WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

ROSA UHES, *Applicant*

vs.

FRANCIS CORD COPPOLA PRESENTS, LLC;
NORTH RIVER INSURANCE COMPANY
administered by CRUM & FORSTER. *Defendants*

Adjudication Numbers: ADJ10961161

Santa Rosa District Office

OPINION AND DECISION
AFTER RECONSIDERATION

We previously granted reconsideration in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

Applicant seeks reconsideration of the "Findings and Order" (F&O) issued on July 15, 2022, by the workers' compensation administrative law judge (WCJ). The WCJ found, in pertinent part, that applicant did not sustain industrial injury on August 17, 2016 to her eyes, mouth, and nervous system resulting in loss of ability to taste and smell.

Applicant argues, in pertinent part, that the WCJ erred because the opinions of the qualified medical evaluator (QME) do not constitute substantial medical evidence and that the QME did not conduct a complete examination.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record, as our Decision After Reconsideration we will rescind the WCJ's July 15, 2022 F&O, and in its place, we will substitute a new findings of fact that applicant sustained industrial injury to her mouth, which resulted in no permanent disability and no need for future medical treatment.

FACTS

Applicant went to the emergency room on August 17, 2016 after ingesting a sip of trisodium phosphate (TSP). (Defendant's Exhibit G, Excerpted Reports of Adventist Health.) Her ER intake notes the following:

> 38 year-old female who is a wine taster presents with ingestion of trisodium phosphate. At approximately 9 AM today she had ingestion of one sip of trisodium phosphate which she mistook as citric acid. She immediately rinsed out her mouth and drinking [sic] "a ton of water". She feels her tongue is numb and she cannot taste things normally however she denies any problems swallowing problems breathing, blood, blistering or any other symptoms. Her manager called poison control who recommended she come into the ER.

(*Id*. at p. 7.)

Following her initial ER visit, applicant obtained follow up care for approximately two months. Her primary treater referred her to a QME examination as follows:

> The patient will be referred to neurology for her complaints of severe headaches at this time. I am strongly recommending this patient be seen by a QME as soon as possible rather than later, as her symptoms and complaints are not consistent. During the interview I noted the patient was writing notes. I also noted as she was writing them, they were not consistent with what I had told her. For example, she wrote in her book that her request for a referral for a second ENT consultation was refused. I advised the patient that taking notes was an excellent idea, but that she needed to be sure to get them transcribed accurately, and therefor she needed to note that I stated she would not be referred to a second ENT until we received the original ENT's report.

(Defendant's Exhibit B, Report of Daniel Weinberg, M.D., October 6, 20216, p. 3.)

Applicant was examined for ear, nose and throat injury by QME, John Carrigg, M.D., who performed a physical examination using a scope and noted no abnormalities. (Defendant's Exhibit A, Report of John Carrigg, M.D., November 1, 2018, pp. 7-8.) "There is no permanent ENT impairment so no causation or apportionment." (*Id*. at p. 9.) He found no need for future medical care on an ENT basis but recommended a neurology exam. (*Ibid*.) Dr. Carrigg further noted that applicant was a poor historian: "This claimant was extremely difficult to glean correct history from as she would make statements of fact not in evidence and the story would change after further

direct questioning. I am not sure the reasons for that as I am not so expert at human psychology and cognitive behavior." (*Ibid*.)

Applicant was examined in neurology by QME Daniel Shalom, M.D., who did not find applicant's complaints of headaches to be industrial, opining:

> The headaches, as stated at times, do appear to have some migraine features, but it should be emphasized at this point that it is rather clear that there are significant psychological/psychiatric factors that appear to be impinging on the overall structure of the case, starting with the accuracy of the patient's description of certain key elements, of her symptoms, and of the care received.
>
> However, even if I were to accept the basic premise that she is having significant headaches, from the neurological perspective, I would find them to be unlikely of industrial causation.
>
> Thus, no rating, work preclusion, or future medical care are given.
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> * * *
>
> [I]t is hard to construct a causal link between the putative tongue injury and the subsequent development of significant headaches. It is even more difficult to create a scenario where they initially appeared to be improving and then suddenly increased in a dramatic fashion, and that begins to raise the very significant issue' of non-organic factors in this case from the neurological perspective.

(Defendant's Exhibit A1, Report of Daniel Shalom, M.D., March 4, 2020, pp. 14-15.)

DISCUSSION

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers' Comp. Appeals Bd.* (*Clark*) (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code[1], §§ 3202.5; 3600(a).)

> The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason

[1] All future references are to the Labor Code unless noted.

> of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)
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> * * *
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> The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark*, *supra* at 298 (internal citations and quotations omitted).)

"Injury" in workers' compensation is broadly defined to include: "any injury or disease arising out of the employment[.]" (§ 3208.) Notwithstanding this broad definition, exceptions exist in the Labor Code for first aid injuries, which do not require formal reporting. (§ 5401(a).) First aid is defined as follows:

> "[F]irst aid" means any one-time treatment, and any follow up visit for the purpose of observation of minor scratches, cuts, burns, splinters, or other minor industrial injury, which do not ordinarily require medical care. This one-time treatment, and follow up visit for the purpose of observation, is considered first aid even though provided by a physician or registered professional personnel. "Minor industrial injury" shall not include serious exposure to a hazardous substance as defined in subdivision (i) of Section 6302.

(*Ibid*.)

Here, for reasons that are not clear, applicant voluntarily ingested an unknown chemical, which was believed to be TSP. Applicant went to the emergency room on the day of the accident, and she was seen in follow up by her doctors for two months thereafter. Applicant sustained an industrial injury, which was not merely a first-aid injury. Accordingly, we must amend the findings of fact to reflect that applicant sustained industrial injury. The sole question is the nature and extent of such injury.

Applicant has been seen by multiple doctors, including two QMEs. No doctor has found permanent disability resulting from applicant's injury. No doctor has found a need for future medical treatment. The only body part treated due to ingestion of the chemical was applicant's mouth, wherein her primary treater noted burns to the taste buds, which resolved. Both QMEs and applicant's treating physician have noted issues with applicant's credibility as a historian.

The WCJ's Report addresses each of the additional arguments raised by applicant in the petition for reconsideration, particularly as to the substantiality of the reporting. We find the WCJ's analysis persuasive in this respect and find the reporting of the QMEs substantial.

Accordingly, as our Decision After Reconsideration we will rescind the WCJ's July 15, 2022 F&O, and in its place, we will substitute a new finding that applicant sustained industrial injury, which resulted in no permanent disability and no need for future medical treatment.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the July 15, 2022 Findings and Order is **RESCINDED**, with the following **SUBSTITUTED** in its place:

FINDINGS OF FACT

1. Applicant, Rosa Uhes, who was 37 years old on the date of injury, while employed on August 17, 2016 as a cellar worker (Occupational Group No.332) at Rutherford, California, by Francis Ford Coppola Presents, LLC, sustained injury arising out of and in the course of employment to her mouth.

2. Applicant did not sustain industrial injury to her eyes or nervous system resulting in loss of ability to taste and smell

3. Applicant's injury did not result in applicant sustaining permanent disability.

4. Applicant does not require future medical care to cure or relieve from the effects of the industrial injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 15, 2024

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

ROSA UHES, IN PRO PER
COLEMAN, CHAVEZ & ASSOCIATES

EDL/mc

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