

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

AURORA LIM, *Applicant*

vs.

COUNTY OF SACRAMENTO, permissibly self-insured, *Defendant*

**Adjudication Number: ADJ12491512
Sacramento District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After Reconsideration.

Applicant, pro per, filed a Petition for Reconsideration and an Amended Petition for Reconsideration on August 31, 2022. We have considered the allegations of the Petitions 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 affirm the August 8, 2022 Findings. In addition, we order that applicant take nothing by way of her claim herein.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 8, 2022 Findings are **AFFIRMED**.

IT IS FURTHER ORDERED that applicant take nothing by way of her claim herein.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 25, 2023

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

**AURORA LIM
TWOHY, DARNEILLE & FRYE**

PAG/abs

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

<u>Date of Injury:</u>	February 16, 2017 through July 13, 2017
<u>Age on DOI:</u>	54 years old
<u>Occupation:</u>	Human Services Specialist
<u>Parts of Body Injured:</u>	<i>Claimed:</i> neck, left arm, shoulder, psyche, and back
<u>Identity of Petitioners:</u>	Applicant
<u>Timeliness:</u>	Petition was filed timely
<u>Verification:</u>	Amended Petition was verified
<u>Date of Order:</u>	August 8, 2022 (served August 11, 2022)
<u>Petitioners Contentions:</u>	Applicant contends she discovered new material evidence which she could not have discovered with reasonable diligence and produced at the hearing. Applicant contends the new material evidence does not justify the findings of fact.

II

FACTS

Applicant claims an injury arising during the period of February 16, 2017 through July 13, 2017, while working as a human services specialist involving the neck, left arm, shoulder, psyche, and back.

The case went to trial on the issue of injury arising out of and in the course of employment. Defendant raised res judicata and collateral estoppel regarding ADJ11099561. At trial, exhibits from ADJ11099561 were taken under judicial notice including Joint Exhibits AA through DD and Defendant Exhibits A through U. The parties submitted additional exhibits and Applicant testified. After trial, it was found Applicant did not sustain an industrial injury.

Applicant filed a Petition for Reconsideration contending she discovered new material evidence which she could not have discovered with reasonable diligence and produced at trial.

III

DISCUSSION

NEW MATERIAL EVIDENCE

All the documents filed with the Petition for Reconsideration pre-date the trial of June 27, 2022. All the documents filed with the Petition for Reconsideration were already admitted into evidence at trial or were summarized in the QME report by Dr. Kounang, which was admitted into evidence at trial. Some of the documents filed with the Petition for Reconsideration were also within exhibits

that were taken under judicial notice from ADJ11099561. Please see the chart provided below. Applicant filed no new evidence.

In the Petition for Reconsideration, Applicant contends the QME report by Dr. Kounang was not received by the Court; she attached a report by Dr. Kounang dated September 21, 2020. However, that report was admitted at trial and was marked as Defendant Exhibit A. In addition, Applicant contends the deposition transcript of Mr. Wasi was not received by the Court. However, that deposition transcript was admitted at trial as part of Applicant Exhibit 6.

The following documents were filed with the Petition for Reconsideration:

