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

MANDY ARMS,

CASE NO: ADJ7014878

Applicant,

v.

FINDINGS, AWARD & ORDER

**WILLITS HOSPITAL INC., DBA FRANK R.
HOWARD MEMORIAL HOSPITAL, PSI
administered by ADVENTIST HEALTH,**

Defendants.

This judge's summary of the sub rosa video is attached.

The above-entitled matter having been heard and submitted, Michael J. Hurley, Workers' Compensation Judge, now finds, awards and orders as follows:

FINDINGS OF FACT

1. The parties stipulated to the following facts:
 - A. Mandy Arms, born August 24, 1980, while employed on May 29, 2009 as a food service worker, occupational group 322, at Willits, California by Frank Howard Memorial Hospital, sustained an admitted injury arising out of and in the course of employment to her low back and psyche.
 - B. At the time of injury, the employer's workers' compensation carrier was Adventist Health in Roseville.
 - C. At the time of injury, the employee's earnings were \$644.25 per week, warranting indemnity rates of \$429.50 for temporary disability and maximum for permanent partial disability based upon date of injury.
 - D. The defendant has paid temporary disability for the period May 30, 2009 through June 9, 2009 at the rate of \$429.50 per week, and for the period September 24, 2009 through May 4, 2011 at the rate of \$429.50 per week.

- 1 E. Defendant has paid permanent disability at the rate of \$230.00 and \$264.50 per week for
2 the period May 5, 2011 through April 17, 2013, for a gross amount of \$26,446.61.
- 3 F. The employer has furnished all medical treatment, and the primary treating physician is
4 Dr. Filgas.
- 5 G. No attorney fees have been paid and no attorney fee arrangement has been made.
- 6 H. It is applicant in the video.
- 7 2. Applicant became permanent and stationary for her physical injuries on December 17,
8 2013, and for her psychological injury on May 7, 2013. Applicant was temporarily
9 totally disabled for 104 weeks during the period May 30, 2009 and May 7, 2013.
- 10 3. The opinion of Dr. Kipperman is not credible or substantial evidence on the issue of
11 permanent disability or apportionment.
- 12 4. Applicant has permanent disability with regard to her back of eighteen percent (18%)
13 after consideration of apportionment.
- 14 5. Applicant is in need of further medical treatment to cure and/or relieve from the effects
15 of the orthopedic and psychological injuries.
- 16 6. Applicant's counsel performed services of a reasonable value of \$1,900.00.
- 17 7. Based upon this judge's finding of temporary total disability, this judge does not find any
18 overpaid temporary total disability.

19 **AWARD**

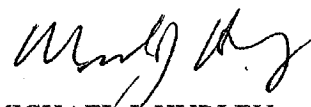
20 **AWARD IS MADE** in favor of Mandy Arms against Adventist Health of:

- 21 A. Temporary total disability pursuant to the Finding of Fact set forth above, less credit
22 for all sums previously paid on account thereof, less credit for what appears to be a
23 permanent disability overpayment;
- 24 B. Permanent disability in the total sum of \$15,065.00, plus the fifteen percent (15%)
25 increase, less an attorney fee of \$1,900.00 payable to Robert Fowler;
- 26 C. Such further medical and psychological treatment as is needed to cure and/or relieve
27 from the effects of the industrial injury.
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ORDER

IT IS ORDERED that the parties seek an AME or a new Panel QME on the issues of permanent disability and apportionment with regard to the psyche forthwith.



MICHAEL J. HURLEY
Workers' Compensation Judge

Dated:
Filed and served by mail on parties
as shown on the Official Address Record.
By: _____

MANDY ARMS
ADJ7014878

OPINION ON DECISION

With regard to the issue of temporary total disability, it is clear to this judge based upon the opinion of Dr. Miles, as set forth in his report of January 10, 2014, with an examination of December 17, 2013, that applicant was not MMI as previously indicated by Dr. Miles, but was found MMI on that exam date. Based upon the credible and substantial opinion of Dr. Kipperman, applicant was found permanent and stationary with regard to the psyche on May 7, 2013. It was based upon those opinions that those findings of fact were made.

