

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3  
4 **CHRISTOPHER DEVEREUX,**

5 *Applicant,*

6 vs.

7 **STATE COMPENSATION INSURANCE**  
8 **FUND, Permissibly Self-Insured; administered**  
9 **by THE HARTFORD,**

10 *Defendants.*

Case No. **ADJ10307426**  
(Sacramento District office)

**OPINION AND ORDERS**  
**DENYING AND GRANTING**  
**PETITIONS FOR**  
**RECONSIDERATION**  
**AND DECISION AFTER**  
**RECONSIDERATION**

11 Applicant Christopher Devereux, and defendant State Compensation Insurance Fund, permissibly  
12 self-insured, seek reconsideration of the Findings and Award, issued September 19, 2018, in which a  
13 workers' compensation administrative law judge (WCJ) found applicant sustained 90% permanent  
14 disability as a result of an admitted industrial cumulative trauma injury in the form of hypertension,  
15 diabetes, heart, circulatory, and cognitive impairment, without apportionment, over the period ending  
16 August 15, 2015, while employed as an attorney.

17 Defendant challenges the permanent disability rating, contending the WCJ erred in using the  
18 addition method to calculate applicant's permanent disability from his cognitive and cardiac/hypertension  
19 impairments, rather than using the Combined Value Chart (CVC), due to the absence of overlapping  
20 disability. Defendant argues that using the CVC is the proper method for combining applicant's  
21 impairments in the absence of medical evidence of a synergistic effect between them.

22 Applicant seeks reconsideration to correct two errors in the Findings and Award, specifically to  
23 provide for annual increases in permanent disability based on increases in the state average weekly wage  
24 per Labor Code section 4659(c), and to award future medical treatment for all of applicant's industrially  
25 injured body parts, and not just for hypertension/heart and sexual dysfunction, as was provided in Finding  
26 of Fact number 7.

27 We have received applicant's Answer to defendant's Petition for Reconsideration, and have

1 reviewed the WCJ's Report and Recommendation on Petition for Reconsideration, in which she  
2 recommends that we grant applicant's Petition for Reconsideration to amend the Findings and Award to  
3 provide for permanent disability increases pursuant to Labor Code section 4659(c), and to correct the award  
4 of future medical treatment. With regard to defendant's Petition for Reconsideration, the WCJ presents  
5 additional analysis to justify her determination to add rather than combine applicant's impairments.

6 For the reasons set forth below, we will follow the WCJ's recommendation with regard to  
7 applicant's Petition for Reconsideration, and will grant reconsideration to amend the Findings and Award  
8 as recommended. We will also affirm the WCJ's permanent disability rating and will deny defendant's  
9 Petition for Reconsideration.

10 I.

11 While employed as an attorney by State Compensation Insurance Fund, applicant sustained an  
12 admitted industrial injury in the form of hypertension, diabetes, heart, circulatory, and cognitive  
13 impairment, over the period ending August 15, 2015.

14 Applicant was evaluated by Dr. Raye Bellinger, the Qualified Medical Evaluator (QME) in  
15 cardiology, and Dr. Claude Munday, the QME in neuropsychology.

16 Dr. Bellinger found applicant sustained an injury to his heart and hypertension as a result of "a  
17 harsh/stressful workplace" handling high profile cases, for which applicant sustained a 30% whole person  
18 impairment under the AMA Guides.

19 The 30% impairment arises out of specific language in the AMA Guides  
20 under Class III noting that if patients have left ventricular hypertrophy by  
ECG, they rate a minimum of 30% (Table 4-2, Page 66).

21 In response to questions from counsel, Dr. Bellinger indicated that applicant's cardiac impairment  
22 was separate and distinct from the cognitive impairment identified by Dr. Munday.

23 The cognitive impairment although related to the treatment of his  
24 hypertension (according to Dr. Munday) is a separate and distinct injury that  
is not directly related to the effects of the hypertension per se.

25 I would absolutely agree that the most accurate rating in this case would be  
26 to add my impairment rating to that given by Dr. Munday.

27 I also agree that my impairment and Dr. Munday's impairment are separate  
impairments and do not require the Combined Values Chart.

1 In a subsequent report, Dr. Bellinger responded to questions from defendant's counsel regarding  
2 overlapping impairments:

3 Ms. Shannon also asked that since it is the cardiac medications, which are  
4 causing the cognitive impairment, "you have already provided your opinion  
5 of 30% whole person impairment for the hypertension, is the cognitive  
6 dysfunction really overlapping the hypertension impairment or is it  
7 subsumed within the impairment rating you found of 30%. If you feel the  
8 cognitive impairment is separate from the permanent disability you found,  
9 please discuss why. In addition, if you feel a separate impairment, do you  
10 feel the same apportionment you gave should apply to the whole person  
11 impairment to cognitive dysfunction?"

12 My impairment calculation might be only accounted for the hypertensive  
13 component and not for cognitive dysfunction as a secondary effect of  
14 treatment of hypertension. I defer the actual cognitive evaluation be left to  
15 Dr. Munday who is an expert in neuropsychology. However, I feel both of  
16 these impairments are separate and distinct. Hypertension is based on the  
17 development of left ventricular hypertrophy as opined above and cognitive  
18 dysfunction is a secondary effect of the medication use for treatment. . . .

19 . . .  
20 Ms. Shannon also states "applicant's attorney suggested in his letter of  
21 September 25, 2017, that a more accurate rating would be to simply add your  
22 impairment with that given by Dr. Munday. If the 48% is added to 33%, the  
23 result is 81% permanent disability. Is this very high level of permanent  
24 disability, a reasonable and accurate permanent disability rating applicable  
25 to Mr. Devereux in this case? If not, please discuss and provide the accurate  
26 impairment rating. If so, please discuss in detail your reasoning and authority  
27 for stacking the rating rather than using the standard method of combining  
permanent disability, found in the Schedule."

18 . . .  
19 I find it completely appropriate to simply add my rating of 30% for  
20 hypertension followed to Dr. Munday's 14%, both adjusted in  
21 apportionment of 90%, given the level of injury Mr. Devereux has suffered.  
22 The rating of 30% is "black letter" writing out of the AMA Guides. Dr.  
23 Munday is responsible for his own rating and defense of such rating. I found  
24 Dr. Munday's evaluation to be reasonable and appropriate.

25 Dr. Munday found the four anti-hypertensive medications required to treat applicant's hypertension  
26 were the cause of his cognitive dysfunction, noting: "the specific picture of pronounced slowness and  
27 decreased attention/concentration/working memory is most consistent with medication effects, particularly  
medicines that are somewhat sedating." He diagnosed applicant with Substance/Medication Induced Mild  
Neurocognitive Disorder.

1 Dr. Munday noted applicant suffered impairments in memory, and in judgment and problem  
2 solving.

3 When asked to comment about “the proper combining of cardiovascular issues rated by Dr.  
4 Bellinger and the neurocognitive rated by the undersigned,” Dr. Munday stated:

5 Frankly, when we are dealing with mental impairments and physical  
6 impairments, in terms of the ultimate disability there often is not much in the  
7 way of overlap. It is my perspective that these two impairments that are  
8 discrete and in very different areas are best combined through a strict adding  
9 procedure than anything else. I do not have a basis to argue that they are  
10 synergistic to any significant degree. That is, I would not argue that the  
11 actual disability is greater than the simple additive combining of the  
12 impairments.

13 On this record, the WCJ determined that applicant’s combined permanent disability rating, from  
14 the WPI ratings of Dr. Bellinger and Dr. Munday, should be based upon adding the impairments rather  
15 than using the CVC, in view of the physicians’ opinions that this was most appropriate in the absence of  
16 overlapping impairments.

## 17 II.

18 Defendant challenges the WCJ’s determination that the medical record supports using the additive  
19 method over the CVC for combining applicant’s two separately rated impairments. Defendant contends  
20 that the law requires the WCJ to use the CVC absent rebuttal evidence showing a “synergistic effect”  
21 between the impairments. Applicant counters that the permanent disability rating schedule applicable to  
22 injuries sustained after January 1, 2013, no longer mandates the use of the CVC, and that the method for  
23 combining impairments must be decided on the medical evidence on a case by case basis.

24 The rating schedule provides that the CVC is “generally” used to combine multiple disabilities, but  
25 that other methodology may be used depending upon the relevant circumstances. It is the role of the  
26 medical expert to make a medical determination as to how to combine the separate impairments. One  
27 reason for using the CVC is to avoid combining impairments that lead to a rating greater than 100%  
permanent disability. However, this concern is not justified here, since applicant cannot receive a  
permanent disability award for a single injury greater than 100%.

