

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

ASHRAF GORGI, Applicant

vs.

**KOLAH FARANGI RESTAURANT and EMPLOYERS COMPENSATION INSURANCE
COMPANY, *Defendants***

**Adjudication Number: ADJ11016330
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings of Fact (Findings), issued by the workers' compensation administrative law judge (WCJ) on May 24, 2021, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his abdomen, that applicant did not sustain injury AOE/COE to his psyche, skin (dermatitis et cetera), body system (cancer), and in the form of headaches.

Applicant contends that the report from psychology treating physician Ana L. Nogales, Ph.D., and applicant's testimony are evidence that applicant sustained a psychiatric injury; and that the reports from internal medicine qualified medical examiner (QME) Mark H. Hyman, M.D., are not substantial evidence that applicant's cancer is not an industrial injury.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in pages 1 through 8 of the Report (only pages 1 through 8 of the Report are adopted and incorporated by this reference thereto), and for the reasons discussed below, we will affirm the Findings except that we will amend the Findings to defer the issue of whether applicant sustained a psychiatric injury AOE/COE (Finding of Fact 2); and we will return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant claimed injury to his psyche, abdomen, skin (dermatitis), body system (cancer), and in the form of headaches, on June 1, 2013, while employed by defendant as a chef.

QME Dr. Hyman evaluated applicant on July 5, 2018. Dr. Hyman examined applicant and took a history but he was not provided medical records to review. The diagnoses included, “Probable cutaneous adnexal skin tumor [eccrine porocarcinoma, a rare type of skin cancer], not industrially related.” (Def. Exh. B, Dr. Hyman, July 5, 2018, p. 7.) Dr. Hyman indicated that in order to address additional issues, he would need to review the medical record. (Def. Exh. B, p. 9.) In his supplemental report, after reviewing the medical records, Dr. Hyman stated:

Record #6 is the April 2017 pathology report which identified squamous cell [type of skin cancer] versus an eccrine porocarcinoma. ... ¶ Further, as previously explained [sic], the skin condition would not be an industrially related condition.

(Def. Exh. C, Dr. Hyman, July 18, 2018, pp. 1 – 2.)

Dr. Hyman’s deposition was taken on February 8, 2019. (Def. Exh. E, Dr. Hyman, February 8, 2019, deposition transcript.) In his report, the WCJ noted that at the deposition:

Dr. Hyman further reasoned that the type of applicant’s skin cancer is not related to his job because there is no scientific literature that suggests that trauma like a knife, a meat exposure, scratching your skin or anything causes that type of skin cancer. Defendant’s Exhibit E ... page 11, lines 15-20 ... ¶ Dr. Hyman based his medical opinion and determination that the applicant’s rare skin cancer was non-industrial, based upon his best medical opinion, upon the scientific literature, principles of causation, his understanding, the research mechanisms, evaluation of the literature, and his evaluation and review of medical records as previously indicted, based on reasonable medical probabilities. Defendant’s Exhibit E ... page 11, lines 21-25 ... ¶ Dr. Hyman reasoned that there is no mechanism in the medical literature that identifies a knife injury causing the applicant’s cancer. Defendant’s Exhibit E ... page 14, lines 5-7... ¶ ... In sum, Dr. Hyman stated that it is simply a rare skin cancer which no one knows what causes it. Defendant’s Exhibit E ... page 16, lines 22-25... .

(Report, pp. 3 – 4.)

Applicant “was referred for a psychological evaluation and he was seen on June 04, 2019” by psychologist, Dr. Nogales. (App. Exh. 8, Dr. Nogales, June 4, 2019, p. 1.) In the “History of Injury” section of her report, Dr. Nogales stated:

As Mr. Gorgi was pulling the boxed toward him, he unknowingly pulled the knife, which had a 6” blade, into his abdominal area. Mr. Gorgi reports about ½” of the blade entered his abdomen. He quickly cleaned the wound with hydrogen peroxide and wrapped it. ¶ ... Mr. Gorgi left work early ... and visited the clinic next door for treatment. ... He stated that know stiches were placed on the wound. ... ¶ A few months later, Mr. Gorgi went to the clinic because he developed small red bumps over the wound. He was given some lotion to apply on it. The skin irritation worsened for around three years, at which time, he was diagnosed with skin cancer. Mr. Gorgi became deathly terrified after he was diagnosed with cancer.
(App. Exh. 8, p. 2.)

