

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

LAURA RICHARDSON, *Applicant*

vs.

**HAVAS FORMULA and XL SPECIALTY INSURANCE, administered by GALLAGHER
BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11231613
Sacramento District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the Findings and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on November 12, 2020, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her cervical spine, that applicant was temporarily totally disabled during the period from August 6, 2016, through November 11, 2016, that her condition was permanent and stationary as of November 11, 2016, and that the cervical spine injury did not cause any permanent disability.

Applicant contends that the trial record contains substantial evidence that applicant had not reached maximum medical improvement/permanent and stationary status on November 11, 2016, that the injured body parts claimed were not limited to applicant's cervical spine, and that defendant admitting only the cervical spine injury meant that the back injury claim was at issue.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will affirm the F&A except that we will amend the F&A to defer the issues of the period of applicant's temporary total disability (Finding of Fact 2), and the permanent and stationary date (Finding of Fact 3), and we will return the matter to the WCJ for further proceedings consistent with this opinion.

BACKGROUND

Applicant claimed injury to her cervical spine/neck, right shoulder, back, and right knee while employed by defendant as an outside sales manager on August 6, 2016.

On November 28, 2017, applicant was evaluated by neurology qualified medical examiner (QME) Rosalind Hsia, M.D. (Joint Exh. FF, Dr. Hsia, November 28, 2017.) Dr. Hsia took a history, reviewed the medical record, performed a neurological examination, and concluded:

The bottom line is that the imaging studies do not provide adequate answers to account for the amount of pain and disability that this applicant reports. I believe that there is something wrong which may be industrial as in the case of the fall causing Fibromyalgia, but am not comfortable saying that this is what happened to her. It is my opinion that a modicum testing (but not a fishing expedition) needs to be done on an industrial basis in an attempt to identify what the potential generator for her pain is before she is made P&S and rated.

(Joint Exh. FF, p. 15.)

Applicant was evaluated by orthopedic QME Michael C. Meehan, M.D., on August 22, 2018. (Joint Exh AA, Dr. Meehan, August 22, 2018.) Dr. Meehan examined applicant, took a history, and reviewed the medical record. The diagnoses included lumbar spondylosis [age-related degeneration of the spine] and cervical pain. (Joint Exh AA, p. 9.) Regarding applicant's disability status, the doctor stated:

We discussed the definition of maximal medical improvement/PS status and the applicant declared she was not content to be judged [sic] MMI at this time. ¶ ... In my opinion with reasonable medical probability, the applicant is not MMI at this time ...

(Joint Exh AA, p. 10.)

Dr. Meehan was provided additional medical records and a surveillance video to review. He submitted a supplemental report and stated:

At two years post fall, she is likely at a permanent and stationary level of disability. Going forward to return her to her previous performance level, she may be assisted by psychological counseling, exercise and weight loss, and gradual return to the workforce starting with sedentary modified as suggested by Dr. Hsia. ¶ I would be willing to see her again ASAP to address MMI/PS status. Joint Exh. CC, Dr. Meehan, November 27, 2018, p. 3.)

On April 8, 2019, Dr. Meehan re-evaluated applicant. (Joint Exh. DD, Dr. Meehan, April 17, 2019.) Dr. Meehan re-examined applicant, took an interim history, and reviewed additional medical records. He stated:

She tells me that she has been approved for a lumbar level epidural injection(s). ¶ Since she is planning on proceeding with the therapeutic/diagnostic injections, I do not find her to be MMI/ P&S at this time. ¶ ... It is my opinion that the applicant has not yet reached the point of MMI/P&S. In my opinion with reasonable medical probability, she is not P&S/MMI as of 04/08/19. (Joint Exh. DD, p. 11.)

QME Dr. Hsia re-evaluated applicant on June 26, 2019. (Joint Exh. II, Dr. Hsia, June 26, 2019.) Having re-examined applicant, reviewed additional medical records, and taken an interim history, Dr. Hsia concluded:

It has been my opinion/suspicion that central nervous system dysfunction, rather than LSS [lumbosacral spine] spine injury, is the generator for her pain (with her pain being caused by inappropriate muscle spasm from upper motor neuron injury causing spasm of muscles in the low back and secondary compression of the S1 root) rather than her slip-and-fall being the cause for the ongoing radicular pain that she reports. She may very well have had radicular pain early on after her injury which lasted for, perhaps as long as 12 months, but I am of the opinion that she no longer has any radicular pain, but has ongoing low back pain because of upper motor neuron injury generated muscle spasm that is not related to her work injury. It is my opinion that the symptoms of neck pain, right shoulder pain, right arm pain, headaches, and incontinence are related to dysfunction within the central nervous system and are not related to her original work injury. ¶ It is my opinion that she is P&S with respect to the slip-and-fall as of 8-16-17 which is one year following the incident, ... ¶ ... She is P&S with respect to her cervical spine as of the date of the MRI. There were no periods of time appropriate for total disability and those for T&PD [temporary partial disability] span from the date of the incident until the date of the MRI. ... WPI is 0%. Future medical care is not appropriate. (Joint Exh. II, pp. 31 – 32.)

