

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

NILOOFAR IRANI, *Applicant*

vs.

**TRENDZ BEAUTY EAST INC./SHAPES BROW BAR; AMGUARD INSURANCE
COMPANY, Administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ14111846
Van Nuys 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.

The WCJ properly relied upon the opinion of the agreed medical evaluator (AME), who the parties presumably chose because of the AME's expertise and neutrality. The WCJ was presented with no good reason to find the AME's opinion unpersuasive, and we also find none. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 10, 2023

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

**NILOOFAR IRANI
EQUITABLE LAW FIRM
PEARLMAN, BROWN & WAX, LLP**

AS/ara

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant filed a timely, verified Petition for Reconsideration, dated December 12, 2022, based upon the Opinion on Decision and Findings of Fact and Order, dated November 17, 2022. This matter came on for trial on February 17, 2022, the issues were framed, and exhibits entered into the record. No testimony was elicited by either party. (Minutes of Hearing EAMS Doc ID. 75215307.) A subsequent trial was held on June 1, 2022 where testimony was elicited by applicant on her own behalf. (Minutes of Hearing (Further) and Summary of Evidence, EAMS Doc ID. 75596218.) In her testimony, applicant denied that a Farsi interrupter was present at PQME examination by Dr. Perelman. A Minute Reflection noted the following:

LET THE MINUTES REFLECT THAT this matter shall be continued for the purposes of determining whether a certified interpreter was present at the Dr. Perelman examination and exactly what their credentials are and perhaps even acquire a declaration from the interpreter and/or from One Call Medical, the service that provided the interpreter, and then this will be determined at the next hearing. (Id. p. 7.)

A subsequent trial was held on September 14, 2022 and additional exhibits were offered into evidence and marked for identification. (Minutes of Hearing (Further), EAMS Doc ID. 75930114.)

PETITIONER'S CONTENTIONS:

1. THE AME REPORT DATED 08/16/2021 MAY NOT BE SUBSTANTIAL EVIDENCE ON WHICH THE WCJ MAY RELY FOR HIS FINDINGS OF FACT AND ORDER
2. TO CONSTITUTE SUBSTANTIAL EVIDENCE ON WHICH THE WCJ MAY MAKE FINDINGS REGARDING THE OPINIONS OF THE AME THE MEDICAL RECORD REQUIRES FURTHER DEVELOPMENT
3. THE DRAKSHANI REPORT OF 1/22/2021 MAY CONSTITUTE SUBSTANTIAL EVIDENCE
4. THE AME REPORT DATED 08/16/2021 MAY NOT BE SUBSTANTIAL EVIDENCE ON WHICH THE WCJ MAY RELY FOR HIS FINDINGS OF FACT AND ORDER
5. TO CONSTITUTE SUBSTANTIAL EVIDENCE ON WHICH THE WCJ MAY MAKE FINDINGS REGARDING THE OPINIONS OF THE AME THE MEDICAL RECORD REQUIRES FURTHER DEVELOPMENT (Petition for Reconsideration, dated December 12, 2022, EAMS Doc ID. 44245803.)

FACTS:

Niloofar Irani, born [], while employed during the period of 12/1/2014 through 1/14/2021, as an eyebrow threader/hairstylist, Occupational Group No. 290, at Northridge, California by Shapes Brow Bar/Trendz Beauty East, claims to have sustained injury arising out of and in the course of employment to the bilateral upper extremities. The issues included: Injury arising out of and in the course of employment. Parts of body injured. Attorney fees. Defendants object to the admissibility of all medical reports listed by applicant counsel which have not been served prior to the MSC/trial setting. Defendants object to the admissibility of all medical reports listed by applicant attorney as not compliant with Labor Code Sections 4060, 4061, 4062, 4628, and 4600 and or 21 CCR 9785 and CCR 10682. 6. Applicant alleges that the AME report is not substantial medical evidence.

Applicant testified that a Farsi interpreter was not present at her QME evaluation, thus creating doubt as to whether any report emanating from that examination could be substantial medical evidence. Thus, it would be useful to review Ms. Irani's testimony.

