

ZTF  
PRIORITY

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

Guadalupe Trujillo,  
  
*Applicant,*  
  
vs.  
  
Arrowhead Regional Medical Center, County  
of San Bernardino, Permissibly Self-Insured  
and Self-Administered by Risk Management,  
  
*Defendant(s).*

Case Nos. ADJ4229501 (MF); ADJ3895541;  
ADJ963410; ADJ2094265; ADJ1547714;  
ADJ2010864; ADJ2585533; ADJ3656202;  
ADJ8242361; ADJ8342817; ADJ8243045; and  
ADJ8243069

San Bernardino District Office

**AMENDED  
JOINT  
FINDINGS, AWARD  
AND ORDERS**  
*(Amended for Correction of Clerical Error in  
Award, Paragraph (d).  
No change in Opinion on Decision)*

The above-entitled matters having been heard and regularly submitted, submission vacated for further development of the record, and resubmission as of February 19, 2013, Myrle R. Petty, Workers' Compensation Administrative Law Judge, now makes her decision as follows:

**FINDINGS OF FACT**

(1) Guadalupe Trujillo, born December 6, 1954, while employed on November 19, 2007 in ADJ4229501 (MF) and during the period May 1, 2010 – May 2, 2011 in ADJ8342817, as a Nurse Attendant or Home Health Aide, Occupational Group Number 340, in Colton, California, by Arrowhead Regional Medical Center, County of San Bernardino, who was then permissibly self-insured and self-administered for workers' compensation through Risk Management, sustained injury arising out of and in the course of employment to her bilateral shoulders only and to no other parts of body.

(2) Applicant, Guadalupe Trujillo, did not sustain injury arising out of and in the course of employment in ADJ3895541 [10/11/05]; ADJ963410 [1/30/06]; ADJ2094265 [12/05 – 7/3/07];

ADJ1547714 [9/3/07 – 9/28/07]; ADJ2010864 [2/20/08]; ADJ2585533 [10/31/07 – 1/28/08]; ADJ3656202 [7/3/07]; ADJ8242361 [7/21/08]; ADJ8243045 [8/24/08]; and ADJ8243069 [1/13/09].

(3) The stipulations in the Minutes of Hearing of 5/26/11, 8/16/11 and as amended and augmented on 2/19/13 are true and are incorporated herein by reference.

(4) Applicant's earnings at the time of injury in ADJ4229501(MF) were \$752.28 per week, producing a temporary disability rate of \$516.53 per week (after adjustment per LC 4453(a)(10) + SAWW), and a permanent disability indemnity rate of \$230.00 per week.

(5) Applicant's earnings at the time of injury in ADJ8342817 were \$596.11 per week, producing a temporary disability rate of \$417.11 per week (after adjustment per LC 4453(a)(10) + SAWW), and a permanent disability indemnity rate of \$230.00 per week.

(6) Applicant's period or periods of temporary total disability cannot be determined based upon the evidence presented. The parties are to further develop the record and adjust the temporary disability, with jurisdiction reserved as to any continued disputes.

(7) Applicant's injury in ADJ4229501 (MF) caused permanent disability of 14%, after adjustment and after apportionment (there is no non-industrial apportionment, but apportionment to the later injury).

(8) Applicant's injury in ADJ8342817 caused permanent disability of 4%, after adjustment and after apportionment (there is no non-industrial apportionment, but apportionment to the earlier injury).

(9) Applicant will require further medical treatment to cure or relieve from the effects of this injury.

(10) Applicant is entitled to reimbursement of mileage and self-procured medical treatment in an amount to be adjusted by and between the parties, or absent such adjustment to be determined by a workers' compensation judge.

(11) The reasonable value of the services and disbursements of applicant's attorney is \$1,595.63 in ADJ4229501 and \$414.00 in ADJ8342817.