Dr. Meehan was provided Dr. Hsia's June 26, 2019 report to review and in his supplemental report he stated:

I agree with the assessment that 1. the applicant is P and S with respect to the slip and fall as of 8/16/17, which is one year following the incident. This was ample time for soft tissue sprain to heal and for the applicant to have received adequate conservative therapy and to ascertain that she was not a surgical candidate. I agree with the statement that periods appropriate for TTD are from the date of the incident until 11/16. ¶ ... Regarding P&S status I agree that with

respect to the cervical and thoracic spines she was P&S as of the dates of the MRIs of these regions. Objective findings include normal MRIs of these regions. Future medical care of these regions is not appropriate on an industrial basis. (Joint Exh. EE. Dr. Meehan, September 16, 2019, p. 3.)

The parties proceeded to trial on September 17, 2020. They stipulated that applicant sustained injury AOE/COE to her cervical spine; the issues submitted for decision included temporary disability, the permanent and stationary date, and permanent disability. (Minutes of Hearing and Summary of Evidence (MOH/SOE), September 17, 2020.) Applicant claimed entitlement to temporary disability indemnity benefits for the period from January 5, 2017, through January 3, 2019; defendant claimed a temporary disability indemnity overpayment for the period from August 16, 2017, through January 3, 2019. Applicant claimed that her condition had not yet reached permanent and stationary status, and defendant claimed August 16, 2017, was the permanent and stationary date. (MOH/SOE, p. 2.)

DISCUSSION

Regarding applicant's assertion that the injured body parts claimed were not limited to her cervical spine, based on the MOH/SOE, it is clear that at the trial the parties stipulated that applicant sustained an injury to her cervical spine. (MOH/SOE, p. 2.) No additional body parts were claimed and "parts of body injured" was not an issue submitted for decision. A stipulation may lawfully include or limit issues or defenses to be tried. (*Bemer v. Bemer* (1957) 152 Cal. App. 2d 766, 771 [314 P.2d 114].) Applicant also argues that the February 24, 2020 Pre-Trial Conference Statement included a claim of injury to her knee, back, and shoulder. (Petition, p. 11.) Again, nine months later the parties stipulated to the cervical spine injury. "The pleadings in a workers' compensation proceeding are deemed amended to conform to the stipulations and statement of issues agreed to by the parties for the record. (*County of Sacramento v. Workers' Comp. Appeals Bd. (Weatherall)* (2000) 77 Cal.App.4th 1114, 1119 [65 Cal.Comp.Cases 1].) Applicant did not object to the stipulations and issues read into the record by the WCJ at the trial. Nor did applicant object to the MOH/SOE that were served on the parties and counsel on October 7, 2020. (See MOH/SOE, p. 5.) Finally, applicant cites no factual or legal support for the argument that defendant admitting injury to applicant's cervical spine, meant that the back injury claim was at issue. Thus, we agree with the WCJ that:

The Findings and Award were issued based on the body parts at issue and issues submitted for decision. No findings were made regarding the back or any body parts beyond the cervical spine because neither the back nor compensability of additional body parts were placed at issue.
(Report, p. 1.)

As to the issues of temporary disability and the permanent and stationary date, as noted above, in her June 26, 2019 report, Dr. Hsia said that applicant was “P&S with respect to the slip-and-fall as of 8-16-17 which is one year following the incident” and she later said, “She is P&S with respect to her cervical spine as of the date of the MRI.” (Joint Exh. II, p. 32.) In his September 16, 2019 report, Dr. Meehan agreed with Dr. Hsia that applicant’s condition caused by the August 6, 2016 injury was P&S as of August 16, 2017, and that her cervical spine injury was P&S as of the date of the MRI (Joint Exh. EE, p. 3.) We note that the only cervical spine MRI that Dr. Hsia mentioned was done by Natraj Shanmugam, M.D., on November 11, 2016. (Joint Exh. FF, p. 11, record review.) We do not understand the doctors’ rationale for their opinions that applicant’s condition caused by the August 6, 2016 slip and fall injury was P&S as of August 16, 2017, but the cervical spine injury (that was caused by the August 6, 2016 slip and fall injury) was P&S as of November 11, 2016, the date of the MRI.

A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers’ Comp. Appeals Bd.* (1968) 69 Cal.2d 399, 407 [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 - 621 (Appeals Board en banc).) Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *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].) The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or where there is insufficient evidence to determine an issue. (Lab. Code, §5701, §5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) When the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) Upon return of this matter, we recommend that the parties request Dr.

Hsia and Dr. Meehan submit supplemental reports clarifying their opinions as to whether applicant had a period (or periods) of temporary total disability because of her injury and to clarify their opinions as to the appropriate P&S date as discussed above.

Accordingly, we affirm the November 12, 2020 F&A except that we amend the F&A to defer the issues of the period of applicant's temporary total disability (Finding of Fact 2); and the permanent and stationary date (Finding of Fact 3), and we return the matter to the WCJ for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings of Fact and Award of November 12, 2020, is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

2. The issue of applicant's temporary disability, caused by the cervical spine injury, is deferred.
3. The issue of applicant's permanent and stationary date is deferred.

* * *

IT IS FURTHER ORDERED that the matter is **RETURNED** to the WCJ for further proceedings consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 6, 2022

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

**LAURA RICHARDSON
LAW OFFICES OF MICHAEL J. HURLEY
D'ANDRE LAW**

TLH/pc

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

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