

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

**YVONNE SHULL, *Applicant***

**vs.**

**COUNTY OF ORANGE, permissibly self-insured, administered by SEDGWICK,  
*Defendants***

**Adjudication Number: ADJ11377820  
Anaheim District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
RECONSIDERATION**

We have considered the allegations of defendant's Petition for Reconsideration, lien claimant's answer 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.

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/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ CRAIG SNELLINGS, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**OCTOBER 5, 2022**

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

**4600BOEHM  
WALL MCCORMICK BAROLDI & DUGAN**

*AI/pc*

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**

Date of Alleged Injury:	January 24, 1986 through March 20, 2017
Parts of Body Alleged/At Issue:	Multiple Sclerosis
Identity of Petitioner:	Defendant
Timeliness:	The petition was timely filed on August 16, 2022
Verification:	The petition was verified
Date of Orders:	July 28, 2022
Petitioner's Contentions:	Petitioner contends the WCJ erred in finding injury AOE/COE.

**II.  
STATEMENT OF FACTS**

In an Application for Adjudication of Claim filed May 21, 2018, applicant claimed to have sustained injury arising out of and in the course of her employment as a Deputy Sheriff/Sergeant with the County of Orange with respect to her development of hypertension/heart, multiple sclerosis, skin, sleep and headaches occurring during the period of January 24, 1986 through March 20, 2017. (EAMS Doc ID 67504397.)

The case settled by way of Compromise and Release for \$75,000.00 with an Order Approving having been issued by this WCJ on March 12, 2020. Injury in the form of multiple sclerosis, heart, non-sun exposed skin cancers and headaches remained denied. (EAMS Doc ID 31850768.)

The matter proceeded to Lien Trial on June 6, 2022 regarding the lien of Anthem Blue Cross on the singular issue of injury AOE/COE in the form of multiple sclerosis. (Minutes of Hearing, EAMS Doc ID 75577231.) No witnesses were called and the matter was submitted on the documentary record

On July 28, 2022, this trier of fact issued her Opinion on Decision and Findings and Award finding that applicant sustained injury arising out of and occurring in the course of employment in the form of multiple sclerosis. It is from this threshold finding that the Petition for Reconsideration was filed contending that 1) this WCJ erred in relying upon portions of the deposition testimony of the applicant that was not admitted into evidence; 2) this WCJ was prohibited from finding injury AOE/COE because the body part at issue remained denied throughout the pendency of the case and the parties stipulated to no injury in the form of multiple sclerosis when settling the claim by way Compromise and Release; and 3) This WCJ misinterpreted and misapplied the law regarding what constitutes an injury. No response has been received from the Lien Claimant.

### III. DISCUSSION

Lien Claimant (LC) offered as evidence designated treatment records from Keck Hospital of USC, reporting from Neurological Panel Qualified Medical Examiner (PQME) Dr. Jay Jurkowitz, and reporting from Internal Agreed Medical Examiner (AME) Dr. Jonathan Green. In response to a subpoena issued by the LC, applicant appeared at the Lien Trial. The parties agreed however, that in lieu of applicant's live testimony, her deposition would be offered and was thereafter admitted into evidence.

#### Applicant's Deposition

On the Pre-Trial Conference Statement prepared in advance of the trial, LC listed as an exhibit "Deposition Transcript of Applicant" dated July 9, 2018. (EAMS Doc ID 40685261.) The Pre-Trial Conference Statement was executed by both the LC and counsel for the Petitioner. Thereafter on April 19, 2022, LC served "Lien Claimant's Trial Exhibits" in which LC identified designated pages from applicant's deposition it wanted to introduce and bring to the Court's attention. (EAMS Doc ID 41108355.) The Court reviewed those designated pages in preparation of her decision and also reviewed the totality of the deposition that had been listed on the Pre-Trial Conference Statement and was offered in lieu of applicant's live testimony.

Defendant argues that, "[t]he Judge's review of the deposition, however, went beyond the scope of the lien claimant's designation and included testimony that was not introduced into evidence. . ." (Petition for Reconsideration at 4:8-9, EAMS Doc ID 42688007). Based thereon, the defendant contends that this WCJ's "Decision is faulty, in part, because the Judge relied on deposition testimony that was not admitted into evidence at the Lien Trial on 06/06/22." (Id. at 4:12-13.)

