

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

RAMIRO BRAVO, *Applicant*

vs.

**TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, insurer for
NATURAL SELECTION FOODS, LLC, d.b.a. EARTHBOUND FARMS, *Defendants***

**Adjudication Number: ADJ11117589
Salinas District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the report of the workers' compensation administrative law judge (WCJ) with respect thereto. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, and as noted below, we will deny reconsideration.

While we agree with the WCJ that the report of applicant's vocational expert Thomas Linvill does not constitute substantial medical evidence due to a lack of compelling reasoning in support of its conclusion that applicant's permanent disability is not 42 percent but 100 percent, we note that the report of defendants' vocational expert, Scott Simon, is similarly defective in its averment that applicant has access to various jobs. However, because applicant bears the burden of proof to rebut the prima facie evidence of a rating based upon the assessment of an agreed medical evaluator (AME) using the *AMA Guides to the Evaluation of Permanent Disability, Fifth Edition* (AMA Guides) under California Labor Code section 4660.1(d), we agree with the WCJ that the AME's conclusions based upon the AMA Guides have not been rebutted. (See Lab. Code § 3202.5.)

We also note that while the vocational evidence is insufficient to rebut the AME's conclusions regarding permanent disability based on the AMA Guides, we agree that the WCJ properly relied upon the AME's use of rating by analogy to find 15 percent Whole Person Impairment (WPI) of the lumbar spine using Table 17-5 of the AMA Guides, which is ordinarily

used to measure impairment of the lower extremities based on gait impairment, and 15 percent WPI of the thoracic spine using Table 6-9 of the AMA Guides, which is ordinarily used to assess impairment of lifting due to a hernia, instead of eight and seven percent WPI using Diagnosis-Based Estimates under Tables 15-3 and 15-4, respectively, as permitted under the reasoning in *Milpitas Unified School Dist. v. Workers' Comp. Appeals Bd. (Guzman III)*, 187 Cal.App.4th 808, 823 [75 Cal.Comp.Cases 837]. We further note that the parties presumably chose AME Mark Anderson, M.D. because of his expertise and neutrality, so his opinion should be followed unless there is good reason to find that opinion unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) The WCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 13, 2025

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

**RAMIRO BRAVO
RUCKA, O'BOYLE, LOMBARDO & MCKENNA
BAVA & ASSOCIATES**

CWF/cs

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I

INTRODUCTION

Applicant filed a timely, verified Petition for Reconsideration on 3/4/25 (EAMS Doc. ID: 56659704) of the undersigned's Findings and Award that issued on 2/7/25. (EAMS Doc. ID: 78849959.) Defendant filed an Answer to Petition for Reconsideration on 3/19/25. (EAMS Doc. ID: 56931051.)

II

F A C T S

Applicant, Ramiro Bravo, while employed on 4/26/17 as a Forklift Operator, Occupational Group number 351, at San Juan Bautista, California, by Natural Selection Foods, LLC, doing business as Earthbound Farms, then insured by Travelers Property Casualty Company of America, sustained injury AOE/COE to his thoracic spine and his lumbar spine.

This claim was previously resolved by Stipulations with Request for Award and Award for 27% permanent partial disability and future medical on 5/29/19. (EAMS Doc. IDs: 70357106, 70357105.) Applicant filed a timely Petition to Reopen for New and Further Disability on 6/17/20. (EAMS Doc. ID: 72870082.)

The matter came before the undersigned at Trial to determine whether the applicant had sustained new and further disability and, if so, to what extent. Defendant asserted that the applicant was now 42% permanently partially disabled. Applicant asserted that he was now 100% permanently disabled. The undersigned agreed with Defendant's rating and issued an Award for 42%. Applicant filed for reconsideration of the court's findings that he had not rebutted the PDRS with VRE evidence and that his permanent disability is 42% only.

III

DISCUSSION

A WCJ's report "cures any technical or alleged defect in satisfying the requirements of Labor Code section 5313." (*City of San Diego v. Workers' Comp. Appeals Bd (Rutherford)* (1989) 54 Cal. Comp. Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd* (1980) 45 Cal. Comp. Cases 1026 (writ den.)) To the extent that the undersigned failed to elaborate on her conclusions, they will be discussed below.

The prior Award was based on AME Dr. Mark Anderson's 2019 report. (JOINT EX. J-6: AME report, Mark Anderson, M.D., 3/25/19.) That report can be rated in two ways:

STRICT AMA GUIDES RATING

15.02.01.00 - 7 - [1.4] 10 - 351G - 12 - 13% (thoracic spine)
15.03.01.00 - 6 - [1.4] 8 - 351G - 9 - 10%) 10% (lumbar spine)
13 C 10 = 22% PD

ALMARAZ-GUZMAN RATING

15.02.01.00 - 15 - [1.4] 21 - 351G - 23 - 24% (thoracic spine)
15.03.01.00 - 6 - [1.4] 8 - 351G - 9 - 10% (lumbar spine)
24 C 10 = 32% PD

Dr. Anderson found 100% apportionment to the industrial injury.

An average of the two ratings is 27%, which is the same percentage the parties stipulated to in 2019.

To address the applicant's Petition to Reopen, the parties returned to their AME to evaluate the applicant for new and further disability. Dr. Anderson found that the applicant's low back had increased in impairment since the issuance of the initial Award. Dr. Anderson provided for no increase in the thoracic spine impairment and an increase from 6% WPI to 8% WPI for the lumbar spine pursuant to a strict rating. (JOINT EX. J-5: AME report, Mark Anderson, M.D., 3/5/21, p. 7.) Dr. Anderson also provided *Almaraz-Guzman* ratings. Dr. Anderson's report can be rated, as follows:

STRICT AMA GUIDES RATING

100% - (15.03.01.00 - 8 - [1.4] 11 - 351G - 13 - 14%) 14%
Spine - Lumbar - Diagnosis-related Estimate
100% - (15.02.01.00 - 7 - [1.4] 10 - 351G - 12 - 13%) 13%
Spine - Thoracic - Diagnosis-related Estimate
14 C 13 = 25% PD

ALMARAZ-GUZMAN RATING

15.02-15-[1.4]21-351G-23-24% (thoracic spine)
15.03-15-[1.4]21-351G-23-24% (lumbar spine)
24 C 24 = 42% PD

Dr. Anderson found 100% apportionment to the industrial injury. (JOINT EX. J- 1: AME report, Mark Anderson, M.D., 12/23/22, p. 6.)

Dr. Anderson increased the impairment for applicant's lumbar spine due to increased symptoms and the part-time use of a cane. Dr. Anderson stated, "The part-time use of a cane is rated on page 529 in Table 17-5 where the patient would fit the Mild (C) at a 15% WPI. The loss of lifting capacity would also rate a 15% WPI using Table 6-9 on page 136 where the patient would fit Class 2 at that level. I would use the part-time use of the cane at the 15% WPI as the most accurate representation of his current impairment." (JOINT EX. J-5: AME report, Mark Anderson, M.D., 3/5/21, p. 7.) The undersigned utilized Dr. Anderson's *Almaraz-Guzman* ratings, which are based upon substantial medical evidence. AME's opinions are entitled to great weight.

The applicant contends he is 100% permanently disabled. As the party asserting this proposition, he bears the burden of proof. The applicant did not meet that burden in order to rebut the 2005/2013 PDRS.

Mr. Thomas Linvill's report does not constitute substantial evidence--his opinions on the applicant's amenability to rehabilitation are conclusory. For example, Mr. Linvill states, without analysis, that a sedentary work environment would be "unworkable" due to the need for the applicant to always use his hand and arm for his cane and "is unlikely to lead to successful training and employment for Mr. Bravo." (Appl's Ex. A-1: Report, Linvill & Associates, 7/17/22, p. 18.) Mr. Linvill's statement is illogical—if the applicant is seated, he will not need to use his cane for ambulation constantly. Based on this erroneous reasoning, Mr. Linvill concludes that it is unlikely for the applicant to succeed. Mr. Linvill provides no discussion as to why.

At trial, the applicant testified that he participated in retraining. He attended an on-line school using the computer he was given. Learning how to use the computer was difficult for him "because he had no one to help him." He finished the program and received a diploma. He further testified,

He continued to use his computer after the training to search the Internet and to send e-mails, with the help of a translator. He has had no luck finding work as a result of the retraining. He met Thomas Linvill after the retraining. Per Counsel, Mr. Linvill reported that the applicant still knew very little about using a computer two years after the training. The witness agreed that is the case--he is dependent on

his daughters for help. (Summary of Evidence, 11/19/24 MOH, p. 4, lines 12.5-20.5.)

While acknowledging that the applicant had some retraining in computers, Mr. Linvill did not discuss the reasons for Mr. Bravo's lack of progress in this area. At trial, Mr. Bravo did not testify that the reason he could not learn computers was due to his physical limitations only and no other factors. Under his *LeBoeuf* analysis, Mr. Linvill simply concludes,

As we consider Mr. Bravo and his options within vocational rehabilitation, we find an individual who is unlikely to participate effectively. It is true Mr. Bravo is primarily Spanish speaking. It is true Mr. Bravo does not have a high level of education. We think it is the physical change imposed by the industrial injury that makes vocational rehabilitation unworkable. Consequently, we find Mr. Bravo is unlikely to benefit from vocational rehabilitation, specifically as a result of his industrial injury. (Id., at p. 19.)

The court found Mr. Linvill's conclusions to be unpersuasive, considering that the applicant had limited access to the labor market *pre-injury* due to his prior work history encompassing largely unskilled or semi-skilled labor. In addition, assuredly, the applicant's lower level of education and limited English skills affected his access to not only his pre-injury but also his post-injury labor market. However, Mr. Linvill provided no meaningful discussion of whether the aforementioned non-industrial factors actually affected Mr. Bravo's access to the labor market before or after his injury—he simply attributed Mr. Bravo's non-amenability to vocational rehabilitation solely to his physical injuries. Mr. Linvill missed a valuable opportunity to evaluate an actual retraining situation.

Like medical reports, VRE reports must constitute substantial medical evidence. As such, if a VRE report is “based on surmise, speculation, conjecture, or guess,” then it does not constitute substantial medical evidence upon which a court may rely. (*Heggin v. W.C.A.B.* (1971) 4 Cal.3d 162, 165.)

IV

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

ROISILIN RILEY

Workers' Compensation Judge

TRANSMITTED TO RECON UNIT ON DAY SERVED.

SERVED: 4/18/2025