WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KEITH LAWRENCE, *Applicant*

vs.

U-HAUL; GALLAGHER BASSETT, *Defendants*

Adjudication Number: ADJ16637216

Oakland 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.

We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place* v. *Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

January 22, 2024

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

KEITH LAWRENCE, IN PRO PER
ALBERT AND MACKENZIE

AS/mc

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

I.

INTRODUCTION

Applicant's Occupation:	Yard Worker
Applicant's Age	69 Years
Date of Injury:	July 26, 2022
Parts of Body Injured:	Right Shoulder

Identity of Petitioner:	Applicant
Timeliness:	Petition is timely filed
Verification:	Petition is verified
Date of Findings and Award:	November 2, 2023

Applicant's Contentions: That the undersigned should have relied on reports from Dr. Nguyen or Dr. Wang to find industrial causation and that Dr. McGahan's report was not substantial medical evidence.

II.
STATEMENT OF THE CASE AND FACTS

Applicant started working for U-Haul on July 25, 2022 as a yard worker. His main job was washing and cleaning the trucks. On July 26, 2022, applicant washed the windows of a large truck and felt pain in his right shoulder. Initially, he thought he had just sprained his shoulder. Applicant kept working for U-Haul until August 20, 2022. On September 1, 2022, Applicant filed an Application for Adjudication while represented by Alex Bonilla for a specific injury of July 26, 2022. Applicant was evaluated by QME Dr. Patrick McGahan. Dr. McGahan issued two reports; and concluded the rotator cuff tear was non-industrial. Dr. McGahan's reports are dated February 22, 2023 and February 3, 2023. Applicant was represented by counsel up until May 16, 2023, when he dismissed his attorney. A Declaration of Readiness to Proceed was filed on June 29, 2023. The June. 27, 2023 hearing was continued over defendant's objection to give applicant an opportunity to find new counsel. On September 21, 2023 the matter was set for trial with discovery closed. At the time discovery was closed and the pre-trial conference was uploaded, applicant's ptp reports were uploaded into FileNet. Applicant is being treated on a non-industrial basis by Dr. Nguyen and Dr. Wang. Both doctors issued opinions regarding causation.

The matter proceeded to trial on October 19, 2023 with applicant and an employer witness testifying.

III.
DISCUSSION

It is applicant's burden to prove, by a preponderance of the evidence, that he or she was injured in the course of employment. Section 3202.5,1 Lundberg v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 436 [33 Cal.Comp.Cases 656]. Medical opinions are not substantial evidence if they are based on surmise, speculation or conjecture. A medical report is not substantial evidence unless it offers the reasoning behind the physician's opinion, not merely his or her conclusions.

In support of causation, Mr. Lawrence submitted reports from Dr. Nguyen and Dr. Wang. In Dr. Nguyen's report dated July 24, 2023, the doctor opined "The incident rather than the length of work at U-Haul caused the pain in the shoulder that necessitated an operation." (Exhibit 1 pg. 1-2). However, the report contained no explanation as to what the "incident" was as relayed to that doctor, nor did Dr. Nguyen's report provide an explanation for on how a high-grade tear could be caused by applicant's alleged specific injury. Dr. Nguyen's report did not offer the reasoning behind the opinions; instead focusing entirely on the conclusion.

The work status report by Natalie Ambriz, PA-C indicate that applicant is released from care, given an 8% upper extremity impairment of whole person rating and work restrictions. This report does not include any analysis on causation. (Exhibit 2). Therefore does not provide any evidence to support causation.

Dr. Wang's progress report's causation analysis is "Like Dr. Nguyen, I do believe it's possible that his injury was due to his job, and so will give him a note stating thus." (Exhibit 3). The report fails to provide any analysis or explanation how the job duties could create a type of tear that Dr. McGahan opines is chronic. Dr. Wang does not explain the reasoning behind the physician's opinion instead surmising that it is industrial. Dr. Wang's report is not substantial medical evidence to support a finding of industrial causation to a specific injury.

Mr. Lawrence submitted three primary treating reports to support causation. The reports submitted by applicant do not rise to the level of substantial medical evidence to support a finding of a specific injury. The reports fail to explain the reasoning as to why the injury was work related or how they came to a different conclusion from Dr. McGahan.

Applicant raised concern that Dr. McGahan did not review all of the medical records including Dr. Strudwick's operative report. However, Dr. McGahan did not need to review every medical record in existence in order for his report to be substantial medical evidence. Brand v. Mt. Diablo Unified School District, 2017 Cal. Wrk. Comp. P.D. LEXIS 406. Dr.

McGahan reviewed numerous records and current records to support and provided an explanation for his finding.

In his petition, Applicant raised the fact that Dr. McGahan cited in his reports that the applicant had retired due to psychological issues as well as right shoulder pain. Applicant argues that the retirement was voluntary retirement and not a medical retirement. There was no evidence as to the type of retirement; and the specific type of retirement is not dispositive to causation. Applicant testified that he told the QME he retired because of stress and the shoulder but asserted that it should not be something that was considered (MOH SOE page 5 lines 10-11). Dr. McGahan's statement about Mr. Lawrence's retirement goes to the history of shoulder injury; however, it is not the sole basis that Dr. McGahan found the injury non-industrial. The purpose of an evaluation is to get applicant's history and for a physical examination. Dr. McGahan may consider applicant's statements during the evaluation in formulating his conclusions. While Dr. McGahan did consider Mr. Lawrence's statements, they were not the sole basis of his conclusion that the shoulder injury was non-industrial. Dr. McGahan's findings were based upon a review of the medical records in conjunction with the evaluation.

Dr. McGahan gave three reasons for finding the right shoulder non-industrial. First, the pre-existing pathology as evident by applicant's statement to the doctor that the shoulder was a consideration in the retirement. Second, the limited time of the activity. Third, the tear being a high-grade tear which is consistent with a chronic tear rather than an acute injury. (Exhibit B pages 12-13). Dr. McGahan's report explained the non-industrial causation and reviewed appropriate medical records. Therefore, Dr. McGahan's report was more convincing and was followed.

Based upon the above, I recommend that the petition for reconsideration be denied.

DA TE: November 28, 2023

Erin Finnegan
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE