WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

FAUSTO MENCHACA, ***Applicant***

vs.

HEDMAN MANUFACTURING COMPANY;
AMERICAN AUTOMOBILE INSURANCE COMPANY, ***Defendants***

Adjudication Number: ADJ12718876
Los Angeles District Office

OPINION AND ORDER GRANTING PETITION FOR RECONSIDERATION AND DECISION AFTER RECONSIDERATION

Applicant seeks reconsideration in response to the Findings and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on July 26, 2022. As relevant herein, the WCJ found that applicant did not sustain injury arising out of and in the course of employment (AOE/COE) to various body parts during the period of August 2, 2018 through August 2, 2019 while employed by the defendant, and ordered that applicant shall take nothing on his claim.

Applicant contends, as relevant herein, that the evidence does not justify the WCJ's findings of fact.

We did not receive an answer from defendant. We received a Report and Recommendation (Report) from the WCJ recommending that we deny 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 the WCJ's analysis of petitioner's arguments in the report, we will grant reconsideration, rescind the WCJ's decision, and find that applicant did sustain injury AOE/COE.

FACTUAL BACKGROUND

Applicant claims he sustained injury to his knees, shoulders, ankles, back, neck, hands and fingers while employed by the defendant as a painter during the period of August 2, 2018 through August 2, 2019. Applicant's primary treating physician is Archie Mays, M.D.

Defendant sent applicant a letter dated October 30, 2019 stating in pertinent part:

> After careful consideration of all available information, we are denying liability for your claim of injury. Workers' compensation benefits are being denied because no injuries were reported to your employer and there is no substantial evidence of work related injuries
>
> (Defendant's Exhibit D, Denial, October 30, 2019, p. 1.)

In a report dated March 5, 2021, Dr. Mays states applicant's diagnoses are:

1. OVERUSE SYNDROME [M70.99]
2. CERVICAL SPINE SPRAIN/STRAIN WITH MRI EVIDENCE OF GRADE I ANTERIOR LISTHESIS OF C3 ON C4 AND DISC BULGES AT C3-4, C4-5 2.9 MM, C5-6 1.8 MM AND C6-7 2.9 MM [S13.8XXA, M43.12, M50.20]
3. CERVICAL SPONDYLOSIS, PER X-RAYS [M47.812]
4. BILATERAL SHOULDER SPRAIN/STRAINS WITH MRI EVIDENCE OF LEFT SHOULDER COMPLETE-THICKNESS TEAR OF THE SUBSCAPULARIS TENDON FROM ITS DISTAL INSERTION SITE WITH AND MRI EVIDENCE OF RIGHT SHOULDER TENDINOSIS AND PARTIAL TEAR OF THE SUPRASPINATUS TENDON [S43.401A, S46.911A, S43.402A, S46.912A, S46.012A, M75.91, S46.011A]
5. BILATERAL LATERAL EPICONDYLITIS [M77.11, M77.12]
6. CLINICAL BILATERAL CARPAL TUNNEL SYNDROMES, WORSE ON THE RIGHT [G56.03]
7. CLINICAL BILATERAL DE QUERVAIN'S STENOSING TENOSYNOVITIS, WORSE ON THE RIGHT [M65.4]
8. LUMBAR SPINE SPRAIN/STRAIN WITH X-RAY EVIDENCE OF SPONDYLOSIS [S33.5XXA, S39.011A, M47.816]
9. RIGHT KNEE INTERNAL DERANGEMENT, STATUS POST TOTAL KNEE ARTHROPLASTY ON AUGUST 7, 2019 [M23.91, Z96.651, Z98.89]
10. LEFT KNEE SPRAIN/STRAIN AND MR1 EVIDENCE OF BUCKET-HANDLE TEAR OF MEDIAL MENISCUS WITH MODERATE OSTEOARTHRITIS [S83.92XA, S83.242A, M17.11]

11. BILATERAL ANKLE JOINT PAIN WITH SPRAIN/STRAINS AND MRI EVIDENCE OF MODERATE OSTEOARTHRITIS OF THE TIBIOTALAR JOINT AND MILD OSTEOARTHRITIS OF THE SUBTALAR JOINT [M25.571, M25.572, S93.401A, S93.402A, M19.071, M19.072]
12. BILATERAL ANKLE CALCANEAL SPURS, PER X-RAYS [M77.31, M77.32]
13. RULE OUT POLYARTHRALGIA OR POLYARTHRITIS [M13.0]
14. ANXIETY AND DEPRESSION DUE TO CHRONIC PAIN [F41.9, F32.9]

(Applicant's Exhibit 1, PTP Permanent and Stationary Report of Archie Mays, M.D., March 5, 2021, pp. 11-12.)