Dr. Nogales concluded:

Mr. Gorgi's diagnoses of Major Depressive Disorder, Single Episode, Moderate ...and Generalized Anxiety Disorder ... are due to his employment at Kolah Farangi, as a consequence of the June 1, 2013 injury. ¶ In my opinion, the percentage of total causation of his current mental disorder is estimated at a higher level than the legal threshold of industrial causation of more than 51%.
(App. Exh. 8, p. 22.)

The parties proceeded to trial on March 5, 2020, (Minutes of Hearing and Summary of Evidence (MOH/SOE), March 5, 2020.) The matter was continued for further testimony and at the January 14, 2021 trial it was submitted. (MOH/SOE, January 14, 2021.) The issues submitted for decision were injury AOE/COE, parts of body injured, and whether the reports by Dr. Hyman constitute substantial evidence. (MOH/SOE, March 5, 2020.)

DISCUSSION

It is well established that any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) When a physician’s report is based on an adequate history and examination, is not speculative, and sets forth the reasoning behind the physician's opinion, not merely his or her conclusions, the report constitutes substantial evidence. (*Granado v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, in his reports, after examining applicant and reviewing the medical record, Dr. Hyman concluded that applicant's skin cancer "would not be an industrially related condition." (Def. Exh. C, pp. 1 – 2; see also Def. Exh. B, p. 7.) At his deposition Dr. Hyman explained in detail that the scientific literature clearly shows there was no causal relationship between applicant's knife injury and his skin cancer. (See e.g. Def. Exh. E, pp. 11 and 14.) He also explained that his opinion was based on upon the scientific literature, his understanding of the principles of causation, the research, mechanisms, evaluation of the literature, and his evaluation and review of medical records. (Def. Exh. E, pp. 11.) Dr. Hyman's reports and testimony comply with the requirements of the case law cited above, to constitute substantial evidence. Also, as noted by the WCJ, applicant submitted no evidence that is contrary to or inconsistent with Dr. Hyman's opinion that applicant's skin cancer was not caused by his June 1, 2013 knife injury. Thus, we agree with the WCJ that applicant did not sustain an injury AOE/COE in the form of cancer.

Regarding Dr. Nogales' opinion as to the cause of applicant's Major Depressive Disorder (App. Exh. 8, p. 20), we note that her discussion of the cause of applicant's psychiatric condition included the following:

In the reports dated November 16, 2018 and December 14, 2018, Van Vu, MD, primary treating physician, noted diagnoses of headache; cervical disc disorder with radiculopathy, cervicothoracic region; strain of muscle, fascia, and tendon at neck level; strain of muscle/sand tendon/s of the rotator cuff of right shoulder; laceration of muscle/sand tendon/s of the rotator cuff of right shoulder; strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, right arm; strain of muscle/s and tendon/s of the rotator cuff of left shoulder; laceration of muscle/s and tendon/s of the rotator cuff of left shoulder; strain of unspecified muscle, fascia, and tendon at shoulder and upper arm level, left arm; tear of articular cartilage of left knee; and sprain of unspecified site of left knee. (App. Exh. 8, p. 21.)

Further, as the WCJ explained:

With respect to addressing causation, Dr. Nogales states that applicant developed an anxiety condition as a result of sustaining a job-related physical injury, but does not explain how or why, but/for stating the applicant has extreme pain. This is inconsistent with the applicant's previous statement that he became deathly terrified after he was diagnosed with cancer. Dr. Nogales does not explain what percentage of the applicant's psychological issues are due to the rare skin cancer diagnosis, wherein a cancerous tumor was removed, and the knife wound. She then states that four (4) other factors are to be considered for purposes of causation determination, such as a bump on the abdomen 14 years

ago, three or four motor vehicle accidents whereby the applicant injured his back and received settlements, a prior work injury to his right hand and wrist wherein he had surgery, and missed work for about six (6) months, and another prior work injury to his right foot wherein he missed work. ... ¶ Notwithstanding the above-mentioned five (5) non-industrial factors, Dr. Nogales states that more than 51% of applicant's anxiety and depression is due to industrial causation caused by the applicant's 06/01/2013 injury.
(Report, pp. 6 – 7.)