EAMS Doc ID	Description	ADJ12491512	ADJ11099561
75889099	Left wrist MRI 5/6/22 with Healthline printout	Applicant Exhibit 1	
75889000	Kaiser report Dr. Reed 1/16/19	Within Applicant Exhibit 2	
75889001	Kaiser report Dr. Chan 7/16/19	Applicant Exhibit 3	
75889002	SSA Notice of Decision & Decision 3/27/20	Applicant Exhibit 4	
75889003	QME fee request, Declarations of Service, QME Panel, Appointment Notices	Within Applicant Exhibit 5	
75889004	Kaiser reports Dr. Taniegra 12/15/17, 4/17/19, 5/1/19, 8/15/17, 4/23/19, 4/30/19 MRI cervical spine	Reviewed by Dr. Kounang in Defendant Exhibit A	
75889005	Kaiser report Dr. Reed 10/1/18, 10/17/18, 11/15/18, 1/16/19, 4/17/19, acupuncture 5/3/19 – 9/6/19,	Reviewed by Dr. Kounang in Defendant Exhibit A	
75889006	Center for Interdisciplinary Spine typed notes and reports 12/2/19, 9/17/19, 3/16/17, 3/2/17, 4/17/19	Reviewed by Dr. Kounang in Defendant Exhibit A	
75889007	Electromyography Dr. Bermudez 6/21/22	Applicant Exhibit 11	
75889008	Operative report left carpal tunnel 7/14/17	Applicant Exhibit 12	
75889009	Consultation 5/30/17	Applicant Exhibit 13	Defendant Exhibit N
75889010	Depo Dr. Zwerin 2/13/19	Reviewed by Dr. Kounang in Defendant Exhibit A	Defendant Exhibit S
75889011	Recorded interview of Applicant 5/31/17	Reviewed by Dr. Kounang in Defendant Exhibit A	Joint Exhibit CC (ID Only)
75889012	Depo Kermell Sidney 11/21/17	Reviewed by Dr. Kounang in Defendant Exhibit A	Defendant Exhibit U
75889013	QME Report Dr. Zwerin 2/28/18	Reviewed by Dr. Kounang in Defendant Exhibit A	Joint Exhibit BB

75889014	Depo of Applicant Vol. 3 2/2/18	Reviewed by Dr. Kounang in Defendant Exhibit A	Defendant Exhibit K (ID Only)
75889015	Attendance sheet 3/30/17	Within Applicant Exhibit 6	
75889016	Investigative Findings 6/25/18	Within Applicant Exhibit 6	
75889017	Police Report 2/17/17	Within Applicant Exhibit 6	
75889018	Timesheets 1/22/17 – 7/22/17	Within Applicant Exhibit 6	
75889019	Workplace Violence Incident Report 2/17/17	Within Applicant Exhibit 6	Joint Exhibit DD
75889020	QME Report Dr. Kounang 9/21/2020	Defendant Exhibit A	
75889021	There is no document labeled 75889021	in this case.	
75889022	Physical therapy notes 8/29/17 – 1/29/20	Reviewed by Dr. Kounang in Defendant Exhibit A	

INJURY AOE/COE

Applicant claims an injury during the cumulative trauma period of February 16, 2017 through July 13, 2017 to the neck, left arm, shoulder, psyche, and back. Defendant denies the claim and contends res judicata and collateral estoppel based on ADJ11099561.

RE: Prior Cases of ADJ11003671, ADJ10906254 (Specific Injury on February 16, 2017)

In ADJ11003671, Applicant filed an application claiming a specific injury to arising on February 16, 2017 to her left arm, left shoulder, neck, back and psyche due to battery by a co-worker. In ADJ10906254, Applicant filed an application claiming a specific injury on February 16, 2017 to stress and left arm due to being assaulted by a coworker at a meeting. At trial, Applicant had testified on that Mr. Wasi knuckled her on the shoulder on February 16, 2017.

On February 10, 2021, a Findings of Fact issued including the finding that Applicant did not sustain an injury arising out of and in the course of employment to her left arm, left shoulder, neck, back, and psyche arising on February 16, 2017 (ADJ11003671, ADJ10906254). Applicant filed a Petition for Reconsideration and the Recon Unit issued an Opinion and Order Denying Petition for Reconsideration.

RE: Subject Case of ADJ12491512 (CT February 16, 2017 - July 13, 2017)

Applicant filed an application claiming a cumulative trauma from February 16, 2017 through April 30, 2019 arising when she was punched by a co-worker, Rahim Wasi while she was talking with another coworker at an office celebration. Applicant claimed Mr. Wasi punched her shoulder with his knuckles. Applicant filed an amended application claiming a cumulative injury from

February 16, 2017 through July 13, 2017 to the left arm, left shoulder, neck, back, and psyche due to battery by a coworker.