Ms. Irani testified that she currently is an employee at Trendz Beauty East/Shapes Brow Bar. She's been working there for seven years. Her job title is she does eyebrow work and makeup. When asked what position she works in she stated standing and bending, in which she uses her bilateral upper extremities, hands and wrists, and fingers. She does bend and turn her wrist constantly. She bends and flexes her elbows constantly. She does this every day. (Minutes of Hearing (Further) and Summary of Evidence, dated June 1, 2022.)

She had a specific injury in 2018 where she injured her head, back, and neck, and she saw Dr. Drakhshani starting on that date. In the 2018 specific injury, she sustained a trip-and-fall in the employer's parking lot. She fell on her face, her head, her knees, and neck, injuring her bilateral upper extremities, specifically her hands. Her face contacted the pavement. She did land on her knees. Her head and knees were scratched. She had pain in her bilateral hands. When asked if the pain went away, she stated they later on became numb. After the fall, she went to the hospital and subsequently treated with Dr. Drakhshani.

She stated she first experienced numbness in her hands approximately a year to a year and a half after the fall of 2018. She subsequently saw Dr. Balfour after being referred by Dr. Drakhshani, and he treated her for the numbness. Dr. Balfour prescribed medications. When asked if Dr. Balfour told her the numbness in her hands was work related, she stated yes. At this point she filed the current continuous trauma claim. She stated that Dr. Balfour believed that her symptoms were due to the repetitive nature of her work. She did tell Dr. Drakhshani about the numbness in her hands and what Dr. Balfour said. She stated that Dr. Balfour told her that the nerves in her hands were swollen and that Dr. Drakhshani agreed with Dr. Balfour's diagnosis. She stated this is when she filed her continuous trauma claim. (Id. p. 2) (Emphasis added)

She subsequently saw Dr. Ronald Perelman and stated that a Farsi interpreter was not present. When referencing p.2 Dr. Perelman's August 16, 2021 report, in the body of the report it stated that a Farsi interpreter was present, but there was no identification of the interpreter or certification number. She stated there was no interpreter present. When asked if Dr. Perelman took her medical history, she stated no. However, he asked questions. She said the appointment

was short due to the language problem. Regarding page two of the Dr. Perelman report stating that George Escobar took the medical history, she stated she didn't remember. When asked if somebody called before the appointment to take a medical history, she stated she didn't recall. When asked if she told Dr. Perelman about her 2018 fall and pain and numbness in her hands and elbows, she stated no. She stated again that the pain and numbness in her hands happened approximately one year after the fall. She stated she had trouble communicating with Dr. Perelman. (Id. pgs. 2-3) (Emphasis added)

When asked if while treating with Dr. Drakhshani she was able to speak Farsi, she stated yes, and they were able to easily communicate. She reiterated she believes that her problems with her bilateral upper extremities were due to the repetitive nature of her work.

When asked if she recalled the deposition of last year regarding her continuous trauma claim to the upper extremities, she stated she did. When asked if she filed a specific injury claim on 4/3/2018 for a slip-and-fall, she stated yes, and that it was in the parking lot of her employer. When asked if she had the same attorney for her specific injury as her CT, she stated yes. *When asked if the specific injury included her head, face, neck, back, and upper extremities, she said that was correct. (Emphasis added)*

When speaking of the 8/16/21 evaluation by Dr. Perelman, she knew it was for her CT claim. Again, she said no interpreter was present. When asked if anyone else was in the room, she stated no. When asked if she knows the lady's name Mashid Golsaz, she stated no. When referencing an invoice for the interpreter from the Dr. Perelman examination referred from One Call Medical, which indicated she was present for two and a half hours, she stated she does not recall. When asked if Dr. Perelman asked about prior workers' comp claims, she stated her English is not good and she did not understand very well, but whatever they asked, she responded as much as she could. When asked if she told Dr. Perelman about her specific injury, she stated no because she was there for the numbness in her p. 3 hands, which wasn't present right after the specific injury. (Emphasis added)

