

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

CONNIE HARE, *Applicant*

vs.

**HARBOR FREIGHT TOOLS; permissibly self-insured,
administered by GALLAGHER BASSETT, *Defendants***

**Adjudication Number: ADJ9148418
Oxnard 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 great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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. (*Id.*)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 30, 2022

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

**CONNIE HARE
LAW OFFICE OF CHRISTINE T. NELSON
WAI & CONNOR
EMPLOYMENT DEVELOPMENT DEPARTMENT**

PAG/cs

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

REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant, CONNIE HARE born on [] while employed during the period 11/05/2011 through 11/05/2012 as a lease administrator at Calabasas, California, by HARBOR FREIGHT TOOLS, permissibly self-insured, administered by GALLAGHER BASSETT was found to have sustained injury arising out of and occurring in the course of employment to her bilateral hands, wrists and thumbs, and following carpal tunnel surgery suffered complex regional pain syndrome as a neurological and internal condition on an industrial basis.

Petitioner defendant seeks reconsideration.

II. CONTENTIONS

Petitioner defendant contends that the undersigned did not consider the entirety of the evidence in determining that applicant suffers from Complex Regional Pain Syndrome (CRPS); and that applicant does not suffer from that condition on an industrial basis.

III. FACTS

The question of Complex Regional Pain Syndrome in this case dates back to the 01/24/2014 report of Andre Ishak, M.D. (Applicant's Exhibit 19). The diagnosis was first made by Kaymar Assil, M.D. on 03/2014 (Applicant's Exhibit 6). The diagnosis was also made by Joshua Prager, M.D. (Applicant's Exhibit 18, report of 07/15/2015) though causation was not discussed.

The panel qualified medical examiner Robert Fisher, M.D. had evaluated applicant with respect to the diagnosis and causation of CRPS. Prior to that time Dr. Fisher had reported and testified, including the 06/05/2018 testimony (Defendant's Exhibit N) where Dr. Fisher acknowledged that he lacked specific training in CRPS, that he did not use the International Association for the Study of Pain ("The Association I don't know. I use the one in the Guide.") and that if he had a patient with CRPS he would refer them to a neurologist. (pages 10 – 13).

On 04/02/2019 the undersigned ordered development of the medical evidentiary record. In the Opinion on Decision it was noted that Dr. Fisher referred to the AMA Guides with respect to the diagnosis. The Guides are utilized in California workers' compensation cases for the purpose of rating permanent disabilities.

However, for diagnostic purposes, the Guides are not binding.

Reference was made to The Lawyer's Guide to the AZMA Guides and California Workers' Compensation, 2019 Edition, Robert Rassp, Mathew Bender. In analyzing the diagnostic criteria for the legal determination of CRPS, Rassp cautions:

Do not allow any physician to refer to any discussion about CRPS in Chapter 16 of the AMA Guides because all of the diagnostic criteria listed there are obsolete and no longer used in present day medicine. The authors in Chapter 16 used the research based diagnostic criteria for CRPS which only captures the most severe cases, probably less than 5% of all confirmed cases of CRPS. The present diagnostic criteria for CRPS uses a clinical medicine diagnostic criteria that is accepted by the International Association of the Study of Pain and it is symptom specific. Counsel should refer to Chapter 13 of the AMA Guides in the chronic pain sections for upper and lower extremities. Chapter 3.16 (6), page 3-183.

The only report in evidence utilizing the International Association criteria at that time was that of Joshua Prager, M.D. (Applicant's Exhibit 18, report of 07/15/2015). That report did not address causation, permanent disability or apportionment.

On 11/18/2019 Dr. Fisher re-addressed the CRPS diagnosis (Defendant's Exhibit Q) and found:

It is my opinion that within reasonable medical probability, the patient does have bilateral complex regional pain syndrome of the upper extremities (especially hands and wrists) and that this is due to the unfortunate results of her carpal tunnel surgery which was done to relieve her carpal tunnel syndrome (bilateral), which I believe was secondary to her cumulative trauma due to the repetitive nature of her work. It is my opinion that the resultant syndrome is 100% industrially related and I see no evidence for apportionment to nonindustrial factors. The patient at this time, I feel has reached maximum medical improvement and is permanent and stationary for rating purposes. I believe that she became permanent and stationary on my original evaluation on February 22, 2016. Up until that time, I would say that she was temporarily totally disabled.

In Defendant's Exhibit S (01/29/2021 report) Dr. Fisher reviews *sub rosa* video and a report of Lawrence Richman, M.D. (09/24/2020, Defendant's Exhibit X)) and concludes that applicant did not then meet the IASP criteria. The relied upon report of Dr. Richman, a neurologist, includes:

It is still my opinion that the subject of complex regional pain syndrome is best addressed by a specialist in neurology and hand surgery. Some physical medical specialists would also address this subject. This is not an autoimmune disorder and would not ordinarily be addressed by a rheumatologist with specialty addressed to autoimmune or other disorders affecting skin subcutaneous tissue and joints to include scleroderma, lupus, mixed connective tissue disease, rheumatoid arthritis, etc.

Petitioner asserts that the undersigned in the Opinion on Decision of 06/15/2022 "further opines that the surveillance evidence is not consistent with the medical histories or applicant's testimony." However the Opinion reads:

“Consideration is given Defendant’s Exhibit Z hereby ordered admitted in evidence. The videos of applicant’s activity do not demonstrate that she does not suffer from CRPS. She does engage in some physical activity, as noted in the Summary of Evidence. However the films also show her holding things in an unusual way, using her wrists against her upper body rather than grasping. On balance the surveillance evidence is not inconsistent with the medical histories or applicant’s testimony.’

IV. DISCUSSION

The problem presented by this case is the CRPS diagnosis is based on symptoms and physical findings that are fluid in nature. It is exactly the totality of the medical evidence that demonstrates that over a period of over six years physical findings and symptoms have fluctuated, but that majority of the reporting physicians diagnose the condition under recognized criteria. Kaymar Assil, M.D., who has examined the patient on multiple occasions points out this dilemma in his 09/23/2021 testimony (Applicant’s Exhibit 20).

There may be differing views of the evidentiary value of the *sub rosa* videos, but Dr. Assil (Exhibit 20, page 29) does not find the video compelling. The undersigned also found the filmed activities were unusual with respect to the use of the upper extremities and did not show that there was no interruption in the manner of physical behavior (despite petitioner’s misreading of the Opinion on that point).

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that reconsideration be denied.

DATED AT OXNARD, CALIFORNIA

DATE: 07/18/2022

WILLIAM M. CARERO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE