WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

MARICELA RODRIGUEZ, ***Applicant***

vs.

SOFT GEL TECHNOLOGIES, INC.; CALIFORNIA INSURANCE COMPANY, administered by APPLIED RISK SERVICES, INC., ***Defendants***

Adjudication Number: ADJ13220426
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.

We have given the WCJ's credibility determination(s) great weight because the WCJ had the opportunity to observe the demeanor of the witness(es). (*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 determination(s). (*Id*.)

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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 10, 2023

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

MARICELA RODRIGUEZ
EQUITABLE LAW FIRM
LAW OFFICES OF JOAN SHEPPARD

AS/*cs*

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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REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

1.	Applicant's Occupation:	PRODUCTION WORKER
	Applicant's Age:	44
	Date of Injury:	June 1, 2002 through February 21, 2020
	Parts of Body Injured:	Bilateral wrists, rt. Upper extremity, left upper extremity ***Claimed***: neck, back, bilateral shoulders, bilateral elbows, eyes
2.	Identity of Petitioner:	Applicant
	Timeliness:	Yes
	Verification:	**Yes**
3.	Date of Amended Findings and Award	12/14/2022
4.	Applicant's Contentions:	There is no substantial medical evidence

II.

STATEMENT OF THE CASE AND FACTS

Maricela Rodriguez was 44 years old and while employed during the period June 1, 2002 through February 21, 2020, by Soft Gel Technologies, a company located in Commerce, California she filed a claim alleging injury arising out of and in the course of her employment. However, during this period of employment it was stipulated that she sustained injury arising out of and in the course of employment to bilateral wrists due to carpal tunnel syndrome. During this same period of time, the applicant claimed to have sustained injuries arising out of and in the course of employment to her neck, back, bilateral shoulders, bilateral elbows, and eyes. A trial was held on this matter on August 9, 2022, where issues were raised regarding additional body parts, temporary disability, permanent disability, apportionment, self-procured medical treatment, liens, attorney fees and the substantially of medical evidence. Applicant testified at trial offering evidence which the court carefully reviewed prior to issuing a decisions. The

medical reports of the PQME and the treating physicians were also reviewed and addressed in the opinion on decision. .

On October 20, 2022, the original Findings and Award issued by the WCJ, with Defendants filing a Petition for Reconsideration on November 18, 2022. Defendant's appeal related solely to a clerical error made in regard to the rating of the permanent disability. No other issue was appealed. The WCJ issued an order vacating the Findings and Award for Clerical Correction only. Applicant did not file an appeal of the original Findings and Award. Following the clerical correction, the matter was resubmitted and an Amended Findings and Award issued on 12/14/22. It is from the Amended Findings and Award that Applicant has now appealed.

III.

DISCUSSION

The appeal filed by applicant essentially questions the substantially of the medical findings of Dr. Peter Alexakis, the PQME. These defense Exhibits, A, B and C, were found by the court to be accurate, well-reasoned and clear. They were held to be substantial medical evidence and better evidence that the reports of the treating physicians. Applicant argues that the PQME's failure to find injury to the applicant's neck and back are incorrect and speculative. They argue that the reports do not properly review all of the applicant's medical records and that the records, specifically the Facey medical records, are not offered into evidence. Applicant asserts that the PQME in the report dated 8/15/2020 indicates that he reviewed a Rehab 90 job analysis stating that applicant lifted up to 10 lbs. They refute this by asserting that the applicant testified to lifting objects up to 50 lbs. They argue that the PQME may have reviewed an unauthenticated job analysis.

None of the arguments made by applicant on appeal were raised at the time of trial. More importantly, there is no evidence that Applicant attempted to question the validity of the PQME report prior to their presentation for trial. There is no evidence of a cross-examination of the PQME to questions his findings. As is well known, there is no requirement that the records reviewed by a physician be offered into evidence. It is enough that the doctor reviews them and comments accordingly, as he did in this case. While Applicant claims that there were complaint in those records, is not the equivalent of a finding of industrial causation. Applicant does not ever point to a place in those records noting industrial causation to the back, neck, bilateral shoulders, bilateral elbows or eyes. The mere fact that the applicant had complaints is not sufficient to

warrant a finding of AOE/COE. The court relies on the physician reviewing those records to determine whether he believes that they are evidence of an industrial injury. In this case the PQME did not find any such evidence.

