

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

BLANCA RODRIGUEZ, *Applicant*

vs.

**CROWN BUILDING MAINTENANCE, permissibly self-insured,
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11144910
Van Nuys District Office**

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

Applicant seeks reconsideration of the June 17, 2021 Findings and Award, wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed as a janitor during the period April 7, 2016 through April 7, 2017, sustained an industrial injury to the left shoulder and did not sustain an industrial injury to the neck and back. The WCJ found that applicant's injury caused 14% permanent disability and that there is no legal basis for apportionment.

Applicant contends that there is substantial medical evidence to support a finding that applicant sustained an industrial injury to her neck and back. Applicant also contends that the reports of the panel qualified medical evaluator (PQME) are not substantial medical evidence and the WCJ erred in relying on those reports to find that applicant did not sustain an industrial injury to her neck and back.

We reviewed defendant's answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

We have considered the Petition for Reconsideration, the answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will grant reconsideration, rescind the Findings and Award, and return this matter to the trial level for further proceedings and a new decision.

FACTS

Mark Ganjianpour, M.D. was applicant's primary treating physician. In his initial evaluation, he stated that "Ms. Rodriguez has been employed by Crown Building Maintenance since April 1995." (Exh. 1, Mark Ganjianpour, M.D., February 19, 2018 Primary Treating Physician Initial Orthopedic Evaluation Report and Authorization Request, p. 3) Dr. Ganjianpour described applicant's job duties as follows:

At the time of the injury, Ms. Rodriguez was working 8 hours per day, 5 days per week. Her job duties entailed cleaning duties, including mopping, sweeping, cleaning bathrooms, take out [trash] and vacuuming. This required her to stand, walk, bend, twist, turn, grip, grasp, push, pull and use her hands repetitively. She lifted and carried about 10 pounds. (Ibid.)

Dr. Ganjianpour noted that applicant had injuries to her cervical spine, left shoulder, left elbow, left wrist and lumbar spine and that the insurer had denied that the injuries to the low back, cervical spine, and left elbow were industrial. (Id. At p. 11.) Dr. Ganjianpour did not offer an opinion on whether the disputed body parts were industrial in his initial report.

The parties selected Eleby Washington, M.D., as a PQME in the field of Orthopedics. Dr. Washington noted that applicant worked as a janitor for Crown Building Maintenance beginning in 2013 and was employed by a different maintenance company as a janitor in the same building beginning in 1995. (Exh. B, Elby Washington, M.D., December 11, 2019, Panel Qualified Medical Evaluation, p. 2-3.) "Her job duties required that she do mopping, sweeping and vacuuming in an office building. At any one time she might have to lift 15-20 pounds." (Id. At p. 2.) Dr. Washington stated that Ms. Rodriguez was "disabled from performance of her job as a janitor with Crown Building Maintenance. I would be happy to review a job analysis or job description before commenting further." (Id. At p. 20)

With respect to causation and apportionment, Dr. Washington opined as follows:

Neck: It is my opinion that Ms. Rodriguez's neck condition is not causally related to her employment with Crown Building Maintenance, and I would attribute it to a natural progression of aging.

Left shoulder: It is my opinion that Ms. Rodriguez's left shoulder condition is causally related to her employment with Crown Building Maintenance and related to appear to have continuous trauma [sic.] between 04/07/2016 and 04/07/2017. I find no indication to suggest apportionment in regards to the left shoulder.

Left arm/hand: I find no causal relationship between Ms. Rodriguez's left arm/hand complaints and her employment with Crown Building Maintenance.

Low Back: It is my opinion that Ms. Rodriguez's lower back condition and her permanent disability in regards to it is not causally related to her employment with Crown Building Maintenance as Ms. Rodriguez had many years of lower back complaints necessitating doctor's visits prior to working for Crown Building Maintenance. I find that her lower back condition is not causally related to her employment with Crown Building Maintenance.

Left hip/leg: It is my opinion that Ms. Rodriguez's left hip/leg condition is not causally related to her employment with Crown Building Maintenance. (Id. at p. 21)

After reviewing the PQME Report, Dr. Ganjianpour issued a supplemental report explaining that "based on the review of her job description...it is my opinion that she sustained [an] CT to the cervical spine, left shoulder and lumbar spine due to the repetitive work duties involving the use of the upper extremities, neck as well as the lumbar spine." (Exh. 1, April 22, 2020, Mark Ganjianpour, M.D., Primary Treating Physician Supplemental Report, p. 2)

After reviewing additional medical records, Dr. Washington stated that the records did not change his opinions expressed in his initial report. (Exh. A, September 26, 2020, Eleby R. Washington, M.D., Supplemental Report, p. 3.) Based on the summary of records reviewed, Dr. Washington did not review a job description or a job analysis before preparing the supplemental report.