With regard to the issue of temporary total disability, as applicant was not permanent and stationary any time before May 7, 2013, and there was clearly 104 weeks during the period of May 30, 2009 and May 7, 2013, this judge awarded the full 104 weeks. This is, of course, less credit for all sums previously paid on account thereof, as well as less what appears to be a permanent disability overpayment.

With regard to the issue of permanent disability, Dr. Miles finds applicant to have a whole person impairment of a DRE Lumbar Category for twenty-one percent (21%). Dr. Miles finds seventy-five percent (75%) to be apportioned to the industrial injury, and this judge finds Dr. Miles' apportionment to be credible and substantial and has followed it in this case. This judge rated Dr. Miles out as follows:

15.03.01.00 – 221[5] 27 – 322F – 27 – 24

Multiplying this by seventy-five percent (75%) comes to eighteen percent (18%), or at the neutral rate of \$15,065.00. As no offer of modified regular or alternative work was made, the parties stipulated that applicant is entitled to a fifteen percent (15%) increase that leaves that increase in the total amount of permanent disability owed to the adjustment of the parties with Board jurisdiction reserved.

With regard to the issue of future medical care, both Dr. Miles and Dr. Kipperman find applicant in need of further medical care and such was awarded.

With regard to the issue of permanent disability in the psychological area, this judge having reviewed all of Dr. Kipperman's reports, and his depositions, agrees with defendant that Dr. Kipperman has failed in his duty of considering apportionment in this case and on that basis, finds his opinion on the issue of permanent disability and apportionment to be not credible or substantial and could not follow it in this case. As there was no other evidence presented on this issue, this judge ordered the parties to return to an AME or a Panel QME to resolve these remaining disputes.

With regard to the issue of temporary total disability overpayment, based upon this judge's findings of temporary total disability, there can be no overpayment until 104 weeks of temporary disability has been paid and therefore no overpayment was awarded.



MICHAEL J. HURLEY
Workers' Compensation Judge

Mandy Arms
ADJ 7014878

Summary of Sub Rosa Video

April 8, 2013:

At 10:04 a.m., we see a white car come toward the camera. We can't see the faces of who's in it to say who it was.

It's now 10:14 a.m., and we see a woman walk away from us with black hair and a white blouse and blue jeans. She appears to walk without effort. She goes out of view. We can see a woman with her face away from us. It is apparently the same woman based on body habitus.

It's now 10:17 a.m. She turns toward us, and it is applicant. We see her standing in what appears to be a parking lot, smoking a cigarette with her right arm. There is another woman present with whom she appears to be talking.

It's now 10:18. She is still in the parking lot and is still smoking. She is still talking to the other lady. She moves around a bit, standing straight up, smoking a cigarette, and talking to a lady in what appears to be a parking lot.

It's now 10:19. It is the same scenario. Again, applicant moves around a bit and smokes her cigarette. She eventually puts her cigarette out against the curb, bending over to do so without apparent effort, standing straight back up. Upon finishing her conversation, she then bends over and grabs her bag, a drink, and an envelope and walks out of sight.

It's now 10:22. We see applicant come back to what apparently is the white car we have previously seen and get in without apparent effort.

It's now 12:25 on April 8th. We see applicant walking to what looks like some kind of commercial establishment. She stands in a doorway. We see her bend over a little bit, taking her head and the top of her shoulders out of view. We then see her exit the establishment and kind of jog a few steps to her vehicle. Again, she is seen opening the door, getting in, sitting down, grabbing something, and then getting out and coming back, walking into the commercial establishment.

It's now 8:28. We see applicant out with another woman. She is in the white blouse and blue jeans, with a green undershirt or something. She is smoking a cigarette, walking a little bit, and talking to this other lady. The other lady exits from view, and we see just the applicant from chest high. The other

lady walks back into view, and they continue to talk. The applicant bends over out of view. We don't know what she did, but she continues to talk to the other lady. She is not smoking. We are across from a road because vehicles keep crossing right in our view.