Applicant also refutes the videos taken of the applicant and argues that they were not offered into evidence, however, at trial each of the PQME reports were admitted without objection. No request was ever made that the videos of the applicant be produced. Applicant also made no attempt to offer the medical records from Facey, which they had every opportunity to do.

The argument that the PQME may have relied upon an unauthenticated Job analysis is also waived as it was never made at trial and there was no objection to the admission of the reports which reviewed them. More importantly, this argument is mere speculation and finds no basis in fact.

Applicant testified at trial that she rarely lifted up to 50 lbs. and she described boxes containing a small number of sheets of paper. There is no basis to applicant's claim that the evidence relied upon by the WCJ is insubstantial.

Applicant has abandoned the claim that the reports of the treating doctors are substantial and instead assert that a 5701 evaluation should be ordered. This argument is first made on appeal. The parties have had numerous hearings, however the record shows no discussion regarding a 5701 evaluation. A party may not raise this issue for the first time on appeal, particularly since they have had numerous opportunities to develop the record but have not done so, to their own satisfaction.

The WCJ is obligated to consider the evidence presented when the parties indicate that they are ready to proceed. Applicant may not, upon seeing an unfavorable outcome, request more discovery in an effort to rewrite a medical record that has already by thoroughly and completely examined by both a PQME and a treating doctor. Cases demand finality so that the applicant may proceed with treatment. This WCJ has reached conclusions based on the entire record which has been considered. The findings of fact are supported by the medical and documentary record. There is nothing offered to rebut these findings.

In order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability. Medical reports 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 or

examinations or on incorrect legal theories. 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. The test of substantiality is measured on the basis of the entire record. The appeals board may not isolate a fragment of a doctor's report or testimony and disregard other portions that contradict or nullify it; it must give fair consideration to all of the doctor's findings. In evaluating the evidentiary value of medical evidence, the physician's report and testimony must be considered as a whole, not in segregated parts. So the entire report and testimony must demonstrate that the physician's opinion is based on reasonable medical probability. In the case before, Dr. Alexakis' reports are substantial and may be utilized to support the WCJ's findings.

REVIEW OF EVIDENCE

The court considered the testimony of the witness, Applicant, Maricela Rodriguez, who testified with the benefit of a Spanish interpreter. It was her testimony that her job duties in the last 5 years were producing documents which included lifting boxes of paper, sitting at her desk and walking to other buildings. She stated that she would lift 8 to 10 pages regular but on occasion would lift 50 lbs. She later testified that she would lift boxes of between 30 lbs. to 50 lbs. once or twice a week, based on her estimate. 70% of her time was spent sitting, according to her. During that time, she was using her hands and staring at the computer.

During cross examination, she admitted that she was accused of stealing money at work and was terminated in February 2020 for stealing. (SOE 8:17-20). She stated that she was doing all of her job duties prior to her termination but was working slowly due to pain in her hands and low back (SOE 10:22-24) She could not recall the dates of the application she filed or the claim form.(SOE 9:1-3).

She was also questioned about the complaints mentioned in the PQME report and despite missing information, she says that she told him about pain in her neck, back and related to her carpal tunnel syndrome. (SOE 9:21-25) The treating doctor's reports were not completed and therefore, insubstantial.

TEMPORARY DISABILITY

Applicant was working her regular job up until her termination based on the employer's claim that she was stealing money. Applicant does not refute this claim and only says that it arose after her injury. By the time of her termination in February of 2020, benefits in the form of PDAs were paid. More significantly, the applicant was performing her regular duties before she was terminated. Dr. Alexakis in his PQME report of June 21, 2021, found that she was not TTD and could have continued working her regular job had she not been terminated. (Exhibit C, Page 2). Based on that, she was not entitled to TD and her claim is denied as it was entirely after her termination.

CONCLUSION

It is the recommendation of the WCJ that the Petition for Reconsideration be Denied.

DATE: 1/24/23

MARTHA D. HENDERSON

WORKERS' COMPENSATION JUDGE