WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

RYAN MOSS, *Applicant*

vs.

HOSPITAL BUSINESS SERVICES, INC./ PRIME HEALTHCARE SERVICES; SAFETY NATIONAL CASUALTY CORPORATION, adjusted by CORVEL CORPORATION, *Defendants*

Adjudication Number: ADJ11931714
Anaheim District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After 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, and for the reasons stated below, we will affirm the December 16, 2020 Findings and Order.

We agree with the WCJ's reliance on the Supreme Court's holding in *Employers Mutual v. Industrial Acc. Com. (Gideon)* (1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286] which is squarely on point with the facts in this case. Therein, the *Gideon* Court stated:

> It is settled in this state and elsewhere that an injury suffered from a fall on the employer's premises, in the course of employment, from a height or on or against some object, arises out of the employment and is compensable, even though the fall was caused by an idiopathic condition of the employee ….
>
> ….
>
> The cases denying compensation do so on the theory that a floor presents no risk or hazard that is not encountered everywhere, and that such risks and perils as they do present are only those which confront all members of the public. The

> cases allowing compensation do so on the theory that the injury need not be the product of a peril or hazard which exposes the employee to extraordinary risk, in order to be compensable, and that the hazard presented by the floor renders the injury compensable, not because it should have been foreseen or expected, but because it is a hazard that is peculiar to the employment and is one that is incidental to and grows out of the employment. . . .
>
> It is our belief, and we so hold, that the attempted distinction between cases where the employee falls from a ladder, or into a hole, or against some object, and those where the employee falls to the ground or floor, is without a reasonable basis. There are cases to the contrary but the modern trend is definitely in accordance with the view above expressed.
>
> ….
>
> Thus in the instant case it is not a ground for annulling the award of compensation that the employee might have had a fall (resulting in bodily injury) caused by an idiopathic condition but occurring at home, on the street or elsewhere when he was tending to his private affairs. The fact remains that he injured himself while at work, on his employer's premises, the injury being the striking of his head against the floor, a condition incident to the employment. His condition may have been a contributory cause but it was not the sole cause of his injury. It would not be doubted that if an employee fell to the ground or floor in the course of his employment, and as a result was injured, the injury would be compensable whether the cause of the fall was a slippery or defective floor, or was due to nothing more than his innate awkwardness or even carelessness. Certainly, resolving all doubts in favor of the commission's finding that the injury arose out of the employment, compels an affirmance of the award.
>
> *(Gideon, supra,* 41 Cal.2d at pp. 678-680.)

The WCJ's report, moreover, cures any technical or alleged defect in satisfying the requirements of Labor Code section 5313. (*City of San Diego v. Workers' Comp. Appeals Bd.* (*Rutherford*) (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Bd*. (1980) 45 Cal.Comp.Cases 1026 (writ den.).)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the December 16, 2020 Findings and Order is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 7, 2021

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

RYAN MOSS
LAW OFFICE OF JOHN ROSENBAUM
THE LAW OFFICE OF KEVIN M. KIM

PAG/*pc*

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

REPORT & RECOMMENDATION ON PETITION FOR RECONSIDERATION

I
INTRODUCTION

The applicant, Ryan April Moss, age 36, while employed on 8/31/2018 as a medical biller/coder/billing specialist, at Ontario, California, by Prime Healthcare, claimed to have sustained injury arising out of and in the course of her employment to her left shoulder, left arm, and neck. The defendant's insurance carrier for this denied claim is Safety National Insurance administered by CorVel Corp.

The applicant is alleged to have fallen at work due to a seizure. Applicant does not claim the underlying seizure arose out of or in the course of her employment. On 12/16/2020, it was found that the applicant suffered a seizure at work resulting in an injury AOE/COE to her left shoulder when she hit the ground. The nature and extent of the injury claimed to any other part of the left upper extremity or the neck was deferred.

On Monday, 1/11/2021, defense counsel filed a timely verified Petition for Reconsideration by serving the AHM folder.

Petitioner argues that the court erred by " merely" relying on the CA Supreme Court case of *Employers Mutual v. IAC* (Gideon), 41 C2nd 676, 18 CCC 286 (1953). He also argues that the medical record is devoid of any medical evidence in support of the court's finding.

II.
FACTS

The parties decided to set this case for trial without any designation of a primary treating physician or a Panel QME to address the AOE/COE issue. The applicant had medical reports from various treating physicians, plus the ambulance records from when she was transported to San Antonio Regional Hospital after her 8/31/2018 fall. At my request, the parties chose to have the applicant examined by Dr. Larry Danzig to address the AOE/COE issue. Dr. Danzig's 6/18/2020 medical report is marked and admitted as Applicant's Exhibit 15.

Dr. Danzig reviewed several medical records reaching a conclusion that the applicant's fall on 8/31/2018 at work resulted in a dislocated left shoulder. Dr. Danzig did not address the underlying seizure issue other than to review the applicant's medical records, the application, and the *Gideon* decision, supra, that was provided to him. The records he reviewed included that of Dr. Al-Hariri

dated 9/13/2018 who has a history of loss of consciousness, loss of bladder control and tongue biting on 8/31/2018.

Defendant had also relied on the affirmative defenses pursuant to Labor Code 3600 (a) (4) and (5) that applicant's injury was caused by intoxication or unlawful use of a controlled substance and that the injury was intentionally self-inflicted. No toxicology report was offered into evidence. It was found that the defendant did not meet its burdens of proof for those affirmative defenses. Defendant has not challenged those findings in its Petition for Reconsideration.

III.
DISCUSSION

Petitioner begins his argument that the court erred in finding an industrial injury to the applicant's left shoulder by referring to an article from Johns Hopkins that is legally inadmissable. It was not offered into the medical record at trial. The applicant was not examined at Johns Hopkins and no evaluating physician refers to considering a Johns Hopkins article in reaching medical conclusions. Defendant had chosen not to have the applicant evaluated for the seizure issue.

The applicant testified that she had suffered a previous seizure about a month before the 8/31/2018 injury at issue in this trial. It occurred while driving co-workers home from work in the carpool lane but did not result in an injury. She described herself as also losing bodily functions at that time. The medical records reviewed by Dr. Larry Danzig as part of his 6/18/2020 medical report include a review of a 12/13/2018 consultation report by Dr. Al-Hariri (page 24) which refers to a seizure on 8/2/2018.

Ms. Moss testified that on 8/31/2018, she had been working at Prime Healthcare for about nine months when she had a seizure while working at her cubicle.

Two witnesses were called to testify by defendant. Mr. Kenneth Wheeler oversaw the department in which applicant worked. He was in his office at the time and did not witness the fall. Mr. Wheeler had known the applicant since approximately 2015 when they worked at a different employer. He knew the applicant complained about pain but they did not interact much at Prime Health Care. He saw that she wore Salonpas patches.

The other witness was Ms. Lydia Cruz who sat two cubicles behind the applicant. Ms. Cruz testified that she did not witness the fall but heard the noise from the fall. She then observed the applicant on the ground. Mr. Wheeler described Ms. Cruz coming into his office crying, saying that the applicant started to seize, made indescribable sounds, and fell out of her chair. Ms. Cruz described the applicant's mouth as "moving really really fast" when this

occurred. Ms. Cruz described the applicant as always looking very relaxed. She estimated that the applicant fell 20 – 25 minutes after her lunch break.
It is undisputed that the applicant was performing her usual and customary work duties at the time of her fall. Applicant has some underlying health issues for which she takes pain medication. Ms. Moss testified that she was taking no illicit drugs at the time of her 8/31/2018 seizure. She takes pain medication every day. All her medications were prescribed. She denied being intoxicated. Defendant offered no evidence of intoxication. Applicant testified to having taken Norco during her 30 minute lunch break.

Ambulance personnel described the applicant as incontinent which is consistent with applicant describing losing bodily functions at that time. Applicant was also described as confused as to the event. The Ambulance records are marked and admitted as Applicant's Exhibit 5.

Dr. Adam Rivadeneyra described the applicant as having suffered a seizure. She was treated with Keppra, an anti-seizure medication.

Defendant is correct that there is no record of an EEG or brain scan taken of the applicant on 8/31/2018. Ms. Cruz' testimony of the applicant's eye movements gives an eye witness account. The physicians who evaluated the applicant after the 8/31/2018 refer to the applicant as having had a seizure. What Ms. Cruz witnessed clearly upset her to the point of being "freaked out" by her observations of the applicant after the fall. Based on the evidence presented, the applicant met her burden of proving by a preponderance of the evidence that she suffered a seizure at work on 8/31/2018.

The court agreed with applicant's counsel that the applicant's claim of industrial injury is supported by *Employers Mutual v. IAC* (Gideon), 41 C2d 676, 18 CCC 286 (1953) in which the California Supreme Court found a non-industrial seizure resulting in a head injury to be a compensable head injury. The court reasoned that while an idiopathic condition could have occurred outside of work, the fact that it occurred at work made it industrial.

Defendant argues there must be a unique danger for applicant to recover for the dislocated shoulder. The court cannot agree with that argument. There was no testimony or evidence given of the applicant's movements while working in her chair just before the fall other than she was performing her usual and customary duties as a billing specialist in a seated position. No additional cases were ultimately cited in the court's decision because the facts were so consistent with the facts in *Gideon*, which involved a seizure.

There was no evidence of applicant taking any illicit medication. She had been working and taking pain medication for years. There was no evidence of why this happened on this day and not a different day. Based on this record, the court concludes that the applicant has met her burdens of proof.

IV.
RECOMMENDATION

For the reasons set forth above, it is recommended that the Petition for Reconsideration be denied.

DATE: 1/25/2021
Nancy M. Gordon
WORKERS' COMPENSATION JUDGE