## AWARD

AWARD IS MADE in favor of Guadalupe Trujillo, against Arrowhead Regional Medical Center/County of San Bernardino, payable as follows:

- (a) Temporary disability indemnity at the rate of \$417.11 in ADJ8342817, according to proof pending further development of the record, less credit for any sums heretofore paid on account thereof, if any;
- (b) Permanent disability of 4% in ADJ8342817, entitling applicant to 12 weeks of disability indemnity at the rate of \$230.00 per week, in the total sum of \$2,760.00, payable after temporary disability ended, less credit to defendants for all sums heretofore paid on account thereof, if any, and less \$414.00, payable to Eduardo Lopez (who shall hold the money pending agreement of an attorney fee division with prior counsel) as a reasonable attorney's fee;
- (c) Temporary disability indemnity at the rate of \$516.53 in ADJ4229501, according to proof pending further development of the record, less credit for any sums heretofore paid on account thereof, if any;
- (d) Permanent disability of 14% in ADJ4229501, entitling applicant to 46.25 weeks of disability indemnity at the rate of \$230.00 per week, in the total sum of \$10,637.50, payable after temporary disability ended, less credit to defendants for all sums heretofore paid on account thereof, if any, and less \$1,595.63, payable to Eduardo Lopez (who shall hold the money pending agreement of an attorney fee division with prior counsel) as a reasonable attorney's fee;
- (e) Further medical treatment reasonably required to cure or relieve from the effects of this injury;
- (f) Reimbursement of self-procured medical treatment costs in an amount to be adjusted by the parties, or absent such adjustment, to be determined by a Workers' Compensation Judge.

## ORDERS

IT IS ORDERED that applicant, Guadalupe Trujillo, take nothing by reason of her claims filed in ADJ3895541 [10/11/05]; ADJ963410 [1/30/06]; ADJ2094265 [12/05 - 7/3/07];

ADJ1547714 [9/3/07 – 9/28/07]; ADJ2010864 [2/20/08]; ADJ2585533 [10/31/07 – 1/28/08]; ADJ3656202 [7/3/07]; ADJ8242361 [7/21/08]; ADJ8243045 8/24/08]; and ADJ8243069 [1/13/09].

IT IS FURTHER ORDERED that these matters be scheduled for lien conference in conformance with Title 8, California Code of Regulations, Section 10562(f).

**NOTICE:** Pursuant to Board Rule 10840 (Cal. Code Reg., title 8, subsection 10840), as amended effective November 17, 2008, any Petition for Reconsideration from this decision, order, or award may be filed with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco.

Dated at San Bernardino, California  
May 23, 2013



MYRLE R. PETTY  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on all parties as shown below on the Official Address Record.

Date: May 28, 2013 By: JShehee

STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

05-28-2013

PROOF OF SERVICE

OFFICIAL ADDRESS RECORD

**Case Number:** ADJ4229501

|  |   |
|--|---|
| ARMC                                     | Employer, 400 N PEPPER AVE COLTON CA 92324  |
| BRADFORD BARTHEL<br>ONTARIO              | Law Firm, 3270 INLAND EMPIRE BLVD STE 200 ONTARIO CA 91764, e-docs@bradfordbarthel.com      |
| COUNTY OF SAN<br>BERNARDINO              | Insurance Company, 222 W HOSPITALITY LN FL 3 SAN BERNARDINO CA 92415                        |
| COUNTY OF SAN<br>BERNARDINO-ARMC         | Legally Uninsured, 400 NORTH PEPPER AVE COLTON CA 92324                                     |
| DORIS PEREZ<br>INTERPRETING<br>RIVERSIDE | Lien Claimant - Other, 4035 MARKET ST RIVERSIDE CA 92501, DPerez@dorisperezinterpreting.com |
| EMANUEL L SELYA<br>PH D                  | Lien Claimant - Other, 2495 E ORANGETHORPE AVE FULLERTON CA 92831                           |
| GOMEZ REYES<br>COLTON                    | Legacy Law Firm, 712 N LA CADENA DR COLTON CA 92324, egreyes@aol.com                        |
| GUADALUPE<br>TRUJILLO                    | Injured Worker, 15148 CHRISTOPHER ST ADELANTO CA 92301                                      |
| PLC ASSOCIATES<br>FULLERTON              | Law Firm, 2495 E ORANGETHORPE AVE STE 101 FULLERTON CA 92831, plc&associates@aol.com        |
| RALPH N STEIGER MD                       | Lien Claimant - Other, 2495 E ORANGETHORPE AVE FULLERTON CA 92831                           |

*Service Of:*

**AMENDED JOINT FINDINGS, AWARD & ORDERS (Amended for Correction of Clerical Error in Award paragraph (d) No Change to Opinion on Decision)**

ZTF  
PRIORITY

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

**Guadalupe Trujillo,**

*Applicant,*

vs.