Under the heading "causation", Dr. Mays states:

> Absent any admitted, recorded or examination evidence to the contrary, given the consistency of the injury biomechanics in this case, it would appear reasonable to conclude that the primary contributory causative factor of injury and impairment involved in this case is the industrial injury herein. This is my opinion.
>
> (*Id*. at p. 12.)

Applicant was evaluated by Panel Qualified Medical Evaluator (PQME) Allen Fonseca, M.D. In a report dated August 3, 2021, Dr. Fonseca states:

ASSESSMENT:

> Based on the stated history, my physical examination, radiologic studies and the medical records my diagnostic assessments are:

1. S13.4xxD Sprain of ligaments of cervical spine, initial encounter.
2. Multilevel degenerative changes of the cervical spine, per x-rays, October 23, 2020.
3. S23.3xxD Sprain of ligaments of thoracic spine, initial encounter.
4. Multilevel degenerative changes of the thoracic spine of a mild degree, October 23, 2020.
5. S33.5xxD Sprain of ligaments of lumbar spine, initial encounter.
6. Multilevel degenerative changes of the lumbar spine, per x- rays, October 23, 2020.
7. S46.011D; S46.012D Strain of muscles and tendons of the rotator cuff of right and left shoulder, subsequent encounter.
8. S66.911D; S66.912D Strain of unspecified muscles, fascia and tendon at right and left wrist and hand level, subsequent encounter.

9. S83.91XD; S83.92XD Sprain of unspecified site of right and left knee, subsequent encounter.
10. Intact right knee arthroplasty. Mild to moderate left knee joint osteoarthritis, per x-rays of bilateral knees, October 23, 2020.
11. S93.401D; S93.402D Sprain of unspecified ligament of right and left ankle, subsequent encounter.
12. Osteoarthritis changes bilaterally with bilateral calcaneal bone spurs, per x-rays of bilateral feet, October 23, 2020.

(Joint Exhibit AA, Panel QME Report of Allen Fonseca, M.D., August 3, 2021, p. 33.)

Under the heading "Causation", Dr. Fonseca states:

> As I have previously opined, Mr. Menchaca has presented with a viable mechanism of industrial injury of August 2, 2018–August 2, 2019 (spine, bilateral upper and bilateral lower extremities). This is supported by the medical reports. There is, however, no medical reports indicating that he sought or received medical treatment while employed by the insured. It remains my opine that Mr. Manchaca's current symptoms and findings on physical exam are consistent with the mechanism of the industrial injury described above. Absent any admitted, recorded or examination evidence to the contrary or alternate mechanism of injury, it is reasonable to conclude that a contributory causative factor of injury and impairment involved in this case is the industrial injury herein. This is based on the information available to me at this time. If further documentation is submitted proving otherwise, I reserve the right to modify my opine. My medical opine is based on his stated history, submitted medical reports, his self-reported job description, my physical examination, deposition transcript, radiologist's interpretation of radiologic studies and my understanding of orthopaedic pathophysiology based on 29 years in clinical practice as a board-certified orthopedic surgeon. Should further relevant medical evidence become available for review, I will be review said medical information and issue an appropriate addendum report.
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> (*Id*. at p. 41.)

The parties proceeded to trial on May 10, 2022. According to the Minutes of Hearing (MOH), the issues were injury AOE/COE, temporary disability, permanent and stationary date, permanent disability, apportionment, need for further medical treatment, liability for self-procured medical treatment, liens, and attorney fees. The matter was continued to June 29, 2022 for further proceedings. (MOH, May 10, 2022, pp. 1-3.)

Applicant testified at the June 29, 2022 trial and testified in relevant part that, while working for the employer, he lifted items weighing up to 70 pounds, that he engaged in continuous lifting while working and that he experienced pain in his knees, hands, neck, back, ankles at various times while working for the employer. (MOH, June 29, 2022, pp. 3-7.)