It is now 12:30. It's still the same view. We see her from about mid-waist up, smoking a cigarette and speaking with a woman who is mostly out of view.

It is now 12:31. We still see her near the road smoking. She goes out of view and maybe puts her cigarette out. We can't tell. She is now on a cell phone using her right hand. It is still 12:31, and she goes out of view.

It is now 12:32. She is back in view around the same place with the same lady and now a gentleman. She is laughing with that gentleman and walks away and goes out of view.

It is now 12:33, and she is still out of view.

It is now 12:34, and we see her walk outside of, again, the commercial establishment, apparently the same one, and then walk back in. Then, a couple of seconds later, she walks back out and goes to her vehicle and puts something in the vehicle and goes back into the commercial establishment, but not very far back because we do see her dimly through a dark doorway. Again, the view of this is across the road, so we continuously see traffic go by, including big trucks, which block the whole view.

It is now 12:36. Another person comes in. We temporarily lose the view of applicant, but it appears we still see an outline of her through a dark doorway.

It is now 12:38. The applicant still is in this commercial establishment. We see her faint outline through the door. Applicant goes in and out of view as she walks further into the store away from the door, eventually coming back.

It is now 12:40. Again, we see the same pattern of applicant going further into the commercial establishment where she goes out of view and then comes back closer to the door. We can't tell what she is doing because it is a very dim view of her.

It is now 12:41, and she is still in the store on April 8th, 2013.

It is now 12:42. She, again, comes out toward the car, quickly walking a couple of steps, and gets in the vehicle.

It is now 1:06. There is a different view; and we are following a white car, which might be applicant's car.

It is now 1:07 p.m. We see what appears to be applicant walking away from our view toward a residence and out of view.

April 9th, 2013:

It is 7:37 a.m. We see applicant's vehicle leaving.

It is now 7:40, and we see applicant's vehicle.

It is now 7:45, and we see applicant's vehicle.

It is now 7:49, and we see what appears to be applicant in a different outfit than the day before. She hops into her car. She is away from us, so I can't be absolutely sure it is applicant; but it appears to be the same white vehicle. Based upon the shadows, it's impossible to see what she is doing; although it does appear that smoke is coming out of the car, so maybe she is smoking a cigarette.

It is now 8:29, and we are at a gas station. We see her exit her vehicle and open the gas door on her vehicle, take out the gas cap, and put in the gas pump line to the vehicle.

It is 8:30 a.m., and we see her bend over slightly to do that and make sure it fits. We see her walk around a bit. It apparently went off, so she had to come and start it again. We see her put on what appears to be lipstick or something that she appears to be putting on her lips. We see her step over the gas fueling line, open the back door of her vehicle, and bend over and do something in the back seat. There appears to be people in the back seat. She may be chatting to them, but I can't really tell what she is doing. She is bending over into the backseat area of her vehicle. She takes the line back to the pump, shuts the gas cap door, and enters her vehicle without apparent effort.

It is 8:32. We see her drive away.

It is now 8:37.

It is now 9:03. We see applicant's vehicle.

It is now 10:26. We see applicant with another girl walking away from us. I can't tell if it's a commercial building or not. Apparently, it is some kind of fast food restaurant.

It is now 10:32. The person applicant is with is purchasing something at this fast food restaurant. We see applicant walk away from the cashier and go further down the line, apparently getting some kind of soft drink or maybe iced tea. We see applicant apparently filling her cup and drinking from it. We see her look at her phone in front of the soda and drink machines. She puts her phone

away. She appears to be talking to the same lady that was in the car previously mentioned. Applicant is in a black sweatshirt with what appears to be black jeans or at least black pants.

It is now 10:35. They are still waiting in front of the machines apparently for an order. The lady applicant is with gets her order, and they leave the restaurant. We next see her outside. They enter their vehicle. It is 10:37 a.m. on April 9th.

It is now 10:53.