**Arrowhead Regional Medical Center, County  
of San Bernardino, Permissibly Self-Insured  
and Self-Administered by Risk Management,**

*Defendant(s).*

**Case Nos.** ADJ4229501 (MF); ADJ3895541;  
ADJ963410; ADJ2094265; ADJ1547714;  
ADJ2010864; ADJ2585533; ADJ3656202;  
ADJ8242361; ADJ8342817; ADJ8243045; and  
ADJ8243069

**San Bernardino District Office**

**JOINT  
FINDINGS, AWARD  
AND ORDERS**

The above-entitled matters having been heard and regularly submitted, submission vacated for further development of the record; and resubmission as of February 19, 2013, Myrle R. Petty, Workers' Compensation Administrative Law Judge, now makes her decision as follows:

**FINDINGS OF FACT**

(1) Guadalupe Trujillo, born December 6, 1954, while employed on November 19, 2007 in ADJ4229501 (MF) and during the period May 1, 2010 – May 2, 2011 in ADJ8342817, as a Nurse Attendant or Home Health Aide, Occupational Group Number 340, in Colton, California, by Arrowhead Regional Medical Center, County of San Bernardino, who was then permissibly self-insured and self-administered for workers' compensation through Risk Management, sustained injury arising out of and in the course of employment to her bilateral shoulders only and to no other parts of body.

(2) Applicant, Guadalupe Trujillo, did not sustain injury arising out of and in the course of employment in ADJ3895541 [10/11/05]; ADJ963410 [1/30/06]; ADJ2094265 [12/05 – 7/3/07];

ADJ1547714 [9/3/07 – 9/28/07]; ADJ2010864 [2/20/08]; ADJ2585533 [10/31/07 – 1/28/08]; ADJ3656202 [7/3/07]; ADJ8242361 [7/21/08]; ADJ8243045 8/24/08]; and ADJ8243069 [1/13/09].

(3) The stipulations in the Minutes of Hearing of 5/26/11, 8/16/11 and as amended and augmented on 2/19/13 are true and are incorporated herein by reference.

(4) Applicant's earnings at the time of injury in ADJ4229501(MF) were \$752.28 per week, producing a temporary disability rate of \$516.53 per week (after adjustment per LC 4453(a)(10) + SAWW), and a permanent disability indemnity rate of \$230.00 per week.

(5) Applicant's earnings at the time of injury in ADJ8342817 were \$596.11 per week, producing a temporary disability rate of \$417.11 per week (after adjustment per LC 4453(a)(10) + SAWW), and a permanent disability indemnity rate of \$230.00 per week.

(6) Applicant's period or periods of temporary total disability cannot be determined based upon the evidence presented. The parties are to further develop the record and adjust the temporary disability, with jurisdiction reserved as to any continued disputes.

(7) Applicant's injury in ADJ4229501 (MF) caused permanent disability of 14%, after adjustment and after apportionment (there is no non-industrial apportionment, but apportionment to the later injury).

(8) Applicant's injury in ADJ8342817 caused permanent disability of 4%, after adjustment and after apportionment (there is no non-industrial apportionment, but apportionment to the earlier injury).

(9) Applicant will require further medical treatment to cure or relieve from the effects of this injury.

(10) Applicant is entitled to reimbursement of mileage and self-procured medical treatment in an amount to be adjusted by and between the parties, or absent such adjustment to be determined by a workers' compensation judge.

(11) The reasonable value of the services and disbursements of applicant's attorney is \$1,595.63 in ADJ4229501 and \$414.00 in ADJ8342817.