Based on our review of the report from Dr. Nogales, it appears the WCJ is correct that after identifying several previous and subsequent physical injuries, Dr. Nogales provided no explanation for her opinion that:

[T]he percentage of total causation of his current mental disorder is estimated at a higher level than the legal threshold of industrial causation of more than 51%.
(App. Exh. 8, p. 22.)

Therefore, we agree with the WCJ that the report from Dr. Nogales is not substantial evidence regarding applicant's psychiatric injury claim. However, the Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue, or when it is necessary in order to fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases" and "may not leave matters undeveloped where it is clear that additional discovery is needed." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403, 404 [65 Cal.Comp.Cases 264].) Normally, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Review of the trial record indicates there is no evidence supporting applicant's contention that Dr. Nogales is in fact applicant's treating physician. Under the circumstances of this matter, upon return to the WCJ, it will be appropriate for the parties to have applicant evaluated by a psychiatry/psychology QME or agreed medical examiner (AME).

Accordingly, we affirm the Findings except that we amend the Findings to defer the issue of whether applicant sustained a psychiatric injury AOE/COE (Finding of Fact 2); and we return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the May 24, 2021 Findings of Fact, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

2. Applicant, Ashraf Gorgi, did not sustain injury to his skin (dermatitis et cetera), body system (cancer), and headaches arising out of and occurring in the course of employment; the issue of whether applicant sustained a psychiatric injury arising out of and occurring in the course of employment is deferred.

* * *

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I DISSENT,

/s/ DEIDRA E. LOWE, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 14, 2022

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

**ASHRAF GORGI
HINDEN & BRESLAVSKY
TOBIN LUCKS**

TLH/pc

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

DISSENT OF COMMISSIONER DEIDRA LOWE

I agree with the majority that Dr. Hyman's reports and testimony constitute substantial evidence, and that the report from Dr. Nogales is not substantial evidence. However, it is clear that applicant did not meet his burden of proof in regard to the psychiatric injury claim and I do not see good cause to further develop the record. Therefore, I dissent.

The employee bears the burden of proving injury arising out of and in the course of employment by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297–298 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) If a party fails to meet its burden of proof by obtaining and introducing competent evidence, it is not the job of the Appeals Board to rescue that party by ordering the record to be developed. (Lab. Code, § 5502; *San Bernardino Community Hospital v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Telles Transport Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290]; *Guzman v. Workers' Comp. Appeals Bd.* (2013 W/D) 78 Cal.Comp.Cases 893.)

In this matter, instead of going through the proper QME process to have applicant examined by a psychology QME, or in the alternative an AME, applicant was referred to Dr. Nogales for a “Primary Treating Physician’s Comprehensive Psychological Evaluation. (App. Exh. 8, p. 1.) Applicant’s date of injury was June 1, 2013, and he was seen by Dr. Nogales on June 04, 2019. However, as noted by the majority, the trial record contains no evidence that Dr. Nogales actually provided any treatment to applicant. Therefore, the report from Dr. Nogales is not substantial evidence and as the WCJ stated, “Applicant has failed to present a scintilla of medical evidence to support his claim of an industrial injury to his psyche.” (Report, p. 8.) Applicant had a significant amount of time to seek psychiatric treatment if appropriate, or to otherwise produce evidence that he had sustained a psychiatric injury. Having failed to exercise due diligence during that time, I see no reason to “rescue” him by further developing the record. Thus, I would affirm the WCJ’s finding that applicant did not sustain a psychiatric injury AOE/COE. For these reasons, I dissent.



WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 14, 2022

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

**ASHRAF GORGI
HINDEN & BRESLAVSKY
TOBIN LUCKS**

TLH/pc

I certify that I affixed the official seal of the Workers' Compensation Appeals Board to this original decision on this date. *abs*

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

1. Applicant's Occupation: Chef
Ages at Injury: 62
Parts of Body Injured: Abdomen
Manner in which injury occurred: Specific Injury
2. Identity of Petitioner: Applicant Ashraf Gorgi Filed the Petition.
Timeliness: The Petition is Timely.
Verified: The Petition is Verified
3. The Petitioner Contends That:
 - a) That the WCJ erred in Finding that the Panel QME Dr. Mark Hyman's Medical Reports constituted substantial evidence.
 - b.) That the WCJ erred in Finding that the applicant sustained injury arising out of and in the course of employment to his body system (cancer) and psyche.

