WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

STEPHANIE ***Applicant,*** **vs.** **(---, permissibly self-insured, administered by ' MANAGEMENT,** ***Defendants.***	**Case No.** **(Van Nuys District Office)** **OPINION AND DECISION AFTER RECONSIDERATION**

We previously granted reconsideration of both applicant and defendant's petitions for reconsideration in order to further study the factual and legal issues in this case. This is our Decision After Reconsideration.

Applicant and defendant each seek reconsideration of the Opinion and Findings of Fact and Award (F&A) issued on June 10, 2015, by the workers' compensation administrative law judge (WCJ). In the F&A, the WCJ found in pertinent part that applicant sustained injury to her back and left hip and was entitled to an award of 19% permanent disability.

Defendant contends that the finding of 19% permanent disability was not based on substantial evidence because the rating incorrectly applied the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (2001) (AMA Guides) and because the body part rated (the left knee) was not listed as a body part in the pre-trial conference statement.

Applicant contends that the WCJ improperly rejected a proffered *Almaraz-Guzman* opinion by the agreed medical evaluator (AME) and incorrectly rated applicant's nerve impairment. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Almaraz-Guzman*) (2010) 187 Cal.App.4th 808 [75 Cal.Comp.Cases 837].)

We have received answers from applicant and defendant in response to their respective petitions. We received two Reports and Recommendation on Petitions for Reconsideration (Reports) from the WCJ

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in response to the respective petitions, recommending we deny reconsideration to both applicant and defendant.

We have reviewed the record, the Petitions for Reconsideration, the Answers, and the WCJ's Reports with respect thereto. Based on our review of the record, 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, 5; Award (1), (3).) We will return this matter to the trial level for further proceedings consistent with this opinion and a new decision by the WCJ.

FACTS

Applicant was employed by defendant as a police officer from June 19, 1999 to June 12, 2012, and suffered a cumulative injury to her low back and left hip through June 15, 2012.

Applicant was examined by AME Mark M.D., who authored a total of three reports and was deposed by the parties. Dr. diagnosed applicant with left meralgia paresthetica, left femoral neuralgia, left inguinal region strain, lumbar spine strain, multilevel lumbar spondylosis, and degenerative arthritis of the left hip. In his ratings report, Dr. assigned 2% whole person impairment (WPI) to applicant's low back solely as a pain rating, 2% WPI to applicant's left hip based on loss of range of motion, 1% WPI to left thigh muscle atrophy, and 1% WPI for pain. (Exhibit C, Report of Mark , M.D., February 17, 2014, pp. 5-6.)

The parties deposed Dr. on September 15, 2014. (Exhibit D, Deposition Transcript of Mark Greenspan, M.D.) Dr. testified that applicant lost 20% of the function of her lumbar spine; thus, he changed his impairment rating of the lumbar spine from 2% to 20%. Dr. explained his reasoning as follows:

> Well, one, if you look at the actual MRI, she does have degenerative changes. She has bulges rated as mild bulges and some minimal bulges. I'd have to go back and read it, but -- and I think that Dr. Kim, when he saw her, felt that the work restrictions were, you know, were no sitting, prolonged sitting, prolonged standing, lifting 20 and then 25 pounds, respectively. I think that that kind of would be a preclusion -- let me just go to the first report. So I think when we look at her ability to function, I think that 20 percent loss I think is reasonable. So that's why I think the 20 percent for the regional impairment is reasonable.

(*Id.*, p. 11, lines 5-17.)

Additionally, the AME assigned 4% WPI due to peripheral nerve impairment to the femoral and lateral femoral cutaneous nerves. The AME opined that the 20% rating for applicant's low back was the most accurate rating.

The WCJ issued ratings instructions on May 14, 2015, which instructed the rater to issue a rating based on the AME's ratings report (Exhibit C) and the AME's addition of a peripheral nerve rating in deposition. (Formal Rating and Instructions, May 27, 2015.) The WCJ instructed the rater to ignore the 20% WPI rating to applicant's lower back. (*Ibid.*)

The rater issued the formal rating on May 27, 2015. The rater noted a mathematical error in the rating for left thigh atrophy, which the rater corrected to 2% WPI. Additionally, the rater corrected the rating to the peripheral nerves to 2% WPI and issued the following rating:

FORMULA:

PERIPHERAL NERVES:	17.01.04.00 - 4 - [5]5 - 4901 - 8 - 9 PD (A) 2 WP ADD-ON INCLUDED FOR PAIN
LHIP:	17.03.04.00 - 2 - [5]3 - 4901 - 5 - 6 PD (A)
L KNEE:	17.05.01.00 - 3 - [2]3 - 4901 - 5 - 6 PD (A) 1 WP ADD-ON INCLUDED FOR PAIN

(A) 9 C 6 C 6 = 19 FINAL PD

(*Ibid.*)

On June 4, 2015, applicant objected to the rating instructions and rating and reserved her right to cross-examine the rater after seeking reconsideration. On June 10, 2015, the WCJ issued the F&A, which awarded applicant 19% permanent disability relying on the above rating.

