

STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board

JOSE CAMACHO (MENESES);

Applicant,

vs.

Case No. ADJ6783209
Santa Ana District Office

FINDINGS AND AWARD

ARAMARK SPORTS & ENTERTAINMENT;
ACE AMERICAN INSURANCE COMPANY,
administered by SEDWICK CLAIMS
MANAGEMENT SERVICES,

Defendants.

MEHR AND ASSOCIATES
By: Michelle Beshore
Attorneys for Applicant

BRADFORD AND BARTHEL
By: Claudia A. Peterson
Attorneys for Defendants

The above entitled matter having been heard and regularly submitted, the Honorable Joanne M. Coane, Workers' Compensation Administrative Law Judge, now decides as follows:

FINDINGS OF FACT

1. The applicant, Jose Camacho (Meneses), born March 9, 1959, while employed on July 21, 2008, as a stand worker, occupational group number 322, at Anaheim, California, by Aramark Sports and Entertainment [hereinafter, Aramark], insured for workers' compensation by ACE American Insurance Company, whose adjusting agency is Sedgwick Claims Management Services, sustained injury arising out of employment and in the course of employment to his head and neck, and claims to have sustained injury arising out of employment and in the course of employment

to his right shoulder and back, resulting in a sleep impairment causing chronic pain, and psychological problems. (See 4/21/2014 Minutes of Hearing, page 2, The Following Facts Are Admitted, item numbers 1 and 2.)

2. Based upon the stipulations of the parties, as well as upon the presented credible and substantial medical evidence, the Trial Court previously confirmed and determined that the applicant sustained injury AOE / COE to his head and neck, but elected to further develop the medical record regarding injury AOE / COE concerning the applicant's alleged psyche injury, resulting in a sleep impairment, causing chronic pain and psychological problems. (See 7/1/2014 Findings, Award and Order, Findings of Fact numbers 2 and 4.)

3. Specifically, the parties were "ordered to further develop the evidentiary record ... by providing Dr. Maloff with Dr. Zehler's July 3, 2011 neuropsychologist report for review and consideration, and to obtain Dr. Maloff's final medical opinions concerning" psyche injury AOE / COE. (See 7/1/2014 OPINION ON DECISION, page 11, The Trial Court's Decision To Further Develop the Medical Record Concerning the Psychological / Psychiatric Evidence.)

4. The parties further developed the record as instructed by the Trail Court, and obtained a supplemental August 19, 2014 report from Dr. Maloff, as well as Dr. Maloff's January 29, 2015 deposition testimony. (See Dr. Maloff's 8/19/2014 report, Appeals Board Exhibit ZZZZ, and Dr. Maloff's 1/29/2015 deposition transcript, Appeals Board Exhibit XXXXX.)

5. Based upon the credible and substantial medical evidence provided by Dr. Maloff, the Trial Court finds that the applicant sustained an industrial injury to his psyche consisting of a simple phobia, but that this condition did not result in a sleep impairment causing chronic pain and psychological problems, other than the applicant's simple phobia. (See Dr. Maloff's 8/19/2014 report, page 21, APPORTIONMENT OF CAUSATION, Appeals Board Exhibit ZZZZ.)

6. The Trial Court finds that the applicant became permanent and stationary on an orthopedic basis at least by April 25, 2013, as determined by the parties' orthopedic Panel QME

Dr. Schwarz, and on a psychiatric basis on approximately September 21, 2008, as determined by psychiatric QME Dr. Maloff. (See Dr. Schwarz' 4/25/2013 report, page 8, STATUS, Appeals Board Exhibit Z. See also, Dr. Maloff's 8/19/2014 report, page 21, APPORTIONMENT OF CAUSATION, Appeals Board Exhibit ZZZZ.)

7. The Trial Court finds that the applicant has no level of permanent disability, as determined by the parties' orthopedic Panel QME Dr. Schwarz and by psychiatric QME Dr. Maloff. (See Dr. Schwarz' 4/25/2013 report, page 8, IMPAIRMENT, Appeals Board Exhibit Z. See also, Dr. Maloff's 8/19/2014 report, pages 19 – 22, ASSESSMENT OF DISABILITY, CONSIDERATION OF ALTERNATIVE DISABILITY RATING METHODOLOGIES, and APPORTIONMENT OF CAUSATION, Appeals Board Exhibit ZZZZ.)

8. Since the Trial Court has already determined that the applicant has no level of permanent disability, the issues concerning the apportionment of the causation of injury and the causation of permanent disability are moot.

9. The Trial Court previously determined that the applicant is in need of future medical treatment on an orthopedic basis for his head and neck, as determined by the parties' orthopedic Panel QME Dr. Schwarz. (See 7/1/2014 Findings, Award and Order, Findings of Fact number 3.) The Trial Court additionally finds that the applicant is not entitled to any future industrial medical treatment on a psychiatric basis, as determined by QME Dr. Maloff. (See Dr. Maloff's 8/19/2014 report, page 22, RECOMMENDATIONS, Appeals Board Exhibit ZZZZ.)

10. The Trial Court defers making any lien claim determinations in this matter, since no lien claims were presented to the Trial Court for determination. (See 4/21/2014 Minutes of Hearing, ISSUES, pages 2 – 3, item number 7.)