**II.
SUMMARY OF FACTS**

This matter proceeded to Trial on March 5, 2020, October 8, 2020, December 17, 2020 and January 14, 2021, on the issue of injury arising out of and in the course of employment as to the parts of body injured, namely abdomen, psyche, skin (dermatitis), body system (cancer) and headaches. With respect to parts of body injured, this WCJ found injury as to the applicant's abdomen only, and did not find injury arising out of and in the course of employment as to the applicant's psyche, skin (dermatitis), body system (cancer), and headaches.

The issues presented by the petitioner applicant raised in his Petition for Reconsideration is whether PQME Mark Hyman's Medical Reports constitute substantial evidence and whether the applicant sustained injury arising out of and in the course of employment to his psyche and body system (cancer) as noted in this WCJ's Findings of Fact. Findings of Fact, dated 05/24/2021, EAMS DOC. ID NO.: 74226999.

Testimony was taken at the Trials wherein only the applicant testified; defendants did not provide any witnesses. Petitioner Applicant's Petition for Reconsideration addresses the validity of the Findings of Fact issued by this WCJ as stated above. Findings of Fact dated 05/10/2021, EAMS DOC ID No.: 74177320.

III. **DISCUSSION**

In considering the evidence provided by the parties and considering the admitted evidence, with respect to applicant's body system (cancer) and psyche claim, the parties selected Dr. Mark H. Hyman, MD, FACP, FIAIME, PQME, as the Panel Qualified Medical Evaluator (PQME) in the field of Internal Medicine. The applicant submitted the Medical Reports of Ana Nogales, Ph.D., treating psychologist, dated 06/04/2019 regarding the applicant's claimed psyche injury, which will be discussed below.

In Dr. Hyman's Medical Report dated 07/05/2018, Dr. Hyman opined that his diagnosis of the applicant was a probable cutaneous adnexal skin tumor, not industrially caused. It appears that he may have a rare type of skin cancer. The most likely type is an eccrine porocarcinoma. Defendant's Exhibit B, Medical Report of Mark H. Hyman, MD, PQME dated 07/05/2018, page 7, pars. 2-4. EAMS DOC. ID NO.:72434360.

Dr. Hyman's research indicated that the cause of this type of cancerous tumor is unknown or genetic. He could not identify any occupation at increased risk for these rare tumors. There would be no known relationship between his work activities or scratching of the skin on this tumor. Therefore, this would not be industrially related. Defendant's Exhibit B, Medical Report of Mark H. Hyman, MD, PQME, dated 07/05/2018, page 8, par. 1, EAMS DOC. ID NO.: 72434360.

In his review of medical records, PQME Dr. Hyman indicated that the records are remarkable, at one point suggesting that he first noted a difficulty on the skin 14 years prior to this evaluation (medical records began in 2014). At another point, applicant identifies the changes occurring 4 years ago. In either case, this pre-exists his work with Kolah Farangi or at the least is concurrent with the onset of his work at Kolah Farangi. As previously explored, the skin condition would not be an industrially related condition. Defendant's Exhibit C, Medical Report of Mark H. Hyman, MD, PQME dated 07/18/2018, page 2, par. 2, EAMS DOC. ID NO.: 72434363.

In his medical report dated 10/17/2019, Dr. Hyman reviewed the medical records from UCLA Medical Center, and said records were unrelated to this accident. Defendant's Exhibit D, Medical Report of Mark H. Hyman, MD, PQME, dated 10/17/2019, page 1, pars. 1-2, EAMS DOC ID NO.: 72434366.

The Deposition of Mark H. Hyman was taken by applicant's attorney on 02/09/2019. In his deposition, Dr. Hyman stated that he believed an oncologist would not be helpful in this case, because the records are clear regarding the type of cancer. The medical research he identified looked at that cancer of the applicant. Dr. Hyman could not see an industrial relationship. Defendant's

Exhibit E, Deposition of Dr. Mark H. Hyman, MD, PQME dated 02/08/2019, page 5, lines 13-20, EAMS DOC. ID NO.: 72434370.

Dr. Hyman had no changes regarding causation concerning the applicant's non-industrial condition in his medical reports. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME dated 02/08/2019, page 6, lines 6-8, EAMS DOC. ID NO.: 72434370.

