

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

KATIA ESCOBEDO, *Applicant*

vs.

**SOUTHERN CALIFORNIA HEALTHCARE SYSTEM/PROSPECT MEDICAL
HOLDINGS, Permissibly Self-Insured, Administered by CORVEL, *Defendants***

**Adjudication Number: ADJ13528847
Marina del Rey 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, we will deny reconsideration.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 5, 2022

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

**KATIA ESCOBEDO
CALIFORNIA WORKERS COMPENSATION LAWYERS
DORMAN & SUAREZ
EMPLOYMENT DEVELOPMENT DEPARTMENT**

HAV/ara

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

- | | |
|--|---|
| 1. Applicant's Occupation: | certified nurse's assistant (CNA) |
| 2. Applicant's Age: | 20 |
| 3. Date of injury: | 2/16/2020 |
| 4. Parts of Body alleged: | bilateral upper extremities, cervical spine, thoracic spine, lumbar spine, right shoulder, right leg, right knee and psyche |
| 5. Manner in which injuries have Occurred: | specific injury |
| 6. Identity of Petitioner: | Defendant |
| 7. Timeliness: | The Petition was timely. |
| 8. Verification: | A verification is attached. |
| 9. Date of Findings of Fact and Order: | 4/26/2022 |
| 10. Petitioner's contentions: | 1. The evidence does not justify the Findings of Fact. |

II
FACTS

This matter previously went to trial and was submitted on 8/19/2021. The only issues set for trial were AOE/COE, attorney fees and Post-Termination defense pursuant to Labor Code Section 3600(a) (10). The Applicant and defense witness, Menchie Dasalla, testified at trial.

A Findings of Fact and Order issued on 11/8/2021. The Findings of Fact concluded Applicant did not meet her burden of proof regarding injury AOE/COE. Applicant filed a timely and verified Petition for Reconsideration dated 12/15/2021. Defendant filed an Answer on 12/21/2021.

The undersigned WCJ prepared a Report and Recommendation dated 1/18/2022 indicating that she had reconsidered her opinion regarding AOE/COE and now agreed with Applicant. She recommended that the Petition be granted to reflect that Applicant had in fact met her burden of proof that she sustained injury arising out of and in the course of her employment to her cervical spine, thoracic spine, lumbar spine, right shoulder and right knee as a result of the injury on 2/16/2020.

The WCAB issued an Opinion and Order Granting Petition for Reconsideration and Decision after Reconsideration on 2/14/2022. The WCAB concluded that “the Petition for Reconsideration was timely, and that it appears applicant met her burden of proof on the issue of injury arising out of and in the course of employment (AOE/COE), the WCJ did not explain the reasons her recommended finding as to the issue of defendant’s post-termination defense.” The WCAB then ordered Reconsideration granted, the 11/8/2021 Findings of Fact and Order was rescinded and the matter was to be returned to the trial level ”for the WCJ to reissue her decision addressing all issue in the first instance.”

The matter was returned back to the trial calendar on 3/17/2022. On that date, the matter was resubmitted without additional testimony or documents at the parties request. (See Minutes of Hearing dated 3/17/2022) The WCJ issued her Findings of Fact and Award on 4/26/2022. Defendant filed a timely, verified Petition for Reconsideration on 5/3/2022. To date Applicant has not filed an Answer to Petition for Reconsideration.

Defendant contends that the evidence does not justify the Findings of Fact. The WCJ respectfully disagrees. For the following reasons the Petition for Reconsideration should be denied.

III **DISCUSSION**

Defendant’s Petition for Reconsideration appears premised on the fact that although the defense witness, Menchie DaSalla, testified that she did not specifically recall that Applicant reported the 2/16/2020 injury to her, she would have remembered such a violent incident if it had been reported to her. Ms. DaSalla’s actual testimony was that Applicant never told her about the details of an aggressive patient with flailing arms and legs and this would be the type of conversation she would have remembered. (See Minutes of Hearing and Summary of Evidence dated 8/19/2021 page 9, lines 11 to 13) Ms. DaSalla’s hypothetical conjecture regarding her memory did not rebut the definitive testimony of the Applicant that she reported her symptoms to Ms. DaSalla a few days after the accident. (See Minutes of Hearing and Summary of Evidence dated 8/19/2021 page 8, lines 11 to 12)

Next Defendant points out that the records of Applicant’s Primary Care Physician, Dr. Bady, are silent with regard to a work-related injury and should be given great weight regarding injury AOE/COE. These records were introduced by Defendant as Exhibit B and consist of three partially legible progress notes for dates of service 3/6/2020, 5/20/2020 and 8/3/2020. Applicant testified that Dr. Bady had been her primary care physician for over 5 years. She also testified that there were communication problems between her and Dr. Bady and when they spoke in English they often needed an interpreter as English was neither ones first language. Further Applicant testified

that Dr. Bady had a thick accent. (See Minutes of Hearing and Summary of Evidence dated 8/19/2021 page 5, lines 24-25 and page 6, lines 1-2)

To the extent that the report is legible it is clear that based on its content and Applicant's testimony, Dr. Bady is not a workers compensation doctor. The records of Dr. Bady are only a small portion of the medical reports in evidence. The determination of AOE/COE was based on the entire record including the Panel QME report of Dr. Sang Lee who is a workers compensation doctor and who in fact reviewed the medical reports of Dr. Bady along with a numerous medical records. The entire record supports the finding that Applicant met her burden of proof of establishing injury AOE/COE regarding injuries she sustained to her bilateral upper extremities, cervical spine, thoracic spine, lumbar spine, right shoulder, right leg and right knee on 2/16/2020.

The remaining issue to address is further explanation of the Finding regarding the Post-Termination Defense. The WCAB specifically returned the matter back to the undersigned to provide further explanation regarding her finding in this regard. The WCJ provided her explanation for her finding regarding the affirmative defense of post-termination in her Findings of Fact and Award dated 4/26/2022.

The current Petition for Reconsideration does not raise the Post Termination defense as an issue. The WCJ will provide a brief explanation in order to be thorough.

Defendant failed to establish that Applicant's claim was barred by the affirmative defense of post-termination. This finding was based on the credible and un rebutted testimony of the Applicant, the testimony of the defense witness, Menchie DaSalla and the entire record.

Applicant definitively testified that she reported her injuries to Ms. DaSalla a few days after the 2/16/2020 incident. The Applicant was deemed a credible witness by the WCJ. The defense witness, Menchie Dasalla, was unable to rebut applicant's testimony. Applicant testified that her last date of work was on 7/3/2020. Therefore, Applicant credibly testified that she reported her injuries to her supervisor while she was still working for her employer prior to her last day at work or termination.

RECOMMENDATION

As the Petition for Reconsideration fails to demonstrate good cause upon which to base the setting aside of the Findings and Award dated 4/26/2022, it is respectfully recommended that the Petition for Reconsideration be denied.

Date: 5/31/2022

Respectfully submitted,

CIRINA A. ROSE
Workers' Compensation Judge