The WCJ issued the resulting F&O as discussed above. The Report of the WCJ states in relevant part:

> It is because of the conflicting testimony provided to the medical providers and to the Court while under oath, that the undersigned Judge is unable to determine if the medical provider's opinions are based on …an accurate history. As a result, Applicant did not meet his burden as to whether he sustained an injury arising out of and occurring in the course of employment to his knee, back, shoulders, ankle, neck, hand, and fingers.
>
> (Report, August 30, 2022.)

DISCUSSION

In the Opinion on Decision and the Report, the WCJ explained in detail why he found applicant not to be credible. A WCJ's opinions regarding witness credibility are entitled to great weight, (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]), and we do not question the WCJ's opinion as to applicant's credibility. However, when deciding a medical issue, such as whether an applicant sustained a cumulative injury, the WCJ must utilize expert medical opinion. (See *Insurance Company of North America v. Workers' Comp. Appeals Bd.* (*Kemp*) (1981) 122 Cal.App.3d 905 [46 Cal.Comp.Cases 913].) With respect to matters requiring medical knowledge, the WCJ cannot disregard a medical expert's conclusion when the conclusion is based on expertise in evaluating the significance of medical facts. (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006)145 Cal.App.4th 922 [71 Cal.Comp.Cases 1687].)

Although the factual issue of the occurrence of the alleged incident is a determination for the WCJ, the issue of injury is a medical determination, which requires expert medical opinion. As the Court of Appeal explained in *Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 [30 Cal.Comp.Cases 188]: "Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a [WCAB] finding; lay testimony or opinion in support of such a finding does not measure up to the standard

of substantial evidence. Expert testimony is necessary where the truth is occult and can be found only by resorting to the sciences."

Applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) It is sufficient to show that work was a contributing cause of the injury. (See *Clark*, *supra*, 61 Cal.4th at p. 298; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].) Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (*Clark*, *supra*, 61 Cal.4th at p. 303.) The burden of proof "manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1701 [58 Cal.Comp.Cases 313].) It has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (*Guerra v. Workers' Comp. Appeals Bd.* (2016) 246 Cal.App.4th 1301, 1310 [81 Cal.Comp.Cases 324], citing *Clemmons v. Workmen's Comp. Appeals Bd.* (1968) 261 Cal.App.2d 1, 8; see also *Garza*, *supra*, 3 Cal.3d at p. 317; Lab. Code, § 3202.)

It is also well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza*, *supra*; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion…It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd.* (*Bolton*) (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) 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 examination and history, and it must set forth reasoning in support of its conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).)

Here, both the PTP and the PQME concluded that applicant sustained a cumulative injury AOE/COE. Both doctors reviewed applicant's medical records, diagnostic studies,

medical history, and work history, as well as conducted physical examinations of the applicant and explained their analyses their reports. There is substantial medical evidence in the record here to support a finding of AOE/COE.

The inconsistencies in applicant's testimony at trial include the weight of the heaviest object applicant lifted while working, what year he started feeling the pain in his knee while working, and telling the PQME he never climbed at work and then testified he did have to climb ladders. While there may be inconsistencies in applicant's testimony, they are not crucial to the mechanism of injury. The doctors found that repetitive work as a painter was consistent with the injury sustained arising out of and occurring in the course of employment.

We are persuaded that applicant met his burden of proving AOE/COE by a preponderance of the evidence. Accordingly, we grant applicant's petition, rescind the WCJ's decision, and find that applicant did sustain injury AOE/COE.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of July 26, 2022 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of July 26, 2022 is **RESCINDED** and the following is **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant, Fausto Menchaca while employed by defendant Hedman Manufacturing Company as a painter, occupational group number 321, during the period of August 2, 2018 through August 2, 2019, sustained injury arising out of and in the course of employment to his knees, shoulders, ankles, back, neck, hands, and fingers.

2. During the period from August 2, 2018 through August 2, 2019, Hedman Manufacturing company was insured for workers' compensation by American Automobile Insurance Company.

3. All other issues are deferred.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 17, 2022

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

FAUSTO MENCHACA
LAW OFFICES OF BERNARDO DE LA TORRE
GILSON DAUB

HAV/ara

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