It is now 11:37 on April 9th. We see applicant in her vehicle, but she doesn't appear to be the driver. The other lady she is with is the driver. We see applicant get out of the passenger door and look around and stand next to the car with the door open. She then gets back in the vehicle as a passenger.

It is now 11:41. We see the car leave.

It is now 11:44. We see applicant out by a curb, and we see her bend over. Maybe she is talking to someone inside a car. She is crouched down. We then see her stand up, staying bent over and going out of view, maybe going into her vehicle. We see a white door at that point. She is apparently looking for change, maybe for a meter. We see her then go back to looking in the car. Her friend is bent down on one knee, and she is bent over looking for something, maybe for change in her purse. We see applicant straighten up and then sit back down. The camera turns off.

It is now 11:47. Applicant is again standing. The woman she is with is down on one knee.

It is now 11:48. We see applicant again sitting in the passenger seat with the door open. We can see applicant bent over getting something in her vehicle, apparently grabbing the two drink cups that we had seen earlier. We then see her go to the front of the car for a moment, look at something, and turn around and come back. Then a car gets in our way, and we don't see them.

It is now 11:49, and we see applicant and her girlfriend walking toward the camera.

It is now 11:50, and we see them walking away from the camera. She apparently walks without effort, holding a purse over her right shoulder and a coat on her left arm.

It is now 11:51, and we are at a different angle; but we see both applicant and her friend walking. We see what looks like them sitting down on something, and then we go to a different view.

It is now 11:53, turning 11:54, and applicant down on what looks like some steps. She pulls a cigarette out of a cigarette pack and lights it and starts smoking.

It is now 11:56. She still sitting and still smoking.

It is now 11:57, and she continues to do the same. She then picks up an envelope and starts looking at whatever is in the envelope. She puts it down and checks her phone.

It is 11:59. She is still sitting. She puts out the cigarette. It looks like she is gathering her things to get up and go, and she does so. She and her friend keep walking and go to some red steps and go up the red steps. Again, they go into what looks like some kind of commercial establishment out of view.

It is now 3:09, and they are both back in view.

It is 3:11, and we see applicant walking away from the camera. We see her enter the passenger side of a car.

June 3rd, 2013:

It is 7:48 a.m. We see a white car coming toward us. Based on the view, we can't say who is driving it or who the passenger is. Next, we get a clear shot. It is 7:48, and it does appear to be applicant.

It is now 8:02 a.m. on June 3rd, 2013. We apparently are following behind applicant's vehicle.

It is now 8:32; and, again, we appear to be following behind applicant's vehicle.

It is 8:35, and we are continuing to follow.

It is 8:59, and now we are in front of applicant's vehicle.

It is now 9:02. We see applicant in what appears to be a bank of some kind. She is in a white tank top with blue jeans. There might be stripes on the tank top. It is kind of hard to tell if it is stripes or shadows.

It is now 9:05, and we are still in the bank apparently. Applicant leaves the bank at 9:08.

We then pick applicant back up at 9:11 walking in front of us with apparently no effort and enter another commercial establishment.

It is now 9:13, and we see her leave the establishment. We see her get into a white vehicle that we have seen previously. She enters without apparent effort. She then gets up out of the vehicle and goes back into the commercial establishment.

It is now 9:15, and she exits with a plastic bag full of some groceries. She stays there for a few minutes and lights a cigarette.

We change scenes, and it is 9:40. We see her vehicle leaving away from us.

It is now 9:57. We see her vehicle coming toward us.

It is now 10:05. We see her in a parking lot of some kind. She enters her vehicle.

It is now 10:06. We see her driving away from us. All of this is on June 3rd, 2013.

It is now 10:12, June 3rd. We see her in what appears to be some kind of commercial establishment.

June 4th, 2013:

It is now 8:18 a.m. We see applicant's vehicle driving away from us.

It is now 9:24 on June 4th.

It is now 9:25, and we see applicant's vehicle driving toward us. We can't tell exactly who is in it.

It is now 9:53.

It is now 9:55. We see what appears to be applicant's vehicle.