In an attempt to *refresh her memory* regarding the AME examination and referencing page three, paragraph three, defense attorney read the following: *"According to the patient, on April 3, 2018, during the course of her employment, she was going to her car to obtain personal item when she tripped on a cement block and fell. She fell forward face down and struck her face, nose, developed pain in her neck, low back and knees. She also broke the fall by using both hands and noted pain in both wrists. " She now states it was not her wrists that it was her two hands because she tried to brace herself, but it wasn't much to her wrists. Because she tried to brace herself not to fall, pressure was exerted to her wrists. (Id. pgs. 3-4) (Emphasis added)*

Regarding Exhibit A, page 26, starting at line 6, through page 27, she stated she did recall her deposition. She was being honest and truthful in that she injured her face, nose, neck, back, knees, hands, and bilateral wrists. When asked if she recalled testifying to those body parts, she stated yes, and that she has pictures. When asked if she recalled going to the emergency room on 4/3/2018 regarding the specific injury, she stated she does. She stated she recalls testifying that after the trip to the emergency room, she had pain all over her body, that her entire body was sore. She does recall testifying that prior to her specific injury, she had no pain in her body. When asked if she

recalls testifying that her pain was a nine out of ten on a scale of one to ten after the fall, she stated yes.

When asked about testifying after the fall that the pain in her wrists were nine out of ten, she stated that her entire body was hurting and that she doesn't recall any numbers, and she states that if she said it at the time, it's correct. When asked if she was a good employee, she stated yes. *She stated that she started working for the employer in December 2014. She recalls testifying that she had no complaints prior to her specific injury, but after the fall, she had pain to her upper extremities. When asked if she told any doctor about the pain to her upper extremities, she stated she mentioned she had pain throughout her body.* (Id. p. 4) (Emphasis added.)

She stated Dr. Drakhshani referred her to a doctor to perform nerve conduction studies on 11/23/2019. When asked if she recalls that that test specifically notes a date of injury with regards to her specific injury, she stated she didn't recall. She stated she didn't mention the specific injury to Dr. Balfour. She stated she told Dr. Balfour that she fell down and hurt her hands, neck, face, and back. When asked if she was told the results of the nerve conduction study, she stated yes. When told that the report stated she had carpal tunnel and when asked if she disagreed with the findings of the report, she stated why would she disagree with the doctor's opinion and she does not have a medical background or experience. (Id. pgs. 4-5) (Emphasis added)

Reference was then made to the neurology report of Dr. Robert Douglas Collins dated 11/23/19 wherein it states as follows: "This is a 49-year-old English as well as Farsi speaking lady who was in her usual state of health until sometime on May 15, 2018. While she was walking in the parking lot, she fell over and injured both upper extremities and right face and twisted over her lower back and neck. " (Emphasis added)

When asked if she recalled that her attorney filed a continuous trauma claim to her upper extremities on January 14, 2021, she stated yes. She stated that she continued to treat with Dr. Drakhshani for the specific injury and with Dr. Balfour. When referencing Dr. Drakhshani's first report regarding the CT of 1/22/21, she stated she was aware; however, she does not recall the date. When asked if there had been any discharge report from her April 3, 2018 injury, she stated no, that she continued to treat. When asked if she went to either an AME or QME for her specific injury, she stated she doesn't recall names but that she went to wherever she was sent. She doesn't know what AME or QME means. She stated she continued to treat with Dr. Drakhshani as long as necessary.

When asked if she settled her specific claim in January of 2022 by C&R, which included her upper extremities, she stated yes. When asked if she had been made permanent and stationary, she stated, "I was better, in a better condition." She stated the amount of her settlement was \$70,000. When asked if she knew that part of that settlement money was to be used for her medical treatment, she stated she wasn't able to work for a period of time. (Emphasis added)

When asked if she knew the Dr. Perelman report stated that her injuries were due to the specific injury, she stated she doesn't know if it was the specific or not, but the specific was not related to the numbness in her hands. (Id. p. 5)

When asked if she's 50 years old, she stated no, she's 52. She stated she has children. When asked if when she fell, she had pain in her hands, she stated yes. When asked if she told Dr. Drakhshani about this, she stated yes. When asked if in November of 2019 she told Dr. Drakhshani that her hands were falling asleep, she stated that's correct, and she also told Dr. Balfour. She had a primary physician named Hratch Yadegarian. When asked if she told that doctor that her hands were falling asleep and that he referred her to Dr. Balfour, she stated that's correct. She stated that Dr. Balfour sent her for nerve conduction tests, and Dr. Balfour told her that her symptoms were due to repetitive work. She subsequently told Dr. Drakhshani what Dr. Balfour told her when she sent her out for more testing.