11. The applicant has presented a non-specific claim for reimbursement for unpaid medical mileage, in an unknown amount. Therefore, the Trial Court defers making any determination regarding the applicant's mileage reimbursement claim, since the Trial Court is not presently able to

ascertain what the applicant's actual claim is. (See 4/21/2014 Minutes of Hearing, ISSUES, pages 2 – 3, item number 9.)

12. Finally, the applicant's claim to entitlement to a 15% increase or "bump up" regarding the payment of weekly permanent disability indemnity, as specified in Labor Code § 4658(c)(2), is moot, since the Trial Court has already determined that the applicant is not entitled to any permanent disability indemnity.

13. The applicant's attorneys are entitled to an attorney's fee, based upon the efforts which they expended in bringing this matter through the litigation process. However, inasmuch as there are no available workers' compensation benefits, against which an attorney's fee can be assessed, no attorney's fee is being awarded.

AWARD

AWARD IS MADE in favor of **JOSE CAMACHO** against **ARAMARK SPORTS & ENTERTAINMENT** of:

- A. Future Medical Treatment, per Finding of Fact Number 9.
- B. Lien Claim Reimbursement, per Finding of Fact Number 10.
- C. An Attorney's Fee per Finding of Fact Number 13.

Dated in Santa Ana on May 21, 2015


JOANNE M. COANE
WORKERS' COMPENSATION JUDGE

**SERVED ON ALL PARTIES INDICATED ON THE
OFFICIAL ADDRESS RECORD (See Attached
Official Address Record and Proof of Service)
DATED: 05/21/2015**

BY: 
NACunanan

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

Case No. ADJ6783209
(Santa Ana District Office)

JOSE CAMACHO,

Applicant,

vs.

ARAMARK SPORTS & ENTERTAINMENT;
ACE AMERICAN INSURANCE COMPANY,
administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES,

Defendants.

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award (F&A) issued on May 21, 2015, by the workers' compensation administrative law judge (WCJ). The WCJ found in pertinent part that applicant suffered no permanent disability as a result of his injury. Applicant contends that the WCJ erred in finding that applicant did not suffer any permanent disability because the WCJ relied upon the reports of the orthopedic qualified medical evaluator (QME) Charles Schwarz, M.D., which did not constitute substantial medical evidence. Applicant further contends that he did sustain permanent disability per the reporting of his primary treating physician, David Soloway, M.D., which constituted substantial medical evidence.

We have received an answer from defendant. We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ, recommending we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record, and for the reasons stated in the WCJ's report, which we adopt and incorporate, we will deny reconsideration.

In addition to the reasons stated in the WCJ's report, we would note that we do not find the reporting of Dr. Soloway to constitute substantial medical evidence on the issue of impairment.

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

1 examination and history, and it must set forth reasoning in support of its conclusions.” (*Escobedo v.*
2 *Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) Dr. Soloway assigns the
3 highest possible impairment rating to applicant’s neck under a diagnosis related estimate category two
4 (DRE II) and further increases the rating by three percent for applicant’s pain. (Exhibit 7, Report of
5 David Soloway, M.D., January 22, 2013, at p. 19.) Dr. Soloway states that there is significant
6 asymmetric loss of range of motion and significant muscle spasm in assigning this rating. (*Ibid.*)
7 However, earlier in the report Dr. Soloway reports that applicant denies pain to palpitation of the cervical
8 spine. (*Id.* at p. 7.) Dr. Soloway goes on to state that applicant has minimal paravertebral and trapezius
9 pain and myospasm. (*Ibid.*) Further, Dr. Soloway’s range of motion measurements of applicant’s
10 cervical spine, which are at or near normal, are not consistent with a finding of asymmetric loss of
11 motion. (*Id.* at p.8.) The finding of asymmetric loss of motion is also inconsistent with a finding of
12 minimal spasm. Dr. Soloway’s clinical findings are inconsistent with his rating applicant in DRE II.

13 Dr. Soloway also assigns a pain add-on of three percent whole person impairment. Again
14 however, Dr. Soloway’s clinical findings do not support a pain add-on. (See *Id.* at pp. 4-5.) Applicant
15 reports pain as follows: “At this moment, he has no pain. Most of the time, he has no pain.” (*Id.* at p. 4.)
16 Dr. Soloway’s report does not establish the criteria for a pain add-on. Dr. Soloway’s report is not
17 substantial medical evidence. If anything, Dr. Soloway’s clinical findings support the findings of the
18 QME, who found no permanent impairment.

19 The record supports the WCJ’s findings. The WCJ did not act in excess of her powers by
20 determining that applicant did not suffer permanent impairment from his injury.

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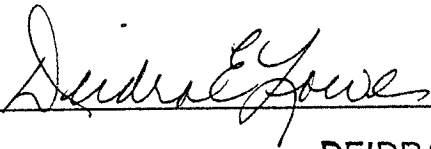
1 For the foregoing reasons,

2 **IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Award issued
3 on May 21, 2015, by the WCJ is **DENIED**.

4 **WORKERS' COMPENSATION APPEALS BOARD**

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7 **MARGUERITE SWEENEY**

8 I CONCUR,

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12 **DEIDRA E. LOWE**

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16 **RONNIE G. CAPLANE**



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

18 **AUG 11 2015**

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

22 **;**

23 **BRADFORD & BARTHEL
24 JOSE CAMACHO
25 MEHR & ASSOCIATES**



26
27 **EDL:mm**

CAMACHO, Jose