## AWARD

AWARD IS MADE in favor of Guadalupe Trujillo, against Arrowhead Regional Medical Center/County of San Bernardino, payable as follows:

- (a) Temporary disability indemnity at the rate of \$417.11 in ADJ8342817, according to proof pending further development of the record, less credit for any sums heretofore paid on account thereof, if any;
- (b) Permanent disability of 4% in ADJ8342817, entitling applicant to 12 weeks of disability indemnity at the rate of \$230.00 per week, in the total sum of \$2,760.00, payable after temporary disability ended, less credit to defendants for all sums heretofore paid on account thereof, if any, and less \$414.00, payable to Eduardo Lopez (who shall hold the money pending agreement of an attorney fee division with prior counsel) as a reasonable attorney's fee;
- (c) Temporary disability indemnity at the rate of \$516.53 in ADJ4229501, according to proof pending further development of the record, less credit for any sums heretofore paid on account thereof, if any;
- (d) Permanent disability of 44% in ADJ4229501, entitling applicant to 46.25 weeks of disability indemnity at the rate of \$230.00 per week, in the total sum of \$10,637.50, payable after temporary disability ended, less credit to defendants for all sums heretofore paid on account thereof, if any, and less \$1,595.63, payable to Eduardo Lopez (who shall hold the money pending agreement of an attorney fee division with prior counsel) as a reasonable attorney's fee;
- (e) Further medical treatment reasonably required to cure or relieve from the effects of this injury;
- (f) Reimbursement of self-procured medical treatment costs in an amount to be adjusted by the parties, or absent such adjustment, to be determined by a Workers' Compensation Judge.

## ORDERS

IT IS ORDERED that applicant, Guadalupe Trujillo, take nothing by reason of her claims filed in ADJ3895541 [10/11/05]; ADJ963410 [1/30/06]; ADJ2094265 [12/05 - 7/3/07];

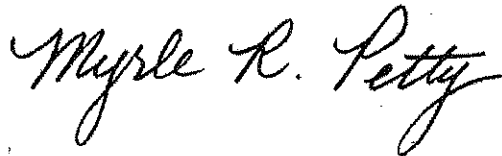


ADJ1547714 [9/3/07 – 9/28/07]; ADJ2010864 [2/20/08]; ADJ2585533 [10/31/07 – 1/28/08]; ADJ3656202 [7/3/07]; ADJ8242361 [7/21/08]; ADJ8243045 8/24/08]; and ADJ8243069 [1/13/09].

IT IS FURTHER ORDERED that these matters be scheduled for lien conference in conformance with Title 8, California Code of Regulations, Section 10562(f).

**NOTICE:** Pursuant to Board Rule 10840 (Cal. Code Reg., title 8, subsection 10840), as amended effective November 17, 2008, any Petition for Reconsideration from this decision, order, or award may be filed with any district office of the Workers' Compensation Appeals Board or with the office of the Appeals Board in San Francisco.

Dated at San Bernardino, California  
May 16, 2013



MYRLE R. PETTY  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on all parties as shown below on the Official Address Record.

Date: 5/17/13 By: *M. Davis*

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

CASE NOS. ADJ4229501 (MF); ADJ3895541; ADJ963410;  
ADJ2094265; ADJ1547714; ADJ2010864; ADJ2585533; ADJ3656202;  
ADJ8242361; ADJ8342817; ADJ8243045; and ADJ8243069

San Bernardino District Office

Guadalupe Trujillo v. Arrowhead Regional Medical Center,  
County of San Bernardino, Permissibly Self-Insured and  
Self-Administered by Risk Management

JUDGE: MYRLE R. PETTY

HEARING DATES: 5/26/11; 8/16/11, 5/21/2012; 2/19/13

SUBMISSION DATE: February 19, 2013

**OPINION ON DECISION**

The applicant, Guadalupe Trujillo, born 12/6/54, while employed as either a Nurse Attendant or Home Health Aide, occupational group number 340, in Colton, California, by Arrowhead Regional Medical Center (County of San Bernardino), has asserted 12 injury claims as follows:

ADJ4229501 (MF) – admitted specific injury of 11/19/07 to the right shoulder, disputed specific injuries to bilateral upper extremities, low back, cervical spine and psyche;

ADJ3895541 – disputed specific injury of 10/11/05 to the psyche;

ADJ963410 – disputed specific injury of 1/30/06 to the psyche;

ADJ2094265 – disputed cumulative trauma injury from 12/05 – 7/3/07 to the psyche;

ADJ1547714 – disputed cumulative trauma injury from 9/3/07 – 9/28/07 to the psyche;