When asked if an interpreter spent 2.7 hours with her, she states no, that she doesn't remember if the person was there. Regarding the time spent at Dr. Perelman's office, she stated it was a short period, 15 to 20 minutes. (Emphasis added)

She stated she is still working for the employer. She does still treat for her hands with Dr. Drakhshani and with Dr. Benjamin for her neck. She stated she received a cortisone injection last week. When asked if her neck pain is worse since the fall, she stated yes, but that it has nothing to do with that and it's because of the work, that it started a year to year and a half ago, that she is still working and the pain is getting worse day by day.

When referring to the Dr. Perelman examination, which started at 1:30 p.m., she reiterated she only spent 15 to 20 minutes in the office. When asked if Dr. Perelman performed any tests or a physical examination, she stated yes, that he examined her, he raised her hand, and he asked her about pain. It was very short. When asked regarding the interpreter having stayed until 3:10 p. m. and whether that's accurate, she stated she doesn't recall. (Id. p. 6) (Emphasis added)

When referring to her deposition testimony and whether she had pain at the deposition that was seven to eight out of ten, she stated she didn't recall.

Applicant insists that a Farsi interpreter was not present at her examination with AME Perelman, that it was difficult to communicate with him, and that the examination was only 15 to 20 minutes long. At the June 1, 2020 hearing the trial was continued for the distinct purpose of allowing the parties to present evidence regarding the presence of a Farsi interpreter at the examination. A minute reflection from that hearing is as follows:

"LET THE MINUTES REFLECT THAT this matter shall be continued for the purposes of determining whether a certified interpreter was present at the Dr. Perelman examination and exactly what their credentials are and perhaps even acquire a declaration from the interpreter and/or from One Call Medical, the service that provided the interpreter, and then this will be determined at the next hearing." (Ibid. p. 7)

At the September 14, 2022 hearing the following exhibits were offered into evidence by defendant. Applicant counsel objected to their admission based upon Exhibit D lacks foundation and not substantial, Exhibit E is not a proper declaration under California law, Exhibit F as a medical report and not a declaration.

All of the following exhibits are declarations signed under the penalty of perjury. They are relevant to the issue in dispute and are what they purport to be. They will be admitted into evidence over applicant's objection as rebuttal evidence to applicant's testimony.

Affidavit from interpreter Mahshid Golsaz, dated 6/14/2022.

Mahshid Golsaz certify that I performed Farsi to English interpretation services for the AME exam of Niloofar Irani at the offices of Dr. Ronald Perelman on 8/16/21. My National Board of Certification for Medical Interpreters certification number is 200305.

I arrived at the doctor's office at approximately 1:15 p.m. and I left the examination at approximately 3:15 p.m. I assisted Ms. Irani with the completion of her pre-examination forms for translation purposes, helped her fill out the pre-exam questionnaire and I was present with Ms. Irani at the time of the examination for interpreting from Farsi to English and English to Farsi. I entered notes about the examination into the Voices LLC system after the appointment.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (Exhibit D)

Affidavit from One Call Care Management, dated 6/13/2022. Applicant objects as not a proper declaration under California law.

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Translation Services booked through One Call

RE: Interpreting Services for AME exam with Dr. Ronald Perelman of 8/16/21.

I, Alarico Arevalo, certify that One Call arranged for an English to Farsi/Farsi to English Interpreter for the AME exam of Niloofar Irani at the offices of Dr. Ronald Perelman on August 16, 2021. The services were scheduled through Voices LLC and the name of interpreter that attended was Mashid Golsaz, NBCMI certification number 200305.

I am the person most knowledgeable.