Interestingly, in the Petition for Reconsideration, Petitioner also cites to pages from applicant's deposition that were not specifically designated by the LC one of which (page 40) was also cited by this WCJ. (Id. at 6:19-21.) It should be noted that it is the same attorney for the Petitioner, Evelyn Pike, who conducted the deposition of the applicant, who signed the Pre-Trial Conference Statement that listed the totality of applicant's deposition, who attended the lien trial and who agreed to allow the deposition of the applicant to be introduced into evidence in lieu of applicant's live testimony.

Nevertheless, as is evidenced in this WCJ's Opinion on Decision the vast majority of the portions of applicant's deposition testimony outlined therein were specifically taken from the designated pages and removing the non-designated pages from consideration would have had no bearing on this WCJ's decision finding injury AOE/COE.

Applicant was hired January 24, 1986 and continued working for the Sheriff's Department until March 20, 2017. During her 31 years with the Orange County Sheriff's Department applicant worked in the Women's Central Jail, worked Patrol, worked in the Traffic Bureau conducting traffic investigations and was a member of the Major Accident Reconstruction Team. (LC Exhibit 11 at 26:1-23; 28:21-24; 32:8-19, EAMS Doc ID 41107105.)

In June 1996 applicant was promoted to Investigations where she worked the South Narcotics Detail, Economic Crime Detail and in the Homicide Detail. (Id. at 33:22-16; 34:1-16) In March 2003 she was promoted to Sergeant and remained a Sergeant until she retired as a Sergeant in March 2014. (Id. at 34:17-23.)

After retiring as a Sergeant, applicant remained as a Deputy Sheriff working with the Major Accident Reconstruction Team until the end of her career in 2017. (Id. at 32:8-19.)

Applicant was required to work "shift work" while assigned to the Women's Central Jail which she found stressful. (Id. at 26:13-25; 28:1-15.) While working Patrol, applicant

"responded to numerous homicide scenes to secure the scene and oversee the – make sure that the scene was secured for the homicide detail to come. I also responded to major injury and fatal traffic crashes. People die in front of me that were run over by cars or involved in car crashes. I've been to numerous baby-not-breathing calls where the baby actually dies when you're trying to give CPR to them." (Id. at 29:10 21.)

Working in the Traffic Bureau and the Major Accident Reconstruction Team required the applicant to respond to major injury crashes within an hour of the crash occurring, determine how the accident occurred, and be a liaison with family members of the deceased which was "very difficult and very stressful." (Id. at 32:6-33:10.) Working in Investigations and applicant's eleven years as a Sergeant proved stressful as well. (Id. at 34:3-14; 36:1-37:24.)

Applicant was diagnosed with Relapsing Remitting Multiple Sclerosis (MS) in 2010. (Id. at 9:8-9; 51:21-25; 53:2-3.) After her diagnosis, applicant had good and bad days at times depending "on what was happening at work, as far as workload and cases and things, it could can make me fatigue faster..." (Id. at 53:16-54:1.) Applicant is aware of several triggers that can cause her MS to relapse including "stress, lack of sleep, heat, sickness, getting a cold . . ." (Id. at 52:6-11.)

While as of the date of her deposition applicant had not been hospitalized because of her MS, in 2011 or 2012 she went to the Emergency Room because

she “had been up for about 40 hours on a homicide call, and I felt terrible. So I went to the hospital because I felt bad.” (Applicant’s answer began on designated page 54 and continued to page 55) (Id. at 54:17-55:4.)

Applicant’s un rebutted testimony as outlined in the designated pages of her deposition transcript, provides a very clear picture of the incredible stress and strain she experienced as a result of her job duties working as a Deputy Sheriff/Sergeant for the County of Orange. The complete deposition transcript was provided to PQME Dr. Jay Jurkowitz for review and is discussed within his medical reporting as a source used when rendering his opinions. After citing to and utilizing only those specifically designated pages of applicant’s un rebutted deposition testimony, this WCJ finds no reason to change her Opinion on Decision as it stands fully supported by the evidence and the law.

### Compromise and Release

Petitioner argues that this WCJ was prohibited from finding injury AOE/COE because the body part at issue remained denied throughout the pendency of the case and the parties stipulated to no injury in the form of multiple sclerosis when settling the claim by way of Compromise and Release. In support thereof, Petitioner cites to The 4600 Group v. Workers’ Comp. Appeals Bd. (Herdmann) (1996) 61 Cal. Comp. Cases 1473 (writ denied) for the proposition that “[m]edical treatment expenses provided by a lien claimant are not reimbursable when the Agreed Medical Examiner or Panel Qualified Medical Evaluator finds that the condition for which the lien claimant provided treatment was not an industrial injury and when the underlying case is resolved by a Compromise and Release with a Beltran finding.” (Petition for Reconsideration Supra at 3:11-16).

Petitioner erroneously posits that “[t]here is no medical evidence the Judge relied upon that supports the finding that multiple sclerosis was an injury arising out of and in the course of employment” and that “the Order Approving Compromise and Release dated 3/12/2020 was approved with the finding that the MS condition was non-industrial pursuant to the Panel QME reporting of Dr. Jurkowitz” (Id. at 3:18-22.)

At Petitioner’s request, this WCJ took Judicial Notice of the Compromise and Release, the Order Approving said Compromise and Release that issued on March 12, 2020 and the Minutes of Hearing associated therewith. (EAMS Doc ID’s 31850768 and 72512340.) As is evidenced therein, this Court did not make a Beltran finding. In fact, Attorney Pike (who filled-in the Order Approving Compromise and Release for presentation to this WCJ for signature) **did not** check as applicable the box that “A good faith issue exists which, if resolved against the claimant would totally bar claimant’s recovery or workers’ compensation benefits.” (Order Approving Compromise and Release, EAMS Doc ID 72512340.)

This Court issued an Order Approving Compromise and Release that reflected the agreement of the parties to the settlement. LC was not a party to the settlement and therefore did not agree to the terms set out therein. LC had the right to try the issue of injury AOE/COE and bears the burden of proving by a preponderance of the evidence the matters placed by them at issue at trial. (Labor Code §§5705 and 3202.5) As applicant's claim of injury in the form of multiple sclerosis (MS) was denied by the defendant, the burden was placed upon the LC to establish that applicant's injuries occurred arising out of and course of her employment with the defendant. This WCJ found that the LC met its burden.

#### Medical Evidence Establishing Injury AOE/COE

As of 2014, applicant was treating for her MS at Keck Hospital of USC. The Clinic Note for the visit of February 5, 2014 notes in part as follows:

“She plans to retire in 03/2014, as she hopes to decrease the stress caused by call-outs, in her job as a Sheriff. She has retirement plans which will include consulting and teaching.” (LC Exhibit 2, EAMS Doc ID 41106042.)

The Clinic Note for the visit of May 20, 2014 notes:

“Remarkably, however, she and her significant other tell me that when she retired from work she no longer had flu-like symptoms.” (LC Exhibit 3, EAMS Doc ID 41106091.)

Applicant's neurological complaints were submitted to PQME Dr. Jay Jurkowitz and his three reports were admitted into evidence as LC's Exhibits 6-8. Dr. Jurkowitz evaluated the applicant on one occasion, March 25, 2019, at which time he took a history. Thereafter, over the course of several months Dr. Jurkowitz reviewed multiple medical records and in his report of June 16, 2019 discussed the causation of applicant's MS as follows:

“There is no doubt from the medical records that the patient in fact has multiple sclerosis and that she has had multiple exacerbations as well working for the Sheriff's Department. It is well known that heat, anything that raises body heat such as fever, or even external heat, can produce symptoms suggesting an exacerbation and in fact can produce an exacerbation. Therefore, all the exacerbations that she had while she was working for the Sheriff's Department, which appear to be from June 1996 to April 25, 2018, were brought on by her exposures to heat and stress as a Sheriff's deputy, however the basic disease of MS was not caused by her job as the Sheriff's Department.” (LC Exhibit 8 at page 5, EAMS Doc ID 41107667.)

He further opined:

“Her temporary disability periods, while she was a Sheriff’s deputy, are work-related and are due to the heat exposure that she had as a Sheriff’s deputy, but the basic disorder and permanent disability are not work-related but are due to the disease of multiple sclerosis itself.” (Id.)

While Dr. Jurkowitz opined that applicant’s development of MS was not caused by her work as an Orange County Sheriff’s Deputy/Sergeant, he did opine, that applicant’s work as a Deputy Sheriff/Sergeant caused exacerbations of her MS during her employment. Based thereon, underlying the issue of injury AOE/COE is the issue of whether applicant’s symptoms during her employment with defendant were an aggravation or an exacerbation of her non-industrial MS.