ADJ2010864 – disputed specific injury of 2/20/08 to the right shoulder, arm & low back;

ADJ2585533 – disputed cumulative trauma injury from 10/31/07 – 1/28/08 to the psyche;

ADJ3656202 – disputed specific injury of 7/3/07 to the psyche;

ADJ8242361 – disputed specific injury of 7/21/08 to the chest and right arm; **[This injury claim was added following augmentation of the record.]**

ADJ8342817 – admitted bilateral shoulder injury from 5/1/10 – 5/1/2011, and disputed as to psyche, chest and bilateral upper extremities; **[This injury claim was added following augmentation of the record.]**

ADJ8243045 – disputed specific injury of 8/24/08 to the psyche and nervous system; **[This injury claim was added following augmentation of the record.]** and

ADJ8243069 – disputed specific injury of 1/13/09 to the psyche, nervous system & head.  
[This injury claim was added following augmentation of the record.]

At the time of the injuries asserted, the employer was permissibly self-insured for workers' compensation and the claims were administered through the County of San Bernardino Department of Risk Management. Applicant's earnings were disputed. Defendant paid permanent disability indemnity from 12/3/09 through 7/3/10 at the rate of \$195.50 per week. Liens were deferred by agreement of the parties.

Raised in issue at the commencement of the trial on 5/26/11 were the following:

- ♦ Parts of body injured, with defendant accepting injury to the right shoulder only in ADJ4229501 (MF) and disputing injury to all other parts of body and psyche as to all other injury claims and as to ADJ4229501 as well;
- ♦ Earnings, with applicant asserting \$800 per week and defendant asserting \$566.80 per week;
- ♦ Temporary disability, with applicant asserting the following periods of TD:
  - 10/11/05 – 2/14/06
  - 7/3/07 – 10/31/07
  - 1/2/8/08 – 2/13/08
  - 3/8/08 – 5/28/08
  - 9/16/08 – 10/27/08
  - 1/28/09 – 2/13/09
  - 2/13/09 – 10/31/09
  - 5/10/10 – 5/25/10
- ♦ Permanent and stationary date, with applicant asserting she is not yet P&S/MMI, and with defendant asserting 10/27/08 based on Dr. Steiger's report of 11/5/08;
- ♦ Permanent disability;
- ♦ Need for further medical treatment;
- ♦ Liability for self-procured medical treatment;
- ♦ Lien of applicant's prior attorney, Eloise Gomez Reyes, with all other liens deferred;
- ♦ Attorney fees, with Mr. Lopez requesting that any attorney fee be released to his office and he will retain the funds until any agreement is reached with prior counsel, Eloise Gomez Reyes, and with defendant to be held harmless;
- ♦ Defendant admits injury of 11/19/07 only to the right shoulder and all other claimed dates of injury and all other body parts are denied;
- ♦ Defendant objects to admissibility of any reports not previously served; and
- ♦ Mileage and out-of-pocket expenses are deferred and are to be adjusted by the parties once a determination of the issues in the cases-in-chief are decided.

Stipulated at the trial on 2/19/2013, following prior vacation of submission for further development of the record, were the following:

- ♦ Defendant accepts injury to the bilateral shoulders only in ADJ8342817, all other parts of body are disputed;

- ♦ No additional periods of TD are asserted except as previously raised; and
- ♦ Liens remain deferred.

Raised in issue at the trial on 2/19/2013, following prior vacation of submission for further development of the record, were the following:

- ♦ Earnings as to all dates of injury, with applicant asserting \$800 per week, and defendant asserting \$596.11 per week, based on a wage statement, which was submitted on 2/19/13.
- ♦ Injury AOE/COE as to all new dates of injury, except as to bilateral shoulders only in ADJ8342817, per Panel QME Lee Silver;
- ♦ Future medical treatment as to new injuries asserted;
- ♦ Permanent disability and apportionment as to new injuries asserted;
- ♦ Liability for self-procured medical treatment as to new injuries asserted; and
- ♦ Attorney fees as against permanent disability found on any new injuries asserted.