An invoice for 2.75 hours was sent to Gallagher Bassett for the time spent at the examination. One hour of time was billed for travel time. I declare under penalty of perjury under the laws of the State of California that the above is true and correct. (Exhibit E)

Declaration from AME Perelman regarding interpreter, dated 15 6/14/2022. Applicant objects as the document is a medical report from Dr. Perelman and not a declaration. (Exhibit F.)

"At the present time, the applicant contends that there was no Farsi interpreter present at the time of the physical examination of 8/16/21. Can you please comment in writing, via a signed affidavit addressed to the Honorable Judge Sommer at the Van Nuys WCAB, with a copy to all parties, whether or not an interpreter was present at the time of the physical examination of the applicant, Ms. Irani? If your chart so contains any documents/notes that can be of assistance to confirm that

an interpreter was physically present at the time of the exam please enclose those documents as well.

I reviewed your request and a certified Farsi interpreter was physically present at the time of the August 16, 2021 Agreed Medical Examination, which took place at 18531 Roscoe Boulevard, Suite 202, Northridge, CA 91325.

It is customary for our office to obtain a copy of the patient's driver's license along with a copy of the interpreter's identification with certification number and copy them on the same page for our file. It is also customary for the certified interpreter to assist in filling out the pain activity questionnaire, which is signed by the patient, and the certified interpreter.

The interpreter information provided in my August 16, 2021 report is correct. I am enclosing the original forms with the patient's and interpreter's ink signatures on the pain questionnaire. I am also enclosing the original copy of the patient's driver's license along with the certified interpreter's identification card.

My office follows all Labor Codes and regulations as imposed by the Worker's Compensation Appeals Board.

I declare under penalty of perjury that the information contained in this report and its attachments, if any, is true and correct to the best of my knowledge and belief, except as to information that I have indicated I received from others. As to that information, I declare under penalty of perjury that the information accurately describes the information provided to me and, except as noted herein, that I believe it to be true. I further declare under penalty of perjury that I have not violated the provisions of California Labor Code Section 139.3 with regard to the evaluation of this patient or the preparation (Id. p. 2)

Photo copy of CDL of Ms. Irani. National Board of Certification for Medical Interpreters - Mahshid Golsaz # 200305. Patient questionnaire signed by Ms. Golsaz (Id. pgs. 4-5.)

DISCUSSION

At the time of the applicant's testimony the question was not whether there was a certified interpreter present, the question was whether an interpreter was present. The applicant testified that there was no interpreter present at the time of the examination. The interpreter is certified by the National Board of Certification for Medical Interpreters and California Interpreters which has been recognized and approved by the Department of Industrial Relations, California Division of Workers' Compensation.

Referring to page 11 of Dr. Perelman's Declaration, Dr. Perelman provided copies of the interpreter's certification and the interpreter's driver's license. There would be no other way for Dr. Perelman to have copies of those in the file under this applicant's name if it were not provided by the interpreter who was present at the time of the exam. Pursuant to the declaration of Mahshid Golsaz the certified Farsi interpreter spent two hours at the Perelman examination assisting Ms.

Irani with the completion of her pre-examination forms, filling out the pre-exam questionnaire and present at the examination.

Most compelling is the declaration of Dr. Perelman stating that a certified Farsi interpreter was physically present at the time of the August 16, 2021 Agreed Medical Examination. Dr. Perelman included the original forms with the patient's and interpreter's ink signatures on the pain questionnaire. He also included the original copy of the patient's driver's license along with the certified interpreter's identification card.

Based upon this evidence, it is clear to the undersigned that a Farsi interpreter was present at the Perelman examination and applicant either conveniently forgot or purposely misstated the fact.

Based upon the medical report(s) of AME report of Ronald Perelman, M.D., dated 8/16/2021, which is the better reasoned and more persuasive, it is found that applicant did not sustain injury to her bilateral upper extremities arising out of and occurring in the course of employment during the period of 12/1/2014 through 1/14/2021, and there was in fact - no continuous trauma injury. The undersigned found the Perelman report to be substantial medical evidence.

RECOMMENDATION

The undersigned WCJ respectfully recommends that Petition for Reconsideration, dated December 12, 2022, be denied.

DATED: December 23, 2022

Respectfully submitted,

ROBERT SOMMER

Workers' Compensation Administrative Law Judge