We do not concur with defendant’s contention that absent effective rebuttal evidence of a

1 “synergistic effect” between the impairments, use of the CVC chart is mandated. Multiple cases have held  
2 that this determination is best based upon the extent to which the impairments affect applicant’s ability to  
3 perform activities of daily living. It is the opinions of the medical evaluators and not a rigid application of  
4 the CVC in the rating schedule that should prevail. (*Athens Administrators v. Workers’ Comp. Appeals Bd.*  
5 (*Kite*) (2013) 78 Cal.Comp.Cases 213, [appropriate to use additive approach because AMA Guides  
6 describe several methods of combining impairments and rigid application of CVC is not mandated]; *Los*  
7 *Angeles County Metropolitan Transportation Authority v. Workers’ Comp. Appeals Bd. (La Count)* (2015)  
8 80 Cal.Comp.Cases 470, [proper to add impairments rather than use CVC in light of AME opinion that  
9 there was synergistic effect to orthopedic injuries so that they should be added rather than combined]; *Diaz*  
10 *v. State*, 2015 Cal. Wrk. Comp. P.D. LEXIS 683, [additive approach within the authority of WCJ because  
11 there was no clear overlap in impairments]; *Sanchez v. California Dept., of Corrections*, 2015 Cal. Wrk.  
12 Comp. P.D. LEXIS 482, [additive rating may be used when combining multiple impairments results in  
13 more accurate rating of overall permanent disability].)

14 It has been recognized that a disability rating, “should reflect as accurately as possible an injured  
15 employee’s diminished ability to compete in the open labor market.” (*LeBoeuf v. Workers’ Comp. Appeals*  
16 *Bd.* (1983) 34 Cal.3d 234, 245-246 [48 Cal.Comp.Cases 587].) In this case, the WCJ reasonably concluded  
17 that the medical evaluators properly determined that adding the hypertension and cognitive impairment  
18 disabilities more accurately reflects applicant’s entire permanent disability than results from using the  
19 CVC.

20 While we do not endorse applicant’s and the WCJ’s analysis that the post-2013 permanent disability  
21 rating schedule eliminated the reliance on the CVC, we do find the WCJ properly found the reports of Dr.  
22 Munday and Dr. Bellinger constitute substantial medical evidence that adequately support the use of the  
23 addition method here.

24 Accordingly, we will affirm the WCJ’s 90% permanent disability rating, and will deny defendant’s  
25 Petition for Reconsideration.

26 Additionally, we will grant applicant’s Petition for Reconsideration, as recommended by the WCJ,  
27 to correct the errors in the award with regard to the award of future medical treatment, and applicant’s

1 entitlement to increases pursuant to Labor Code section 4659(c).

2 For the foregoing reasons,

3 **IT IS ORDERED** that Defendant's Petition for Reconsideration, filed October 9, 2018, is  
4 **DENIED**.

5 **IT IS FURTHER ORDERED** that Applicant's Petition for Reconsideration, filed October 15,  
6 2018, is **GRANTED**, and as our Decision After Reconsideration, the September 19, 2018 Findings and  
7 Award is **AMENDED** as follows:

8  
9 **FINDINGS OF FACT**

10 7. Future medical treatment to cure or relieve applicant from the effects  
11 of the industrial injury.

12  
13 **AWARD**

14 **AWARD IS MADE** in favor of **CHRISTOPHER DEVEREUX**, and **STATE**  
15 **COMPENSATION INSURANCE FUND**, as follows:

- 16 a) Permanent disability in the amount of 90% payable at the rate of \$290.00  
17 per week beginning August 30, 2017 for 753.25 weeks totaling \$218,442.50  
18 plus life pension thereafter at the rate of \$231.92 per week and subject to  
19 the increases pursuant to Labor Code 4659(c), less credit for permanent  
20 disability advances paid to date and less attorney fees per Finding No. 8  
21 above payable to Marcus, Regalado & Marcus. The parties are to obtain a  
22 commutation from the DEU to determine the exact amount of the attorney  
23 fees based on the above.

24 / / /

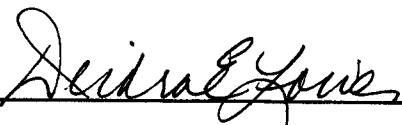
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1 b) Future medical treatment in accordance with Finding of Fact number 7.

2  
3 **WORKERS' COMPENSATION APPEALS BOARD**

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5   
6 \_\_\_\_\_  
7 **DEIDRA E. LOWE**

8 **I CONCUR,**

9  
10  **CHAIR**  
11 \_\_\_\_\_  
12 **KATHERINE ZALEWSKI**

13   
14 \_\_\_\_\_  
15 **PATRICIA A. GARCIA**  
16 **DEPUTY**



17 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

18 **DEC 10 2018**

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

21 **CHRISTOPHER DEVEREUX**  
22 **MARCUS, REGALADO & MARCUS**  
23 **GOLDMAN, MAGDALIN & KRIKES**

24 **SV/pc**