Initially, the evidence initially presented to the court for consideration was so very deficient that the undersigned WCALJ had to vacate submission and order further development of the record. Further development of the record was necessary to include supplemental reports from the orthopedic evaluators, Dr. Steiger (applicant's treating physician) and Dr. Silver (the Panel QME), and to include selection of an Independent Medical Evaluator in the field of psychiatry by the undersigned WCALJ. The reason an IME had to be selected by the undersigned is fully set forth in the minutes of hearing and supplement thereto of 5/21/12. Basically, an IME was selected because applicant's psychiatric treating physician, Dr. Zinke, was not available to provide supplemental reporting, the medical-legal evaluators (Dr. Selya & Dr. Moore) whose reports were previously submitted failed to address causation and apportionment appropriately under *Rolda* and *Benson* despite numerous supplemental reports, and due to the inability of the parties to agree on an AME. After augmentation of the record, I find that I am now able to render decisions as to earnings, whether applicant's claims arose out of and occurred within the course of her employment with Arrowhead Regional Medical Center/County of San Bernardino, and as to what permanent disability applicant has sustained.

#### *Admissibility of Evidence*

Insofar as applicant's attorney could not offer proof that Exhibits 18 – 20, 23 – 30, and 32 were served on defendant prior to the first date of trial, and since the exchange of exhibits prior to commencement of trial is a fundamental due process issue, those exhibits are denied admission into evidence. I will point out, however, that even if those exhibits had been deemed admissible, they would have had no bearing on the decisions reached in this matter.

#### *Injury AOE/COE and Parts of Body Injured*

Based upon the credible and persuasive opinions of the Judge-selected Independent Medical Evaluator in the field of Psychiatry, Perry Maloff, M.D., as set forth in his very

comprehensive (81-page) report of his July 23, 2012 evaluation, the applicant has sustained no compensable injury to her psyche arising out of and in the course of her employment. Dr. Maloff finds that applicant does have psychiatric disability, but all of that disability is apportioned to preexisting, non-industrial factors. He specifically stated, "Employment has been the passive stage upon which her preexisting nonindustrial Axis II psychopathology has been displayed." Dr. Maloff found a period of temporary total disability from October 27, 2005 through February 14, 2006, for which he finds the predominant cause of Ms. Trujillo's response to the provocation [a patient's touching her panty-clad buttocks under her skirt] explained by her personality disorder, NOS [not otherwise specified], preexisting nonindustrial condition caused by physical abuse, sexual abuse stemming from early childhood and previous adult experiences. Based upon Dr. Maloff's opinions, the undersigned WCALJ finds that all of applicant's claims of injury to her psyche to **not** arise out of and occur in the course of her employment with Arrowhead Regional Medical Center/County of San Bernardino. The undersigned specifically finds there to be **no** compensable injury and **no** compensable temporary disability attributable to any claim or claims of injury to the psyche. Applicant is found to take nothing in regard to all of her claims of injury to her psyche in Case Numbers ADJ3895541; ADJ963410; ADJ2094265; ADJ1547714; ADJ2585533; ADJ3656202; ADJ8243045; and ADJ8243069. Likewise, injury to the psyche is specifically excluded as a part of body injured in Case Numbers ADJ4229501 (MF) and ADJ8342817.

In regard to the orthopedic aspects of applicant's claims, following augmentation of the record, I found the opinions of the Panel QME, Lee B. Silver, M.D., to be more credible and persuasive than the opinions of Dr. Steiger. Dr. Silver's analysis and review of the entire record is more thorough and detailed than that of Dr. Steiger. Dr. Silver finds no industrial injury to applicant's back or neck (entire spine), and explains in detail in his reporting of his January 31, 2012 examination as to why he is of that opinion. He only finds injury to applicant's bilateral shoulders in ADJ4229501 (MF) and ADJ8342817, stating that initially applicant sustained injury to the right shoulder on 11/19/07, but that the left shoulder represents a derivative injury and compensable consequence of the effects of the specific injury of 11/19/07 and the cumulative trauma through May 2011, and noted that the right shoulder also worsened with continued worse. Dr. Silver found that no other injuries were substantiated by the record and no other parts of body are found to have been industrially-injured in any of the other cases. It is noted that even if applicant were found to have sustained injury to the elbows, wrists or forearms (and there is no persuasive evidence of any such injury), based upon Dr. Silver's opinions, there is no ratable impairment to those parts of the body.