It is now 9:57. Again, we see what appears to be applicant's vehicle. There is somebody in the driver's seat, but we can't tell who it is. There is also a passenger in the vehicle. Again, we are looking from the rear; and from this angle, and based on the shadows, this Judge is unable to say who is in the vehicle.

It is now 9:59 a.m. We see what appears to be applicant's vehicle with two people in it, one in the driver's seat and one in the passenger's seat. This Judge is unable to tell who those people are.

It is now 10:00 a.m. on June 4th, 2013. We have the same view.

It is now 10:01. We have the same view. It does appear that the passenger door has opened, though; and then we see the door shut.

It is now 10:02, and we are seeing the same view.

It is now 10:04, and it is the same view.

It is now 10:05, and it is the same view.

It is now 10:06, and it is the same view. This is, again, a view looking through a back door window of a white vehicle at the driver. It is so shaded that there is no way for this Judge to tell who that driver may be.

It is now 10:07, almost 10:08. We see some movement of the driver.

We change views, and it is now 10:13. We see applicant leave her vehicle and then return to it. She gets in the vehicle without difficulty.

It is now 10:38. Applicant appears to be in some kind of grocery store.

It is now 10:39. We see applicant crouched down looking at the bottom two shelves at a grocery store. We see her stand up without apparent effort.

It is now 10:40. Applicant is still in the grocery store.

It is now 10:42. Applicant is still in the grocery store.

It is now 10:43. Applicant is still in the grocery store picking up groceries and putting them in a basket. There appears to be maybe two other people with her, or at least they are using the same basket. Applicant appears to be shopping with two elderly people.

It is now 10:45. Applicant is now at the check stand, putting the groceries on the counter for the checker.

It is now 10:50. Applicant, along with the two elderly people, is out at her car. Applicant grabs her purse and opens the back door while the elderly gentleman and elderly woman pick up the groceries and put them in the vehicle. They all three then get in the vehicle. They sit in the vehicle and talk for a few minutes and pass packages back. At 10:52, they left.

It is now 10:56 a.m., and we are once again at a gas station. Applicant is filling her car up with gasoline. She grabs the hose and nozzle and sticks it into her car and stands, waiting for it to fill up.

It is now 8:57. Applicant appears to be finished filling her car. She puts the hose away, shuts the gas cap, shuts the gas cap door, and gets into her vehicle. They sit there a few minutes, and then there's a change of scene.

It is now 11:01 on June 4th, 2013. We see applicant for a second, and then she goes out of view.

It is now 11:15 a.m., and we see applicant in what appears to be a private residence getting into her vehicle, again without effort, and starts backing up.

August 21st, 2013:

It is 7:49 a.m. We see applicant's vehicle moving away from us.

It is now 7:58.

It is now 10:10. We are in front of some commercial establishment. We see applicant standing in front in a grey sweatshirt, blue jeans, smoking a cigarette. Applicant has a white purse on her right arm. Applicant switches the purse to the other arm and changes the cigarette to her right hand. We see her with her back to us, sometimes swinging around far enough to be able to recognize her. She meets up with a girl, and they walk inside at 10:23.

August 22nd, 2013:

It is 8:04 a.m. We see what looks like applicant's vehicle, with what appears to be applicant driving; but we only see the back and side of her head, so we can't tell for sure.

It is now 8:05 a.m. Again, we see the back of applicant's vehicle moving; and it comes to a stop.

It is now 8:11 a.m. We see applicant exit her vehicle and walk across a street and run a couple of steps and go up some stairs and into a commercial establishment.

It is 8:12. Applicant comes back out, again walks quickly a few steps to her vehicle, and gets in it without apparent effort.

It is now 8:15. Applicant's car goes out of view.

It is now 8:19, and applicant's car is back in view. Again, we see the back of it pulling into a residential area.

That is the end of the video.

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

11-05-2014

PROOF OF SERVICE OF F&A&O AND SUB ROSA SUMMARY

Case Number: ADJ7014878

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The F&A&O and Sub
Rosa Summary were
served on the above parties
by mail and/or by email on
11/05/2014 by kcs.