At trial, Defendant produced a letter to Applicant from the County of Sacramento dated June 25, 2018, indicating that the County conducted a thorough and objective investigation of her complaint and the allegations were not substantiated based on the information provided by Applicant, witnesses, documents, physical evidence, and County policies; and the complaint was found to have no merit. (Applicant Exhibit 6) At trial, Applicant testified that she was told the complaint against Mr. Wasi had no merit.

Applicant is not credible. She testified at trial and was not believable.

At trial, she testified about the incident, in pertinent part, as follows: Judy asked her to go to the dessert competition. She was talking to Judy when suddenly she felt a knuckle on her shoulder. She told Judy that Mr. Wasi had just hit her. She screamed “Don’t touch me, you hurt me” and Judy heard her. Mr. Wasi ran from the table to the door, looked at Applicant, and said “Ha, ha.”

During his deposition Mr. Wasi testified that he tapped Applicant on the shoulder with his finger to ask if she wanted any dessert and Applicant said no. Mr. Wasi testified he waited for the winner to be announced and then went to the classroom to help clean up. Mr. Sidney testified that he attended the entire dessert competition and did not witness any commotion between Applicant and Mr. Wasi. Ms. Robinson testified that she saw Applicant and Mr. Wasi at the dessert competition and did not observe any kind of commotion. Ms. Garcia testified that she was one of the judges at the dessert competition and did not recall seeing Mr. Wasi there. Judy Gastinell testified that Mr. Wasi asked Applicant if she wanted to try some dessert and Applicant refused. Judy Gastinell testified that she did not witness Mr. Wasi knuckle Applicant’s arm and asked if Applicant if she was kidding when Applicant mentioned it later. (Applicant Exhibit A)

At trial, Applicant testified that she felt a knuckle on her shoulder and Mr. Wasi had hit her. Applicant testified that she was injured by Mr. Wasi on February 16, 2017, and all her symptoms result from that incident. Applicant testified that she disagrees with the prior determination of no injury on February 16, 2017 and wants the Judge to take a second look. Applicant testified that the report by Dr. Kounang was not considered previously. Applicant testified that she disagreed with the opinions of Dr. Zwerin and Dr. Clarfield.

Applicant obtained a panel in pain medicine. Dr. Kounang performed a QME evaluation of Applicant on September 21, 2020. Dr. Kounang took a history from Applicant and performed an exam. Dr. Kounang reviewed medical records and deposition transcripts. Dr. Kounang diagnosed Applicant with pre-existing cervical mild to moderate degenerative changes, arthritis, and myofascial pain syndrome. Dr. Kounang opined that stress occurring between February 16, 2017 and July 13, 2017 caused a temporary aggravation of chronic myofascial pain syndrome that is now resolved. Dr. Kounang indicated that the myofascial pain syndrome is now back to baseline with no increase in intensity. Dr. Kounang found no changes to the pre-existing degenerative changes and arthritis. Dr. Kounang found no physical stress during the cumulative trauma period. Dr. Kounang found no new and further injury to the preexisting cervical degenerative arthritis. Dr. Kounang found Applicant’s job insufficient to cause a new cervical spine injury. (Defendant Exhibit A)

Dr. Kounang produced a supplemental report dated May 18, 2021, wherein he ultimately deferred the diagnosis of depression to a psychiatrist.

The Court took judicial notice of Joint Exhibit AA from ADJ11099561 wherein licensed psychologist Dr. Clarfield found within reasonable medical probability that Applicant's adjustment disorder with mixed anxiety and depressed mood was not brought about predominantly by the alleged situation where she was knuckled by a colleague in the left arm.

An employee has the burden to prove her claim for workers' compensation benefits. *Hercules Powder Co. v. IAC* (1933) 131 Cal. App. 587. Based on the reports by Dr. Kounang and Dr. Clarfield, Applicant did not meet the burden of proof necessary to establish that she sustained an industrial injury. The record supports a finding of no industrial injury.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully recommended that Applicant's Petition for Reconsideration be denied.

DATE: September 13, 2022

Ariel Aldrich
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE