

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

LUVA WILSON, *Applicant*

vs.

**BLUE SHIELD OF CALIFORNIA; ARCH INSURANCE
administered by SEDGWICK, *Defendants***

**Adjudication Number: ADJ11914024
Pomona 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.

The employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) In this case, we agree with the WCJ that the opinion of panel qualified medical examiner (PQME) Charles Schwarz, M.D., is substantial medical evidence that supports the finding of no industrial causation. Therefore, applicant did not meet their burden of proof. Applicant did not exercise due diligence in developing the record prior to trial and the request to do so now is too late.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER



/s/ KATHERINE A. ZALEWSKI, CHAIR

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

APRIL 13, 2021

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

**LUVA WILSON
SOLIMON RODGERS
KARLIN, HIURA & LASOTA, LLP**

PAG/ara

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

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

**I
INTRODUCTION**

1. Applicant's Occupation: Claims Examiner
Applicant's Age: 44
Date of Injury: CT June 1, 2018 thru February 1, 2019
Parts of Body Injured: Left Elbow, left wrist, back, neck, bilateral
legs, stress and anxiety.
Manner in Which Injury Occurred: Repetitive physical activity.
2. Identity of Petitioner: Applicant
Timeliness: Timely
Verification: Verified
3. Date of Issuance of Findings and Order: January 27, 2021
4. Petitioner's Contentions:
 - a. "Applicant's counsel should be granted the opportunity to cross examine the QME doctor to determine issues with his reporting"

**II
FACTS**

Applicant is claiming a cumulative trauma injury while working as a Claims examiner. The claim was denied by defendant and a PQME was obtained with Dr. Schwarz. Doctor Schwarz examined the applicant on December 3, 2019 and issued a report (Joint exhibit J-4). The Doctor then issued three supplemental reports after reviewing various records, January 22,2020 (Joint exhibit 3), April 27, 2020 (Joint exhibit 2), and August 5, 2020 (Joint exhibit 1).

Defendant filed a DOR for Priority Conference on September 16, 2020, not served until October 2, 2020, on the issue of AOE/COE. Applicant filed a timely objection on October 7, 2020. A priority conference was held on October 8, 2020 with WCJ Coutts. Judge Coutts set the matter for trial, noting Applicant's Objection. Contrary to the Applicant's assertions in the statement of facts, the Judge limited the issue to AOE/COE.

The parties were Ordered to circulate the pretrial conference statement. While each party uploaded a PTCS, only defendant signed the PTCS. Trial was set for December 21, 2020.

At trial, the stipulations, issues and exhibits where discussed with the parties before going on the record. The only issue listed for trial was AOE/COE based on conference Judge's notes and that the case was set on priority track. (MOH 12-21-2020 Pg 2) The exhibits were extensively discussed and it was agreed that they would be Joint exhibits. The reports of Dr. Schwarz (J1 –J4)

were admitted into evidence without objection. (MOH, Pg 3) The issue of discovery was not specifically stated on Applicant's version of the PTCS. Additionally, in the discussion with the parties, the list of exhibits was reduced to those exhibits admitted into evidence.

There was no testimony offered and the case was submitted on the record.

III DISCUSSION

THE MEDICAL REPORTING SUBMITTED WAS SUBSTANTIAL EVIDENCE AND SUPPORTS THE FINDING OF THE WCJ

The Applicant's only argument is that they should be allowed to depose the Panel QME, Dr. Schwarz. However, there is no assertion that the reports are not substantial evidence. Only rhetorical, somewhat sarcastic, questions regarding the doctor's conclusions. (Applicant's Petition for Reconsideration p 3- L13-15).

Nevertheless, the reporting of Dr. Schwarz was evaluated by the WCJ and found to be substantial evidence on the issue of causation. Doctor Schwarz evaluated the applicant and issued an initial evaluation (Joint 4). The doctor did an examination, took the patients history, which included her assertion that she worked 60-70 hours per week, reviewed records, provided a diagnosis, and wrote a 17 page report. However, he could not give an opinion on causation and requested more records.

Additional records were provided and a second report was issued January 22, 2020 (Joint 3). After reviewing 931 pages of records the doctor requested more records to review. Specifically, the records relating to her 8-1-2019 surgery and cervical MRI before he can address causation.

A third report was generated on April 27, 2020 (Joint 2). In this report, the doctor evaluates the applicant's job duties, but would still like a more complete job description that lists the physical requirements of the job. Nevertheless, the doctor does conclude that the Applicant's injuries are non-industrial.

The final report issued on August 5, 2020 (Joint 1). After reviewing the job description, the doctor repeats his conclusion that he feels the injuries are non-industrial. He repeats the reasons that he had recited in the prior reports which include: prior motor vehicle accident with cervical spine injury April 30, 2005; X-rays and acute back pain on October 24, 2006; Additional neck pain noted September 9, 2010; Low back pain and x-rays November 16 & 18, 2010; Right upper extremity pain, February 24, 2014; Upper extremities pain November 14, 2018 due to an injury working out. (Joint 1 pg 4) No testimony was offered to rebut this history given by the doctor.

The doctor continues by stating that based on the long standing conditions referred to above, the relatively short period of employment, and the applicant's job duties, he concludes that an industrial injury did not take place. (Joint 1, pg 5) The doctor's opinion is well reasoned, supported by the examination, patient history and medical records. Further, the conclusions are not

arbitrary, or based on surmise, conjecture, or guess. Therefore, it was found that the totality of the reporting from Dr. Schwarz is substantial medical evidence, and supports the finding of no injury.

APPLICANT'S ASSERTS THAT THE REPORTING OF DOCTOR SCHWARZ IS NOT FAIR OR ACCURATE.

The conclusion of Applicant's Petition for Reconsideration states that a deposition of Dr. Schwarz is necessary for a fair and accurate report. However, there is nothing offered in evidence to contradict the reporting of Dr. Schwarz. In fact, the voluminous records, and well reasoned conclusion of doctor Schwarz, with three supplemental reports being issued, indicates that the doctor was very conscientious and fair when reaching his conclusions.

Furthermore, while the applicant attorney indicated that they objected to the final report of doctor Schwarz, nothing was done to challenge the report. A deposition was not scheduled, or even attempted, there is nothing in the doctors reporting that has been rebutted, and no other evidence has been provided to support an industrial injury. Therefore, allowing open-ended discovery, when the applicant has taken no affirmative efforts to propound the discovery sought, is not fair either. Especially when there are no defects noted in Dr. Schwarz's report, and none were raised prior to the F&A.

IV
RECOMMENDATION

It is respectfully recommended that the Applicant's Petition for Reconsideration be denied in its entirety.

Dated: March 2, 2021

Charles Bentley
Workers' Compensation
Administrative Law Judge