Based upon the opinions of Dr. Silver, which I find to be persuasive, credible and to constitute substantial evidence, I find that applicant sustained injury to the bilateral shoulders (only) on 11/19/07 (ADJ4229501 (MF)) and during the period 5/1/10 – 5/1/11 (ADJ8342817). All other parts of body asserted in these case numbers are found to be non-industrial and non-compensable. Also based upon Dr. Silver's opinions, applicant's injuries asserted in ADJ8243069, ADJ8242361 and ADJ2010864 are found **not** to arise out of and occur in the course of applicant's employment with Arrowhead Regional

Medical Center/County of San Bernardino. Applicant is found to take nothing in regard to all injuries claimed in ADJ8243069, ADJ8242361 and ADJ2010864.

### Earnings

Based upon the wage statements submitted by defendant, which are a more accurate representation of applicant's earnings in the year preceding the cumulative trauma injury in ADJ8342817 and earnings in the year preceding the specific injury in ADJ4229501, I find that applicant's average weekly earnings through May of 2011 were \$596.11 per week and her average weekly earnings through November 17, 2007 were \$752.28 per week. For a 2011 date of injury (CT), applicant's TD rate would be calculated as follows:  $\$596.11 + 4.9593\% [\text{LC } 4453(a)(10) + \text{SAWW}] = \$625.67 \times 2/3 = \$417.11$  TD rate. For a 2007 date of injury (specific injury), applicant's TD rate would be calculated as follows:  $\$752.28 + 2.9941\% [\text{LC } 4453(a)(10) + \text{SAWW}] = \$774.80 \times 2/3 = \$516.53$  TD rate. Applicant's permanent disability rate for both dates of injury would be \$230.00 per week.

### Permanent and Stationary Date

Dr. Silver's opinions are lacking in regard to defining period of temporary disability attributable to applicant's compensable injuries. Applicant's primary treating physician, Dr. Steiger, opined that applicant reached MMI/P&S status as of October 27, 2008. Defendant does not dispute this date. Applicant asserts that she remains temporarily disabled. Even applicant's own treating physician does not share this opinion. Based on Dr. Steiger's reporting, applicant became P&S/MMI as of October 27, 2008.

### Temporary Disability

The record is entirely deficient to determine what, if any, temporary disability is due to the applicant due to the injuries found to be compensable. Applicant's testimony was deficient in the amount of time applicant missed from work due to the two compensable injury claims, and this issue needs to be further explored. Per Dr. Silver, there was an undefined period of time when applicant was in need of ongoing treatment to her bilateral shoulders between his reports of 1/31/12 and 8/21/12 (which applicant claimed she never received). However, Dr. Silver never stated whether he believed applicant was temporarily totally disabled for any or all of this period of time, and there is no definitive information as to whether applicant missed work during this period of time. Defense witness did not testify as to the amount of time or dates applicant missed from work. I will leave it up to the parties to try to figure out what, if any, temporary disability is due and owing to the applicant, and, if necessary, seek further supplemental reports from the examining physicians. I will, of course, reserve jurisdiction as to any lingering disputes, but will once again caution the parties that they need to make sure they fully develop the record on this issue before requesting further hearing on the issue and use valuable court time and resources. My patience with the underdeveloped record in this matter has worn quite thin.

### Permanent Disability and Apportionment

Basing my decision on the opinions of Dr. Silver, as stated above, I find that applicant has sustained industrial injury to her bilateral shoulders. Based upon shoulder range of motion measurements in Dr. Silver's report of 8/21/12 (Exhibit L), applicant has deficiencies in bilateral abduction (4 UE each shoulder), flexion (4 UE each shoulder), and extension (1 UE each shoulder) for a total 18 UE, which converts to a whole person impairment per Table 16-3 (Page 439 AMA Guides) of 11%. Of this disability, Dr. Silver apportions 80% to the specific injury of 11/19/07 (ADJ4229501 (MF)) and 20% to the cumulative trauma injury of 5/1/10 – 5/1/11 (ADJ8342817). The apportionment determination is substantiated adequately by Dr. Silver.