DISCUSSION

Section 3208.1 provides that a cumulative industrial injury occurs whenever the repetitive physically traumatic activities of an employee's occupation cause any disability or a need for medical treatment. As with any decision by a WCJ, a decision whether applicant sustained a cumulative injury must be supported by substantial evidence in light of the entire record. (Lab. Code, § 5952(d); *See Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].)

The question of whether repetitive traumatic activities caused injury or a need for medical treatment can only be established with substantial medical evidence. It has long been recognized that medical proof is required when issues of diagnosis, prognosis, and treatment are beyond the bounds of ordinary knowledge. (*City & County of San Francisco v. Industrial Acc. Com. (Murdock)* (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103]; *Bstandig v. Workers' Comp. Appeals Bd.* (1977) 68 Cal.App.3d 988 [42 Cal.Comp.Cases 114].)

Not all expert medical opinion constitutes substantial evidence. (*Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93, 97]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) To constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (en banc); *McAllister v. Workmen's Comp. Appeals Bd.*, supra, 69 Cal.2d 408, 413, 416-417; *Rosas v. Workers' Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700-1702, 1705 [58 Cal.Comp.Cases 313].) "A medical report predicated upon an incorrect legal theory and devoid of relevant factual basis, as well as a medical opinion extended beyond the range of the physician's expertise, cannot rise to a higher level than its own inadequate premises." (*Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358, 363].) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture, or guess." (*Hegglin*, supra, 36 Cal.Comp.Cases at p. 97.) Whether a physician's opinion constitutes substantial evidence "must be determined by the material facts upon which his opinion was based and by the reasons given for his opinion." (*Ibid.*)

Section 5500.5 limits liability for a cumulative trauma to employers who employed an applicant in the last year of injurious exposure. However, the cumulative trauma injury includes the entire employment period where an applicant was engaged in the same repetitive physically traumatic activities.

In this case, the reporting from both the PQME and applicant's primary treating physician are not substantial medical evidence on the issue of whether the disputed body parts were injured. In his Report, the WCJ noted that "None of the three Ganjianpour reports in evidence indicate a review of records except a single report of PQME Washington. Dr. Washington, ...on the other hand has an exhaustive review of records." (Report p. 5.) We agree with the WCJ that Dr. Ganjianpour should have memorialized the documents he reviewed and discussed any documents he relied on in forming his opinions.

However, the deficiencies in Dr. Washington's reporting are equally glaring. The "relevant factual basis" for a determination of whether a cumulative trauma injury arose out of employment includes a thorough understanding of an applicant's job duties and the duration and frequency of exposure to potentially injurious activities as part of the job. Dr. Washington did not address applicant's job duties in any detail. Notably, he did not comment on the duration of her employment as a janitor or the number of hours she worked during a day or week.

The PQME also appears to have focused on applicant's employment with a particular employer (Crown Building Maintenance). Dr. Washington opined that applicant's low back injury "is not causally related to her employment with Crown Building Maintenance as Ms. Rodriguez had many years of lower back complaints necessitating doctor's visits prior to working for Crown Building Maintenance." (Exh. B, p. 21.) However, applicant's low back complaints arose during the potential cumulative trauma period while she was employed in the same job. As discussed above, Section 5500.5 addresses which employer is liable for a cumulative trauma injury, it does not limit the exposure to be considered when evaluating a cumulative trauma to a single year or a single employer.

The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) Since, in accordance with that mandate, "it is well established that the WCJ or the Board may not leave undeveloped matters" within its specialized knowledge (*Id.* at p. 404), pursuant to Labor Code section 5906, we will return this matter to the trial level for development of the record

and decision by the WCJ as outlined in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Bd. en banc).

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the June 17, 2021 Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 17, 2021 Findings and Award is **RESCINDED** and the matter is **RETURNED** to the trial level for further proceedings and a new decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

September 3, 2021

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

**BLANCA RODRIGUEZ
ROWEN GURVEY & WIN
ALTMAN BLITSTEIN & WAYNE**

MWH/oo

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