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WORKERS' COMPENSATION APPEALS BOARD  
STATE OF CALIFORNIA

Case No. ADJ7965627  
(Santa Rosa District Office)

TONI CRAMER,

*Applicant,*

vs.

COUNTY OF SONOMA, permissibly  
self-insured, administered by NORTHERN  
CLAIMS MANAGEMENT,

*Defendants.*

OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION AND  
DECISION AFTER  
RECONSIDERATION

Defendant seeks reconsideration of the Findings and Award (F&A) issued on December 2, 2015, by the workers' compensation administrative law judge (WCJ) who found, in pertinent part, that applicant sustained industrial injury to her left ankle, which caused 25% permanent disability, after apportionment.

Defendant contends that the WCJ erred in awarding 25% permanent disability because the *Almaraz-Guzman* opinion of the Agreed Medical Evaluator (AME) did not constitute substantial medical evidence. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Almaraz-Guzman)* (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

We received an answer from applicant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record and for the reasons stated below, we will grant defendant's Petition for Reconsideration and as our Decision After Reconsideration we will affirm the F&A, except that we will amend the F&A to defer the issues of permanent disability and attorney's fees (Findings of Fact 2 and 3 and Award (A)), and return this matter to the trial level for further proceedings consistent with this opinion.

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FACTUAL BACKGROUND

Applicant sustained injury to her left ankle as a result of a slip and fall, which occurred on August 2, 2011, while applicant was working as a Child Support Officer II.

Applicant was evaluated by AME orthopedist, Thomas Miles, M.D., who opined on applicant's permanent disability as follows:

It is my opinion using the AMA Guides that she would be best rated using gait impairment, noting that she uses a walker, which is equivalent to using two canes, or two crutches. Therefore, she would be offered a 40% WPI referencing Table 17-5. In the alternative, she could be rated referencing Table 17-26 with ankle impairment due to ankylosis in a valgus position with a 10% WPI since the valgus positioning is approximately 150. This examiner would favor using the gait derangement noting that the patient has an attempted pantalar arthrodesis (i.e., fusion of the tibiotalar joint, as well as the subtalar joint). This would result in a significant gait abnormality that is not accounted for entirely by a simple ankylosis measurement.

(Exhibit J, Report of Thomas Miles, M.D., March 31, 2015, p. 6.)

The parties sought clarification as to Dr. Miles' assignment of disability under *Almaraz-Guzman*, to which Dr. Miles replied as follows:

Dear Mr. Miller and Mr. Francis,

I received Mr. Miller's report of April 20, 2014 requesting a supplemental report. He noted I referred to gait derangement as a method of rating her disability. I offered a 40% disability rating referring to table 17-5. He noted that this level of disability exceeds that provided for an amputation level of the lower leg.

Mr. Miller is correct that before I resort to table 17-5 I should whenever possible use a different rating. Gait derangement should be only used when a more specific method is not possible. Obviously, I can appropriately rate Ms. Cramer referencing arthrodesis with valgus deformity. Table 17-26 rates impairment due to ankylosis in a valgus position and offers up to 10% whole person impairment.

I used the gait derangement impairment primarily because I felt she deserved a higher rating.

Obviously, Mr. Miller is correct that in part her gait derangement is a consequence of her obesity and her diabetic peripheral neuropathy. Therefore, I agree with him that it may be appropriate to consider rating her using the more specific rating of a valgus arthrodesis as referred in Table 17-26 10%.

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CRAMER, Toni

1 Yet, when one steps back and looks at the overall level of her current  
2 disability as a consequence of her injury, level of disability of 10% is fairly  
3 low.

4 I will leave up to the Trier of fact to decide whether or not the  
5 Almaraz (*sic*) Guzman's decision may apply to my rating or not.

6 I must agree with Mr. Miller however that his analysis in Ms. Cramer's  
7 case is quite cogent and I do agree that to an extent her overall disability is  
8 a consequence of her non-industrial diabetic peripheral neuropathy and  
9 obesity in conjunction with her arthrodectis.

10 (Exhibit K, Supplemental Report of Thomas Miles, M.D., April 29, 2015, pp. 1-2 (emphasis added).)

11 By agreement of the parties, this matter proceeded to trial directly from the mandatory settlement  
12 conference on a paper record only. The WCJ found no specific error to cause rejection of Dr. Miles'  
13 opinion as the agreed medical evaluator. (Opinion on Decision, December 2, 2015, p. 1.) The WCJ  
14 found that Dr. Miles' *Almaraz-Guzman* rating accurately reflected applicant's level of disability and  
15 assigned applicant a permanent disability rating of 25% after apportionment. (*Ibid.*)

#### 16 DISCUSSION

17 The Appeals Board has the discretionary authority to develop the record when the medical record  
18 is not substantial evidence or when appropriate to provide due process or fully adjudicate the issues.  
19 (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62  
20 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63  
21 Cal.Comp.Cases 261].) In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit  
22 Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and  
23 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any  
24 time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record . . .  
25 the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient,  
26 for example, that they are inaccurate, inconsistent or incomplete. (Citations.]" (*McDuffie*, supra, 67  
27 Cal.Comp.Cases at 141.)