Applicant’s MS was Accelerated, Aggravated or Lit-up by her Work for the County of Orange

The acceleration, aggravation or ‘lighting up’ of a preexisting condition “is an injury in the occupation causing the same.” (Tanenbaum v. Industrial Acc. Com. (1935) 4 Cal. 2d 615, 617 [52 P.2d 215]; Zemke v. Workers’ Comp. Appeals Bd. (1968) 68 Cal. 2d 794 [69 Cal. Rptr. 88, 441 P.2d 928, 33 Cal. Comp. Cases 358]; Reynolds Electrical & Engineering Co. v. Workers’ Comp. Appeals Bd. (Buckner) (1966) 65 Cal. 2d 438 [55 Cal. Rptr. 254, 421 P.2d 102, 31 Cal. Comp. Cases 421].) An aggravation of a pre-existing condition is an industrial injury. (Argonaut Ins. Co. v. Industrial Acc. Comm. (Harries) (1964) 231 Cal. App. 2d 111 [29 Cal. Comp. Cases 279]; Patco Trucking, Inc., Centre Insurance Co., Petitioners v. Workers’ Comp. Appeals Bd., (Everett) (2004) 69 Cal. Comp. Cases 1167 (writ denied).)

The Appeals Board has previously held that the aggravation of a prior condition constitutes an injury when the aggravation causes a need for medical treatment and a period of temporary disability. (City of Los Angeles v. Workers’ Comp. Appeals Bd. (Clark) (2017) 82 Cal.Comp.Cases 1404 (writ denied).)

It is well established that for the purpose of meeting the causation requirement in a workers' compensation injury claim, it is sufficient if the work is a contributing cause of the injury. (South Coast Framing, Inc. v. Workers’ Comp. Appeals Bd. (2015) 61 Cal.4th 291, [80 Cal.Comp.Cases 489].)

Here, after evaluating the applicant and after an extensive review of medical records, Dr. Jurkowitz unambiguously opined that “all the exacerbations that [applicant] had while she was working for the Sheriff’s Department, which appear to be from June 1996 to April 25, 2018, were brought on by her exposures to heat and stress as a Sheriff’s deputy. . .” (LC Exhibit 8 supra.) He thereafter continued that applicant’s “temporary disability periods, while she was a



Sheriff's deputy, are work-related and are due to the heat exposure that she had as a Sheriff's deputy . . ." (Id.)

Petitioner argues that there is no evidence of medical treatment following heat exposure and that "[t]he only evidence Dr. Jurkowitz relied on was the history applicant provided of intermittent time off work because of MS symptoms caused by heat exposure over an unspecified time frame." (Petition for Reconsideration supra at 5:9-11.) What this argument fails to recognize, however, is that Dr. Jurkowitz performed an extensive medical record review wherein he outlined in detail applicant's extensive multiple sclerosis treatment course and work status advisories and it was this medical evidence that Dr. Jurkowitz referenced when rendering his opinions. (Id.) The Petitioner offered no evidence whatsoever, and thus there is no evidence that contradicts Dr. Jurkowitz's opinions.

Based on the unrebutted opinion of Neurological PQME Dr. Jay Jurkowitz, which this Court found constituted substantial medical evidence, this Court found that applicant, while employed during the period of January 24, 1986 through March 20, 2017, as a Deputy Sheriff/Sergeant by the County of Orange sustained injury arising out of and in the course of employment in the form of multiple sclerosis in as much as applicant's job duties as a Deputy Sheriff/Sergeant caused the "acceleration, aggravation or 'lighting up' of" her non-industrial multiple-sclerosis.

#### **IV. CONCLUSION**

The singular issue before the Court was injury AOE/COE. The LC had the burden of proving by a preponderance of the evidence that applicant sustained injury AOE/COE in the form of multiple sclerosis. Consistent with the unrebutted opinions of PQME Dr. Jurkowitz this WCJ believes the LC met its burden of proof. But that is not where the burden of proof ends. Petitioner spent a bit of time discussing the billing of the LC and whether the services rendered could possibly be considered reasonable and necessary to cure or relieve the applicant from the effects of her industrial injury. That issue was not before the Court.

While it was the opinion of this WCJ that the LC met its burden of proving injury AOE/COE, the LC still has the burden of establishing that the services it rendered and for which it is seeking recovery were reasonable and necessary to cure or relieve the applicant from the effects of her industrial injury. No finding has been made in that regard as that issue will be addressed if and when it is presented.

**V.**  
**RECOMMENDATION**

Based on the foregoing, it is respectfully requested that the petition for reconsideration be DENIED.

DATE: August 29, 2022

Stefanie Ashton

WORKERS' COMPENSATION JUDGE