

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

AMANDA HUMBER, *Applicant*

vs.

**PRIME HEALTHCARE SERVICES, INC.; CENTINELA HOSPITAL MEDICAL
CENTER; administered by AMERICAN CLAIMS MANAGEMENT, *Defendants***

**Adjudication Number: ADJ11905041
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision 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 and Opinion on Decision, both of which we adopt and incorporate, except as noted below, and for the reasons discussed below, we will grant reconsideration, rescind the October 11, 2021 Findings of Fact and Award, and substitute it with new Findings of Fact. We issue new Findings of Fact for the sake of clarity. The new Findings of Fact make the corrections recommended in the Report, identify the specific date of injury, delete the award as no benefits are being awarded at this time, and otherwise affirm the WCJ's findings.

We do not adopt and incorporate the last paragraph of the Opinion on Decision under the heading "STATUTE OF LIMITATIONS."

In addition, we note that "[t]he failure to give notice under [Labor]¹ section 5400, or any defect or inaccuracy in a notice is not a bar to recovery under this division if it is found as a fact in the proceedings for the collection of the claim that the employer was not in fact misled or prejudiced by such failure.' (§ 5403.)" (*Beckstead v. Workers' Comp. Appeals Bd.* (1997) 60

¹ All further statutory references are to the Labor Code, unless otherwise noted.

Cal.App.4th 787, 790 - 791 [62 Cal. Comp. Cases 1646], quoting *Pacific Employers Ins. Co. v. Industrial Accident Commission* (1949) 92 Cal.App.2d 124, 126 [206 P.2d 372, 14 Cal. Comp. Cases 82].) The prejudice alleged by defendant, i.e., that the hospital was impeded from conducting an investigation and was unable to ensure the safety of approximately 67 patients under applicant's care during the 53 days following the injury, is only an allegation of possible potential prejudice with no description of any specific actual prejudice that resulted. Moreover, even if true, the alleged prejudice does not relate to "the proceedings for the collection of the claim" as required by section 5403. Defendant failed to establish that it was in fact misled or prejudiced in *these* proceedings due to her failure to report the injury.

Finally, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the October 11, 2021 Findings of Fact and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the October 11, 2021 Findings of Fact and Award is **RESCINDED** and **SUBSTITUTED** with new Findings of Fact, as provided below:

FINDINGS OF FACT

1. Applicant Amanda Humber, while employed on November 25, 2018, as a nurse, Occupational Group number 311, at Inglewood, California by Centinela Hospital Medical Center, sustained injury arising out of and in the course of employment to her low back.
2. Applicant did not sustain injury arising out of and in the course of employment to her legs.
3. No attorney fees are awarded at this time.

4. Defendant did not meet their burden of proof in establishing the defense of statute of limitations pursuant to Labor Code section 5400.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 30, 2021

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

**AMANDA HUMBER
CALIFORNIA WORKERS COMPENSATION LAWYERS
LAUGHLIN, FALBO, LEVY & MORESI
EMPLOYMENT DEVELOPMENT DEPARTMENT**

PAG/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: Nurse
2. Applicant's Age: 48
3. Date of injury: 7/16/2019
4. Parts of Body Alleged: low back and legs
5. Manner in which injuries have occurred: Specific injury
6. Identity of Petitioner: Defendant, Centinela Hospital Medical Center and American Claims Management
7. Timeliness: The petition was timely filed.
8. Verification: A verification is attached.
9. Date of Findings and Award: 10/11/2021
10. Petitioner's contentions: 1.) The WCJ erred as follows: making a clerical error referencing the incorrect Applicant In her Findings of Fact and Award, finding that Applicant sustained injury AOE/COE, inaccurately referenced Labor Code Section 5412, incorrectly analyzing the statute of limitations defense, failing to address the prejudice to Defendant's patient safety.

II
FACTS

Applicant, Amanda Humber, while employed on 11/25/2018, as a nurse, Occupational Group No. 311, by Centinela Hospital Medical Center at Inglewood, California, claims to have sustained injury arising out of and in the course of her employment to her low back and legs.

The sole issue submitted for decision was injury AOE/COE and Labor Code Section 5400 and the affirmative defense of Statute of Limitations. This matter commenced trial on 11/27/2021 and was continued to 5/12/2021 and then to 6/29/2021 when testimony was completed. The record was left open for the parties to submit post-trial briefs no later than 7/26/2021 at which time the matter was submitted for decision. Both parties submitted their post-trial briefs timely.

At trial, the only witness testimony offered was from Applicant and the defense witness, Kimberly Naucler. All the exhibits proposed by the parties were admitted into the record without objection. The WCJ issued a Findings of Fact and Award on 10/11/2021 finding injury AOE/COE regarding Applicant's low back injury. The WCJ did not find that Applicant sustained a separate and distinct injury involving her legs. Defendant filed a timely, verified Petition for

Reconsideration on 11/1/2021. To date Applicant has not filed an Answer to the Petition for Reconsideration.

Defendant has raised five issues with several sub points regarding the award of 10/11/2021. Based on the below analysis the Petition for Reconsideration should be denied with the exception of the clerical error identified in issue number one and an incorrect citation to Labor Code Section 5412. Regarding the first issue, the WCJ concedes that a clerical error took place and the Findings of Fact and Award should be amended to reflect the correct Applicant, "Amanda Humber" and not "Dorothy Bush". The second clerical correction will be addressed in the order it was raised in the Petition.

With regard to the remaining four issues raised by Defendant, the Petition for Reconsideration should be denied. The second issue raised by Defendant is whether the WCJ erred by finding Applicant sustained a specific injury on 11/25/2018 in light of the evidence and testimony presented at trial. Under the second issue, Defendant raises seven sub points, which will also be addressed in the order set forth in the Petition. For the following reasons the WCJ believes her finding with regard to AOE/COE is supported by the record and the WCJ's personal observation of the testimony and demeanor of the witnesses at trial.

Defendant's first point is that Applicant was impeached on two occasions at trial and therefore her testimony cannot be deemed credible. The WCJ disagrees that Applicant was impeached at trial and found the Applicant to be a credible witness. Witness impeachment at trial is the process of challenging the credibility of a witness in a trial. Defendant contends that when the Applicant failed to recall her 2015 injury at her deposition that she was impeached. However, Applicant explained that at her deposition she did not recall her 2015 date of injury. (See Minutes of hearing and Summary of Evidence dated 5/12/2021 page 3 lines 24 to 25)

The second point raised is that Applicant failed to disclose to the Panel QME Dr. Schmidt that she sustained a prior low back injury in 2015 and this act was deceptive yet this was not established at trial. Applicant admitted at trial that she sustained a prior back injury in either 2014 or 2015. She also testified that the reason she did not report the 2015 injury to the Panel QME Dr. Schmidt was that "she did not believe it was an injury and it wasn't anything ongoing." (See Minutes of Hearing and Summary of Evidence dated 5/12/2021 page 4 lines 11 to 13.) Applicant's un rebutted response regarding her failure to mention her prior injury to the Panel QME Dr. Schmidt was deemed reasonable and credible by the trier of fact. There was no testimonial or documentary rebuttal offered to rebut Applicant's explanation. The fact that Applicant failed to report a prior injury to the Panel QME because she did not consider it an injury does not bar a Finding of Injury AOE/COE based on the record in this case.

Defendants' third point is that there were no witnesses to the incident of 11/25/2018 despite the fact that the incident took place in the presence of coworkers. The Applicant's credible and un rebutted description of the mechanism of injury and her lack of symptoms at the time provided a rational explanation as to why there were no witnesses. The Applicant testified that on 11/25/2018 when she was helping a CNA lift a patient higher in the bed that on the second lift her coworker, a CNA, dropped her side before the Applicant and Applicant felt a pull in her back but no pain. (See Minutes of Hearing and Summary of Evidence dated 1/27/2021 page 3 lines 23 to 25 and page 4 lines 1 to 2) The Applicant testified that the reason that she did not report the injury was because she was not feeling pain at that time. (See Minutes of Hearing and Summary of Evidence dated 1/27/2021 page 4 lines 5 to 7) The next morning, the Applicant testified that she felt soreness in her low back but did not feel it was important enough to report and she thought it would resolve on its own. The Applicant continued working her full duties without missing time from work. Eventually Applicant noticed that pain was radiating down into her leg, in the last week in December 2018. This credible and un rebutted explanation provides an understandable explanation as to why the Applicant did not say "ouch" as she had no pain at the time and further why she did not report the incident to her coworkers who were present at the time of the accident. Based on Applicant's credible testimony she simply did not know that what occurred on 11/25/2018 was an injury.

Defendant's fourth point appears to be that by not reporting her injury immediately that Applicant violated Company Policy. However, Applicant credibly testified that on 11/25/2018 she did not regard what she experienced as an injury so Defendant failed to establish that Applicant violated this Company Policy. In any event, whether or not Applicant complied with Company Policy is irrelevant to the judicial determination of injury AOE/COE.

The fifth point is that the fact that her primary care physician through her private insurance, Dr. Quasi, fails to document a lifting injury. A careful review of the sixteen pages introduced as Exhibit C reveals no section that addresses causation of injury. Dr. Quasi does discuss his assessment for applicant's low back pain and some other medical issues. The mere fact that primary care physician outside workers compensation fails to address a mechanism of injury is not dispositive of whether an industrial injury occurred without additional evidence or testimony.

The sixth point raised is that the first workers compensation physician that Applicant saw, Dr. Kohan, acknowledges that Applicant told him that she felt lower back pain that may have occurred at work 54 days ago when she was lifting a patient. He then noted the length of time and then he states "However, it may have occurred at home with doing house-work as well, not completely sure." (See Exhibit A) It is not clear from the report exactly who is not completely sure, Dr. Kohan or the Applicant. However, Applicant testified she

never told Dr. Kohan that she injured herself performing housework. (See Minutes of Hearing and Summary of Evidence dated 1/27/2021, page 5 lines 4 to 5)

The seventh point raised has to do with the safety of the patients Applicant cared for after her date of injury but before she reported it to her employer in those 54 days. Although patient safety is a critical concern for a medical facility, it is misplaced here. The safety of the patients under Applicant's care prior to reporting her injury was not a factor considered by this WCJ in her determination that Applicant sustained an industrial injury.

The next issue raised is that at the conclusion of his deposition, the Panel QME Dr. Schmidt deferred the issue of causation of injury to the trier of fact. However, Dr. Schmidt also testified that he found the Applicant credible. The WCJ had the unique opportunity to evaluate the Applicant's testimony via Lifesize over the course of three trial settings. The WCJ also found the Applicant to be a credible witness. Applicant successfully met her burden of proof that she sustained industrial injury to her low back based on the entire record.

The next issue raised is that Centinela Hospital was prejudiced by Applicant's violation of Company policy and failure to timely report her injury according to their definition. As was stated above, the evidence in this case does not support that Applicant violated Company Policy, she testified that she reported the injury when she noticed she was experiencing symptoms and after she was examined by her personal physician. Finally, Defendant failed to establish what if any prejudice occurred in the instant case.

The next issue appears to be a compilation of many of the previously raised issues in this Petition. Defendant contends that the Findings of Fact and Award is not supported by substantial evidence. The WCJ disagrees for all of the reasons set forth above and below.

The final issue contends that the statute of limitations defense was incorrectly analyzed under the incorrect Labor Code Section 5412. Defendant is correct that Labor Code Section 5412 has no bearing on the instant case as the instant case concerns a specific date of injury. In this regard, Petitioner is correct that the reference made to Labor Code Section 5412 is misplaced. The Findings of Fact and Award pertain to only a specific date of injury, 11/25/2019. However, Defendant failed to establish that Applicant failed to timely report her injury in accord with Labor Code section 5400 and therefore the affirmative defense of Statute of Limitations fails pursuant thereto fails.

RECOMMENDATION

The Petition for Reconsideration should be granted in part and denied in part based on the recommendations set forth above. The Petition should be granted to correct the clerical errors on the Findings and Award concerning the Applicant's name and the reference to Labor Code Section 5412. The Findings of Fact and Award should be amended to reflect the correct Applicant, Amanda Humber, on page one and Labor Code Section 5400 in the place of 5412. The remainder of the Petition for Reconsideration should be denied for failure to demonstrate good cause upon which to base the setting aside of the Findings of Fact and Award dated 10/11/2021 as set forth above.

Respectfully submitted,
CIRINA A. ROSE
Workers' Compensation Judge

Date: 11/30/2021

OPINION ON DECISION

INJURY AOE/COE

Based on the credible and un rebutted testimony of the Applicant, the testimony of Laura Richardson, the Panel QME reports and deposition of Dr. Isaac Schmidt and the entire record, Applicant has met her burden of proving that she sustained injury arising out of and in the course of employment to her low back on 11/25/2018. Applicant testified that on 11/25/2018 while she was assisting a CNA in lifting a patient she felt a pull in her back but she did not report the injury on that date because she was not in pain. The next day she noticed soreness but did not report the injury because she thought it would resolve on its own. The Applicant continued to work her usual and customary duties as a registered nurse with the same level of soreness until the end of December when she noticed the pain had increased and began radiating down one leg. At that time she decided to make an appointment with a primary care physician in January 2019 when her insurance "kicked in". After seeing a physician, in January she then reported the 11/25/2018 injury to her employer, specifically she reported the injury to Grace who asked Applicant to speak to the employee health coordinator, Laura Richardson. Applicant then filled out paperwork at Ms. Richardson's instructions and was referred to Dr. Kohan at the industrial clinic, where she testified that she told Dr. Kohan how she injured herself at work on 11/25/2018. This history is corroborated by the history given to the Panel QME Dr. Schmidt and the Applicant's deposition testimony which was summarized by Dr. Schmidt in his report dated 5/31/2019.

The defense witness, Laura Richardson's testimony not only corroborated the testimony of the Applicant regarding the January 2019 reporting of her injury on 11/25/2018 but she also corroborated the Applicant's testimony regarding the reason Applicant did not report the injury before January 2019.

Based on the entire record Applicant met her burden of proving that she sustained injury arising out of and in the course of employment to her low back.

Based on the entire record Applicant has not met her burden of proving that she sustained a separate and distinct injury arising out of and in the course of her employment to her legs.

ATTORNEY FEES

As the above decision is limited to the issue of AOE/COE, there is no species of benefits from which attorney fees can be awarded. Therefore, no attorney's fees are awarded at this time. This issue is deferred.

STATUTE OF LIMITATIONS

Defendant failed to establish the affirmative defense of Statute of Limitations. The date of injury pursuant to Labor Code Section 5412 is found to be when the Applicant was seen by Dr. Quasi on 1/17/2019. Based on this finding, Applicant reported her injury timely and her claim is not barred by the Statute of Limitations.

CIRINA A. ROSE
Workers' Compensation Administrative Law Judge

Dated: 10/08/2021