The applicant told Dr. Hyman that the mechanism of his injury was from scratching his abdomen multiple times. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME dated 02/08/2019, page 6, lines 24-25; page 7, lines 1-6, EAMS DOC. ID NO.: 72434370.

Dr. Hyman further reasoned that the type of applicant's skin cancer is not related to his job because there is no scientific literature that suggests that trauma like a knife, a meat exposure, scratching your skin or anything causes that type of skin cancer. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME, dated 02/08/2019, page 11, lines 15-20, EAMS DOC ID NO.: 72434370.

Dr. Hyman based his medical opinion and determination that the applicant's rare skin cancer was non-industrial, based upon his best medical opinion, upon the scientific literature, principles of causation, his understanding, the research mechanisms, evaluation of the literature, and his evaluation and review of medical records as previously indicted, based on reasonable medical probabilities. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME, dated 02/08/2019, page 11, lines 21-25, EAMS DOC. ID NO.: 72434370.

Dr. Hyman reasoned that there is no mechanism in the medical literature that identifies a knife injury causing the applicant's cancer. Defendant's Exhibit E, Deposition of Mark H. Hyman, MD, PQME, dated 02/08/2019, page 14, lines 5-7, EAMS DOC. ID NO.: 72434370.

In his previous medical report dated 07/05/2018, Dr. Hyman provided to the parties a Summary form "Up-To-Date" which analyses this type of cancer and its causation. Dr. Hyman also relied upon the AMA Guides companion book on causation, looking at those principles for consideration. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME, date 02/08/2019, page 14, lines 8-14, EAMS DOC. ID NO.: 72434370; See Also Defendant's Exhibit B, Medical Report of Mark H. Hyman, MD, PQME, dated 07/05/2018, pages 15-28, EAMS DOC. ID NO.: 72434360.

Dr. Hyman noted that the pathology report as seen in the medical record number 6 of April 2017, identified the porocarcinoma (cancer). Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME, dated

02/08/2019, page 16, lines 11-15, EAMS DOC. ID NO.: 72434370. In sum, Dr. Hyman stated that it is simply a rare skin cancer which no one knows what causes it. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME dated 02/08/2019, page 16, lines 22-25; page 17, line 1, EAMS DOC. ID NO.: 72434370.

As to his qualifications and experience, Dr. Hyman stated that he has acted in the capacity as an Agreed Medical Evaluator and Panel Qualified Medical Examiner in Internal Medicine regarding Workers' Compensation matters for about 25 years. He has also seen thousands of patients and/or applicants over that period of time on a forensic basis. He has evaluated patients and/or applicants hundreds of times for skin cancer. Lastly, he has rendered medical opinions of these applicants whether they are industrial or non-industrial, depending on the type of skin cancer. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, MD, PQME, dated 02/08/2019, page 17, line 21-23; page 17, lines 24-25; page 18, lines 1-4; page 18, lines 5-7; EAMS DOC. ID NO.: 72434370.

In terms of proving causation that applicant's skin cancer was industrial, applicant presented no medical evidence whatsoever. The malignant Eccrine Poroma discussed by Dr. Hyman was identified in Applicant's Exhibit 7. Applicant's Exhibit 7, Medical Report of Dr. Rhonda Rand, dated 06/23/2017, EAMS DOC. ID NO.: 72434211.

PQME Dr. Hyman concluded that it is within reasonable medical probabilities that the applicant's body system (cancer) was not industrially caused. Again, applicant presented no evidence to the contrary. Defendant's Exhibit E, Deposition Transcript of Mark H. Hyman, dated 02/08/2019, page 11, lines 15-20; page 14, lines 5-7, EAMS DOC ID NO.: 72434370.

Based on the totality of the medical evidence presented to this Court, and the applicant's testimony, it was found that the applicant did not sustain an industrial injury to his body system (cancer) nor his psyche which will be discussed below, arising out of and in the course of employment.

IV. ISSUE RAISED

APPLICANT'S CLAIM THAT PQME DR MARK H. HYMAN'S MEDICAL REPORTS AND OPINIONS DO NOT CONSTITUTE SUBSTANTIAL EVIDENCE IS SPECIOUS AND IS CONJECTURE, SINCE APPLICANT HAS NOT PRESENTED ANY MEDICAL EVIDENCE TO THE CONTRARY.

As previously stated in the Discussion above, PQME Mark H. Hyman, MD, QME concluded with reasonable medical probability that the applicant did

not sustain injury to his internal system body system (cancer) as a result of his industrial injury.

It should be noted that applicant did not provide any medical evidence or witness to rebut the PQME Dr. Hyman's medical findings and conclusions concerning his body system (cancer) claim.

Dr. Hyman's medical findings, based on reasonable medical probabilities which constituted substantial evidence, was based on examining the entire record, by taking a detailed history of the applicant, evaluating the applicant, reviewing **all available medical records and diagnostic testing**, and formulated his medical opinion pursuant to his specialty as a Diplomate, American Board of Internal Medicine, Agreed Medical Evaluator and Qualified Medical Examiner. His opinions were a probative force on the medical issues, not speculative and are fully in accordance with *Escobedo v Marshalls* (2005) 70 CCC 604 (Appeals Board En Banc) and *Braewood Convalescent Hospital v. Workers Compensation Appeals Board* (1983) 34 Cal. 3d 159, 164. Dr. Hyman's medical opinions were more than a mere scintilla, and relevant evidence was utilized by Dr. Hyman to reach his conclusions. As a result, his medical opinions were reasonable in nature, credible and of solid value. Applicant's argument that his rare skin cancer was caused by his job without presenting any medical evidence whatsoever is surmise, conjecture and speculation, since the applicant did not present any evidence whatsoever to this claim.

As stated above, applicant's argument that Dr. Hyman's medical opinions and findings did not constitute substantial evidence is specious and relies on conjecture. What is perplexing to this WCJ is that this specific injury occurred on 06/01/2013, eight (8) years ago, and the applicant did not submit any medical evidence regarding the causation of his rare skin cancer, nor provide any deposition testimony of applicant's treating physicians regarding the skin cancer, nor provide any medical records discussing the cause and etiology of said skin cancer. Applicant's claim that Dr. Hyman relied on incorrect medical literature, evaluation, and review of medical records, coupled with his 25 years of experience in diagnosing and evaluating several types of skin cancer as an Agreed Medical Evaluator and Panel Qualified Medical evaluator in Workers' Compensation matters is incorrect, and flies in the face of logic. What did the applicant want him to rely on, hypotheticals not based on medical facts or medical records?

More pertinent, applicant did not acquire any other medical opinion on the subject, such as requesting applicant's Treating Physicians to comment upon the etiology and causation of the applicant's rare skin cancer. Why didn't the applicant acquire more evidence if they believed the current information was not accurate? Applicant's arguments, claims and conclusions that Dr. Hyman's medical opinion does not constitute substantial evidence in light of the totality

of the circumstances are surmise, conjecture and speculation. Dr. Hyman appropriately relied on the evidentiary record consisting of medical facts, history, pathology reports, and medical records in rendering his medical opinion. For applicant to argue otherwise lacks credibility and is without merit. As a result, PQME Dr. Mark H. Hyman's medical opinions and conclusions finding that the applicant's internal system – body system (cancer) condition was not industrially related was correct and proper, and constituted substantial evidence.

V.

THE APPLICANT DID NOT SUSTAIN HIS BURDEN OF PROOF AND PROVE THAT THE APPLICANT SUSTAINED A PSYCHE INJURY ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT.

Applicant on direct examination testified while he was working, a knife went into his stomach. This occurred because a co-employee put a knife under the boxes. The applicant pulled the boxes forward to reach the meat. By accident, the knife went into his stomach because the knife was caught under the boxes when he pulled them. It cut his stomach. Minutes of Hearing and Summary of Evidence, dated 03/05/2020, page 4, lines 16-22, EAMS DOC. ID NO.: 72434458.

Applicant testified that he became worried and anxious when the physicians at Harbor-UCLA Medical Center removed a cancerous tumor from his stomach, because he did not know what was going to happen to him. Minutes of Hearing and Summary of Evidence, dated 03/05/2020, page 5, lines 15-21; page 6, line 1, EAMS DOC. ID NO.: 72434458.

