

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

MARIA ██████████, Applicant

vs.

**DEL MONTE FOODS and PROPERTY & CASUALTY INSURANCE COMPANY
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, INC. Defendants**

Adjudication Number: ADJ13446350
Stockton District Office

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

Applicant, in pro per, seeks reconsideration of the Findings of Fact, Order, and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on August 6, 2021, wherein the WCJ found in pertinent part that on August 16, 2019, applicant sustained an injury arising out of and occurring in the course of employment (AOE/COE) to her right wrist and right forearm, and that the injury caused 12% permanent disability.

Applicant contends that, "Everything was focused on the wrist but the back, my waist and arm were never treated. I am not in agreement with the 12% [sic] of disability and with the decided amount."

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, and we will affirm the F&A except that we will amend the F&A to defer the issues of injury, permanent disability, and need for medical treatment, regarding applicant's neck and low back (Finding of Fact 4); to defer the issue of whether defendant has furnished all medical treatment to applicant (Finding of Fact 6); to defer the issue

of whether applicant has been adequately compensated for all periods of temporary disability (Finding of Fact 7); and to find that the injury to applicant's right wrist and right forearm caused 12% permanent disability and the issue of any additional disability is deferred (Finding of Fact 11). Based thereon, we will amend the Award and return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant claimed injury to her back, right arm, and right wrist, while employed by defendant as a warehouse worker on August 16, 2019. (See Application for Adjudication of Claim, July 29, 2020.)

On January 15, 2021, physical medicine and rehabilitation qualified medical examiner (QME) ██████████, M.D., evaluated applicant. ██████████ examined applicant, took a history, and reviewed the medical record. The diagnoses included chronic neck pain, chronic right forearm/wrist pain, post right arm ORIF (open reduction internal fixation surgery), post right wrist surgery, and chronic low back pain. (Joint Exh. 1, ██████████, M.D., January 15, 2021, p. 9.) In the Discussion section of his report, ██████████ noted:

Per the defense attorney's letter, the only admitted body part is the right wrist. At today's evaluation, Applicant indicates in addition to right wrist injury she also had a neck and low back injury. (Joint Exh. 1, p. 9.)

Regarding the cause of applicant's orthopedic condition, Dr. ██████████ stated:

The right forearm fracture and residual permanent disability is 100% due to the specific industrial injury of 08/16/2019. ¶ I am unable to formulate an opinion regarding causation for the neck and low back because: 1) These body parts are not admitted. 2) No treatment has been provided. 3) No diagnostic tests have been performed. (Joint Exh. 1, p. 10.)

The parties proceeded to trial on June 23, 2021. (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 23, 2021). The parties stipulated that on August 16, 2019, applicant sustained an injury AOE/COE to her right forearm and right wrist, and that based on the report of QME Dr. ██████████ the injury caused 12% permanent disability. (MOH/SOE, p. 2.) The issues submitted for decision were "Permanent disability for the right wrist and right forearm." and "Attorney fees." (MOH/SOE, p. 3.)

DISCUSSION

A medical opinion is not substantial evidence if it is based on an inadequate medical history or examination, on incorrect legal theories, or on surmise, speculation, conjecture, or guess, and the medical opinion must set forth the reasoning behind the physician's opinion, not merely his or her conclusions; a mere legal conclusion does not furnish a basis for a finding. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Provisions of the Labor Code require a medical-legal evaluator to address all contested medical issues arising from all injuries reported on one or more claim forms. (Lab. Code, §§ 4062.3(j) and 4064(a).) Pursuant to DIR Rule 35.5:

The evaluator shall address all contested medical issues arising from all injuries reported on one or more claim forms prior to the date of the employee's appointment with the medical evaluator that are issues within the evaluator's scope of practice and areas of clinical competence.
(Cal. Code Regs., tit. 8, § 35.5(c)(1))