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  
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1 examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v.*  
2 *Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

3 The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified*  
4 *School Dist. v. Workers’ Comp. Appeals Bd. (Almaraz-Guzman)* (2010) 187 Cal.App.4th 808, 822 [75  
5 Cal.Comp.Cases 837].) As the Court of Appeal stated in *Almaraz-Guzman*:

6  
7 Section 4660, subdivision (b)(1), recognizes the variety and unpredictability of  
8 medical situations by requiring incorporation of the descriptions, measurements,  
9 and corresponding percentages in the Guides for each impairment, not their  
10 mechanical application without regard to how accurately and completely they  
11 reflect the actual impairment sustained by the patient. (*Id.*)

12 To properly rate using *Almaraz-Guzman* the doctor is expected to 1) provide a strict rating per the  
13 AMA Guides, 2) explain why the strict rating does not accurately reflect the applicant’s disability, 3)  
14 provide an alternative rating using the four corners of the AMA Guides, and 4) explain why that  
15 alternative rating most accurately reflects applicant’s level of disability. (*Id.* at 828-829.)

16 Dr. Miles’ opinion as to applicant’s level of permanent disability does not constitute substantial  
17 medical evidence. Although Dr. Miles provided a strict rating for applicant’s injury, he did not explain  
18 whether applicant’s strict rating adequately reflects her level of disability. Although Dr. Miles provided  
19 an alternative rating using the four corners of the AMA Guides, he did not explain why the alternative  
20 rating most accurately reflects applicant’s level of disability. Instead, Dr. Miles leaves that determination  
21 to the trier of fact. However, it is the “. . . physician’s role to assess whole person impairment by a report  
22 that sets forth facts and reasoning to support its conclusions[.]” (*Blackledge v. Bank of America* (2010),  
23 75 Cal. Comp. Cases 613, 619-620 (Appeals Board en banc).) Here, Dr. Miles improperly delegated that  
24 role to the WCJ. Without medical evidence to support which of applicant’s proposed disability ratings is  
25 most accurate, the trier of fact cannot make a determination on applicant’s level of permanent disability.  
26 For these reasons, Dr. Miles’ opinion is not substantial evidence.

27 We cannot determine whether applicant’s strict rating or the *Almaraz-Guzman* rating is the most  
28 accurate on the present record. Absent substantial evidence establishing the level of applicant’s  
29 permanent disability, the proper procedure is to return the matter to the trial level to develop the record.

CRAMER, Toni

1 Accordingly, we will grant defendant's Petition for Reconsideration and as our Decision After  
2 Reconsideration we will affirm the F&A except that we will amend the F&A to defer the issues of  
3 permanent disability and attorney's fees (Findings of Fact 2 and 3 and Award (A)) and return this matter  
4 to the trial level for further proceedings consistent with this opinion.

5 For the foregoing reasons,

6 **IT IS ORDERED** that defendant's Petition for Reconsideration of the Findings and Award  
7 issued on December 2, 2015, by the WCJ is **GRANTED**.

8 **IT IS FURTHER ORDERED** as our Decision After Reconsideration that Findings and Award  
9 issued on December 2, 2015, by the WCJ is **AFFIRMED**, except that Findings of Fact 2 and 3, and  
10 Award (A) are **AMENDED** as follows:

11 **FINDINGS OF FACT**

- 12 2. The issue of permanent disability is deferred.
- 13 3. The issue of attorney's fees is deferred.

14 **AWARD**

- 15 A. The issues of permanent disability and attorney's fees are deferred.

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1 IT IS FURTHER ORDERED that this matter is RETURNED to the trial level for further  
2 proceedings in accordance with this decision.

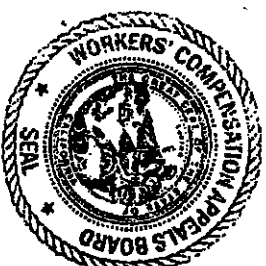
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4 WORKERS' COMPENSATION APPEALS BOARD

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8 JOSE H. RAZO

9 I CONCUR,

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11 KATHERINE ZALEWSKI

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14 MARGUERITE SWEENEY



15 DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

16 FEB 17 2016

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

19 TONI CRAMER  
20 MULLEN & FILIPP LLP  
21 LAW OFFICES OF MARC FRANCIS

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23 EDL/ebc

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27 CRAMER, Toni