Under cross-examination by defendants, the applicant testified that he did not lose any time from work four (4) years after the injury. Applicant stated that he returned to work the day after the incident. Minutes of Hearing and Summary of Evidence, dated 10/08/2020, page 2, lines 13-15, EAMS DOC. ID NO.: 73370827; Minutes of Hearing and Summary of Evidence, dated 12/17/2020, page 2, lines 19-21, EAMS DOC. ID NO.: 73649265.

Under continuing cross-examination by defendants, applicant stated that he filed his June 1, 2013 claim regarding his abdomen with his attorneys. He filed his case with them three to four years later. He filed this claim after his termination from Kolah Farangi. The doctor at the Venice Family Clinic told him to file the case. Minutes of Hearing and Summary of Evidence, dated 01/14/2021, page 2, lines 14-17, EAMS DOC. ID NO.: 73736226.

In the Medical Report of Ana Nogales, Ph.D. dated 06/04/2019, the applicant stated that when he was diagnosed with skin cancer at a medical clinic, he became deathly terrified after he was diagnosed with cancer. Applicant's

Exhibit 8, Medical Report of Ana Nogales, Ph.D., dated 06/04/2019, page 2, par. 7, EAMS DOC. ID NO.: 72434245.

Applicant admitted to Dr. Nogales that he had never been to a psychologist or psychiatrist, and he initially denied having any psychological issues, although he indicated he was very much sad about the cancer. Applicant's Exhibit 8, Medical Report of Ana Nogales, Ph.D., dated 06/04/2019, page 19, par. 4, EAMS DOC. ID NO.: 72434245.

With respect to addressing causation, Dr. Nogales states that applicant developed an anxiety condition as a result of sustaining a job-related physical injury, but does not explain how or why, but/for stating the applicant has extreme pain. This is inconsistent with the applicant's previous statement that he became deathly terrified after he was diagnosed with cancer. Dr. Nogales does not explain what percentage of the applicant's psychological issues are due to the rare skin cancer diagnosis, wherein a cancerous tumor was removed, and the knife wound. She then states that four (4) other factors are to be considered for purposes of causation determination, such as a bump on the abdomen 14 years ago, three or four motor vehicle accidents whereby the applicant injured his back and received settlements, a prior work injury to his right hand and wrist wherein he had surgery, and missed work for about six (6) months, and another prior work injury to his right foot wherein he missed work. Applicant's Exhibit 8, Medical Report of Ana Nogales, Ph.D., dated 06/04/2019, page 22, par. 1, EAMS DOC ID NO.: 72434245.

Notwithstanding the above-mentioned five (5) non-industrial factors, Dr. Nogales states that more than 51% of applicant's anxiety and depression is due to industrial causation caused by the applicant's 06/01/2013 injury. Applicant's Exhibit 8, Medical Report of Ana Nogales, Ph.D., dated 06/04/2019, page 22, par.3, EAMS DOC ID NO.: 72434245.

Upon considering the totality of the circumstances, and the applicant's testimony, which this WCJ found credible when he described why he was anxious and depressed, due to the rare skin cancer and the cancerous tumor the physicians at Harbor-UCLA removed, it is clear that the applicant is anxious and depressed upon finding that he had this rare skin cancer, malignant Eccrine Poroma, which said cancerous tumor was removed from his stomach. He admitted this in his court testimony and with Dr. Nogales. However, this cancer was rendered non-industrial by PQME Dr. Mark H. Hyman as indicated above.

In light of the above, Dr. Nogales' Medical Report does not constitute substantial evidence under the Braewood and Escobedo decisions in finding applicant's psyche claim was industrially caused. There is no substantial evidence presented to establish industrial causation as to a psyche injury. She doesn't indicate what non-industrial factors contributed to the applicant's anxiety and depression, even though the applicant himself indicated that the

cancer was the cause. Dr. Nogales does not present competent medical evidence to establish industrial causation. Her proof of industrial causation is not reasonably probable. Applicant has failed to present a scintilla of medical evidence to support his claim of an industrial injury to his psyche. See *Braewood Convalescent Hospital v. WCAB* (1983) 34 Cal. 3d. 159,164; *Escobedo v. Marshalls* (2005) 70 C.C.C. 604 (En Banc). As a result, applicant did not sustain his burden of proof in establishing his psyche injury was industrially caused as a result of this 06/01/2013 specific injury by the preponderance of the evidence as stated above, and thus the applicant did not sustain injury to his psyche arising out of and in the course of employment while working for defendant.