I did not find it necessary to refer this matter to the Disability Evaluation Unit for a rating. I have rated the applicant's disability as follows:

ADJ4229501 (MF) 80% ( 16.02.01.00 – 11 – [7] 15 – 340 F – 15 – 18) 14%

ADJ8342817 20% ( 16.02.01.00 – 11 – [7] 15 – 340 F – 15 – 18) 4%

Permanent disability of 14% in ADJ4229501 equates to 46.25 weeks of disability at the rate of \$230.00 per week, for the total dollar value of \$10,637.50. The issue of a 15% bump up or bump down per LC 4658 was not raised and will not be addressed by the court. Since this issue was not raised, it is deemed to be waived.

Permanent disability of 4% in ADJ8342817 equates to 12.0 weeks of disability at the rate of \$230.00 per week, for the total dollar value of \$2,760.00. Again, the issue of a 15% bump up or bump down per LC 4658 was not raised and will not be addressed by the court. Since this issue was not raised, it is deemed to be waived.

### Future Medical Treatment

Applicant is entitled to reasonable future medical treatment for the bilateral shoulders. In light of passage of SB 863, through June 30, 2013, the QME may continue to render opinions on the reasonableness of treatment requests, which may then be adjudicated before a WCALJ. As of July 1, 2013, however, any and all disputes over reasonableness of treatment shall be addressed through Utilization Review and the Independent Medical Review processes.

### Self-Procured Medical Treatment

Any and all medical treatment rendered to parts of body other than the bilateral shoulders shall not be defendant's liability. Liens, other than that of prior counsel for applicant, have been deferred. Lien claimants who wish to pursue their liens in this matter should be mindful of the decisions made herein. Mileage and out-of-pocket expenses were deferred. Thus, the parties are directed to adjust and defendant is ordered to pay the non-disputed charges, and jurisdiction is reserved as to any disputed charges. If these issues

are not resolved prior to the upcoming lien conference, they will need to be addressed at that time.

Attorney's Fees

Applicant's attorney has provided valuable legal services on applicant's behalf, and is entitled to an attorney's fee of \$1,595.63, representing 15% of the permanent disability benefits in ADJ4229501 and \$414.00, representing 15% of the permanent disability benefits in ADJ8342817. These attorney's fees are to be deducted and paid to the Law Offices of Eduardo Lopez from the permanent disability awarded and currently payable to the applicant in these cases. Mr. Lopez shall hold the funds until such time as an agreement is reached as to division of the fees with prior counsel of record for the applicant, Eloise Gomez Reyes, with defendant being held harmless as to the issue of attorney fees once paid to Mr. Lopez. If no agreement is reached between Mr. Lopez and Ms. Gomez Reyes, the court will retain jurisdiction as to any disputes, which will need to be addressed at the upcoming lien conference. If there are insufficient sums accrued to pay these fees, they shall be commuted from the far end of each award. In the event defendant has already over-advanced permanent disability indemnity to the applicant, the fees shall still be paid by defendant and the over-advanced sum shall be construed as a credit as against any future indemnity that may be found to be payable in these two cases, according to proof, with jurisdiction reserved.

Lien Deferral

In accordance with Title 8, California Code of Regulations, Section 10562(f), where liens are deferred, the WCALJ shall, upon issuance of their decision on the remaining issues, issue a 10-day notice of intention to order payment of the lien in full or in part, issue a 10-day notice of intention to disallow the lien or continue the lien issues to a lien conference. To afford due process to the lien claimants whose liens have been deferred herein, I will order this matter to be set for a lien conference on Board notice.

Dated at San Bernardino, California  
May 16, 2013



MYRLE R. PETTY  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

Filed and Served by mail on all parties as shown below on  
the Official Address Record.

Date: 4/17/13 By: *M. Solis*



STATE OF CALIFORNIA  
DEPARTMENT OF INDUSTRIAL RELATIONS  
DIVISION OF WORKERS' COMPENSATION

05-17-2013

PROOF OF SERVICE

Case Number: ADJ4229501 ET AL

|  |   |
|--|---|
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*"Jt Opinion on Decision & Jt Findings, Award and Orders"*

Served by mail on all parties  
shown above on: **May 17, 2013**

By: M. Solis