As noted above, in his report QME Dr. [REDACTED] diagnosed applicant as having chronic neck pain and chronic low back pain. (Joint Exh. 1, p. 9.) He then stated that he could not address the issue of the cause of applicant's neck and low back condition because they were denied body parts and no diagnostics had been performed. (Joint Exh. 1, p. 10.) An Appeals Board panel has previously decided that the issue of whether or not the injury was industrial was considered a "medical determination," and fell within the list of "contested medical issues" the QME was required to decide. (*Wachuri v. Torrance Memorial*, [2018 Cal. Wrk. Comp. P.D. LEXIS 196].)¹ Based on the Labor Code sections and DIR Rule noted above, we agree with that panel's analysis and conclusion that a medical-legal evaluator must address the issue of whether or not the injury was industrial if, as in this matter, the body parts at issue were claimed and denied.

¹ Although panel decisions of the Appeals Board are not binding precedent and have no stare decisis effect, they are citable to the extent they point out the contemporaneous interpretation and application of the workers' compensation laws by the Appeals Board. (*Smith v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 530, 537, fn. 2 [65 Cal.Comp.Cases 277]; *Griffith v. Workers' Comp. Appeals Bd.* (1989) 209 Cal.App.3d 1260, 1264, fn. 2 [54 Cal.Comp.Cases 145, 147]; (*Guthron v. Santa Fe Extruders* (2011) 76 Cal.Comp.Cases 228, 242, fn. 7 [Appeals Board en banc].)

Here, applicant's injury claim included injury to her back. Dr. [REDACTED] diagnosed neck and low back pain, but it appears he did not address the issue of industrial injury to applicant's neck and low back because he was told, "These body parts are not admitted." (Joint Exh. 1, p. 10.) Clearly, this is inconsistent with the applicable law discussed above. Thus, his report does not constitute substantial evidence upon which the issue of injury AOE/COE may be decided.

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue, or when it is necessary in order to fully adjudicate the issues. (Lab. Code §§ 5701, 5906.) "The principle of allowing full development of the evidentiary record to enable a complete adjudication of the issues is consistent with due process in connection with workers' compensation claims." (*Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) 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).) Under the circumstances of this matter, upon return to the WCJ it would be appropriate for the parties to request a supplemental report from Dr. [REDACTED] addressing the issue of industrial injury to applicant's neck and low back. It will be left to the discretion of Dr. [REDACTED] to determine if he needs to re-examine applicant and if diagnostics are necessary for him to be able to provide an opinion regarding the issue of injury as discussed herein.

Accordingly, we amend the F&A to defer the issues of injury, permanent disability, and need for medical treatment, regarding applicant's neck and low back (Finding of Fact 4); to defer the issue of whether defendant has furnished all medical treatment to applicant (Finding of Fact 6); to defer the issue of whether applicant has been adequately compensated for all periods of temporary disability (Finding of Fact 7); and to find that the injury to applicant's right wrist and right forearm caused 12% permanent disability and the issue of any additional disability is deferred. Based thereon, we amend the Award and return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact, Order, and Award issued by the WCJ on August 6, 2021, is **GRANTED**.

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 6, 2021 Findings of Fact, Order, and Award, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

4. On 8/16/2019, applicant sustained a specific injury arising out of and in the course of employment to her right wrist and right forearm; the issues of injury arising out of and occurring in the course of employment, permanent disability, and need for medical treatment regarding applicant's neck and low back are deferred.

* * *

6. The issue of whether defendant has furnished all medical treatment to applicant is deferred.

7. The issue of whether applicant has been adequately compensated for all periods of temporary disability is deferred.

* * *

11. Per stipulation of the parties, the injury to applicant's right wrist and right forearm caused 12% permanent partial disability; the issue of any additional disability is deferred.

* * *

AWARD

1. The award of permanent disability indemnity benefits, and additional temporary disability indemnity benefits, if any, is deferred pending further development of the record.

2. Applicant is awarded future medical care to cure or relieve from the effects of the industrial injury to her right wrist and right forearm; an award of future medical treatment for applicant's neck and low back, if any, is deferred.

* * *

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DEIDRA E. LOWE, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 27, 2021

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

MARIA MARAVILLA
LAUGHLIN, FALBO, LEVY & MORRESI

TLH/pc

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