

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

HILDA PONCE, *Applicant*

vs.

RED 5 STUDIOS; FEDERAL INSURANCE COMPANY, *Defendants*

**Adjudication Number: ADJ11226322
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Applicant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award¹ of April 13, 2022, wherein it was found that applicant did not sustain compensable industrial injury to her back, hands, hips, neck, face, legs and to her psyche while employed as an office manager during a cumulative period ending on March 31, 2017. The WCJ thus issued an order that applicant take nothing on account of her workers' compensation claim.

Applicant contends that the WCJ erred in not finding industrial injury to the cervical spine per the opinion of qualified medical evaluator orthopedist Moshe H. Wilker, M.D. Applicant's Petition does not raise error as to any of the other claimed body parts. We have received an Answer from defendant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

In his August 17, 2018 report, Dr. Wilker found that applicant had sustained "cervical and lumbar radiculitis ... from repetitive lifting of a water tank and cases of soda." (August 17, 2018 report at p. 9.)

Applicant testified that her job included lifting heavy objects including heavy reams of paper and 5-gallon water bottles. (Minutes of Hearing and Summary of Evidence of March 3, 2021 trial at p. 10). However, defendant's human resources director Wilhelmina Pagan testified that applicant did not lift heavy objects, including water bottles or heavy reams of paper as part of her employment. (Minutes of Hearing and Summary of Evidence of February 2, 2022 trial at pp.

¹ Although it is captioned a Findings and Award, the WCJ's decision contains no award of compensation to the applicant. To the contrary the decision states "AWARD IS MADE in favor of RED 5 STUDIOS against HILDA PONCE who shall take nothing by way of this claim."

4-5.) In fact, she testified that there were no 5-gallon bottles of water at the job site. (Minutes of Hearing and Summary of Evidence of February 2, 2022 trial at p. 5.)

The WCJ explained in the Opinion on Decision that Ms. Pagan's testimony was found to be credible (Opinion on Decision at p. 3), while applicant was found not credible (Opinion on Decision at p. 4.) A WCJ's credibility determinations are "entitled to great weight." (*Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].)

"The applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial causation'" (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660].)

While applicant urges us to adopt the medical opinions of Dr. Wilker, the WCJ has found the history given to Dr. Wilker to be not credible. Reports that contain an erroneous or inadequate history do not constitute substantial medical evidence upon which the WCJ can rely. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 1993]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 801 [33 Cal.Comp.Cases 358].) Accordingly, the applicant has not produced substantial evidence of industrial causation sufficient to meet her burden of proof.

Given the "great weight" we are required to accord a WCJ's credibility determinations, we deny applicant's Petition for Reconsideration.

For the foregoing reasons,

IT IS ORDERED that that Applicant's Petition for Reconsideration of the Findings and Award of April 13, 2022 of April 19, 2022 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 5, 2022

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

**HILDA PONCE
ROBERT OZERAN
PEARLMAN, BROWN & WAX**

DW/oo

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