *Acme Steel v. Workers' Comp. Appeals Bd.* (2013) 218 Cal.App.4th 1137 [160 Cal.Rptr.3d 712]. The court in *Acme Steel* held that medical evidence of apportionment cannot be ignored when considering a vocational expert's opinion. (*Ibid.*) It did

not hold that a court must apply apportionment found by doctors irrespective of the opinions of the vocational experts. (See Report, p. 3.)

Accordingly, we grant reconsideration, rescind the January 20, 2023 Findings and Award and return this matter to the trial level for further proceedings consistent with this Opinion.

For the foregoing reasons,

IT IS ORDERED that applicant Terri Glasgow's Petition for Reconsideration of the January 20, 2023 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the January 20, 2023 Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 11, 2023

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

**TERRI GLASGOW
LAW OFFICES OF RICHARD W. SMITH
STATE COMPENSATION INSURANCE FUND**

LSM/pc

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