DISCUSSION

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence, or when it is appropriate to provide due process or fully adjudicate the issues. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389, 394 [62 Cal.Comp.Cases 924] ["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. (Citations.)"]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].)

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

The overarching goal of rating permanent impairment is to achieve accuracy. (*Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd.* (*Almaraz-Guzman*) (2010) 187 Cal.App.4th 808, 822 [75 Cal.Comp.Cases 837].) To properly rate using *Almaraz-Guzman* the doctor is expected to (1) provide a strict rating per the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (2001) (AMA Guides), (2) explain why the strict rating does not accurately reflect the applicant's disability, (3) provide an alternative rating using the four corners of the AMA Guides, and (4) explain why that alternative rating most accurately reflects applicant's level of disability. (*Id.*, p. 828-829.)

The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) We will follow the opinions of the AME unless good cause exists to find his opinion unpersuasive. (*Ibid.*)

I.

As detailed below, both the AME's strict AMA Guides rating and his *Almaraz-Guzman* rating are defective and do not constitute substantial medical evidence. Without substantial evidence supporting applicant's permanent disability rating, we must rescind the findings as to the permanent disability level and return the matter for further development of the record.

Defendant argues that the permanent disability rating should not include a rating to applicant's left knee and that the rater improperly combined ratings for applicant's loss of range of motion to the hip with muscle atrophy. The rating string provided by the rater notes a rating to applicant's left knee; however, it is clear from examining the record that this was actually the rating for atrophy to applicant's left thigh with the 1% pain add-on.

The AMA Guides specifically state: "Atrophy ratings should not be combined with any of the other three possible ratings of diminished muscle function (gait derangement, muscle weakness, and

peripheral nerve injury)." (AMA Guides, p. 530.) Thus, it was error to combine applicant's muscle atrophy and peripheral nerve injury into the same rating under a strict AMA Guides approach.

Furthermore, the AME never completed a proper analysis of applicant's peripheral nerve injury. Per chapter 17.2l, page 550 of the AMA Guides, the evaluator must first assign a classification of the severity of the motor deficit using Table 16-11. Then, the evaluator must assign a percentage of sensory deficit using Table 16-10. Then, the evaluator must multiply the percent of motor deficit and sensory deficit against the maximum value for the nerve deficit and combine the results. Here, the AME never assigned a percentage of severity of either the sensory or motor deficit for applicant's peripheral nerve injury. The AME never multiplied the sensory or motor deficit percentages against the maximum value for the nerve. The AME did not combine the results of this calculation. The AME's opinion on peripheral nerve impairment is not substantial medical evidence. Without a substantial opinion assigning applicant's disability using a strict AMA Guides analysis, we cannot affirm the WCJ's assignment of 19% permanent disability.

II.

For the reasons stated in the WCJ's Report and Recommendation dated June 26, 2105, which we adopt and incorporate, we also find that the AME's opinion regarding an *Almaraz-Guzman* analysis is not substantial evidence. The AME did not properly analogize applicant's lifting restriction to the loss of use of her entire lumbar spine. For this reason, we cannot assign a permanent disability rating based on the AME's proffered *Almaraz-Guzman* rating.

Accordingly, we will affirm the Findings of Fact and Award issued on June 10, 2015, by the WCJ, except that we will amend the F&A to defer the issues of permanent disability and attorney's fees to the trial level for further proceedings consistent with this opinion and a decision by the WCJ.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings of Fact and Award issued on June 10, 2015, by the WCJ is **AFFIRMED** except that Findings of Fact numbers 2 and 5 and Award (1) and (3) are **AMENDED** as follows:

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FINDINGS OF FACT

2. The issue of permanent disability is deferred.

5. The issue of attorney's fees is deferred

AWARD

(1) The issue of permanent disability is deferred;

(3) The issue of attorney's fees is deferred.

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IT IS FURTHER ORDERED that this case is **RETURNED** to the trial level for further proceedings and decision by the WCJ in accordance with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

JOSÉ H. RAZO

I CONCUR,

DEIDRA E. LOWE

RONNIE G. CAPLANE

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

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

CITY OF LOS ANGELES

, LLP

Stephanie