

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

**ANASTASIA HENDRICKS, *Applicant***

**vs.**

**PASADENA UNIFIED SCHOOL DISTRICT, *Permissibly Self-Insured, Defendant***

**Adjudication Number: ADJ13145591  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Order of March 2, 2023, wherein it was found that while employed during a cumulative period ending on December 31, 2019 as a teacher assistant, applicant sustained industrial injury to her cervical spine, lumbar spine, and knees.

Defendant contends that the WCJ erred in finding industrial injury. Defendant argues that the WCJ's findings were based on panel qualified medical evaluator orthopedist Charles Schwarz, M.D.'s supplemental report of July 18, 2022, which should not have been admitted into the evidentiary record because it was procured after the close of discovery, and the advocacy letter from applicant's attorney procuring the report misstated Dr. Schwarz's deposition testimony. We have not received an answer from applicant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated by the WCJ in the Report, which we adopt, incorporate, and quote below, we will deny the defendant's Petition. Footnotes have been omitted.

**REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

Applicant was employed as a teaching assistant during the period September 10, 2009 through December 31, 2019 by Pasadena Unified School District and alleges she sustained an industrial injury to her cervical spine, lumbar spine, and knees on an industrial basis. Applicant's claim was denied by defendant on July 9, 2020.

Defendant was examined by PQME. Dr. Schwarz. The matter was brought to trial on the underlying issue of injury AOE/COE. Defendant relied upon the reporting of Dr. Schwarz who initially found Applicant's condition to be non-industrial. Dr. Schwarz amended his opinion during his deposition where he ultimately found Applicant's condition to be industrially related. A subsequent supplemental report by Dr. Schwarz confirms his opinion remained unchanged from his prior report but made no mention of his subsequent deposition and finding of industrial causation. Subsequent to the issuance of this report and the matter being set for trial; Applicant's counsel requested a supplemental report from Dr. Schwarz clarifying whether his opinion remained industrial as stated at his deposition or if he was maintaining that his prior reporting was correct and Applicant's complaints were non-industrial.

The matter proceeded to trial with the defendant objecting to the report of Dr. Schwarz that was obtained after the Priority Conference when the matter was set for trial. The undersigned deferred ruling on the objection, ultimately determining that the reporting of Dr. Schwarz did not constitute substantial medical evidence as his final determination as to causation was unclear. The undersigned overruled the objection of defendant and allowed the document into evidence as it was determined that the report clarified Dr. Schwarz's opinion and resolved the issue between the reporting and his deposition testimony. The Court then found that Applicant's injury was the result of industrial causation.

Defendant is aggrieved of the undersigned's Findings and Order and Opinion on Decision and filed a timely and verified Petition for Reconsideration.

In reviewing the medical record of Dr. Schwarz in this matter, the undersigned determined that development of the record would be necessary to determine if Applicant's alleged injuries were industrially related. The discrepancy was the result of conflicting statements by Dr. Schwarz as found in his initial reporting, his deposition, and a subsequent supplemental report.

Initially, Dr. Schwarz found Applicant's injury to be non-industrial in his report of January 28, 2021. (Exhibit FF, page 21). He was later deposed by the parties where he changed his opinion to find industrial causation but also indicates that he would like to review diagnostic records. (Exhibit GG, page 38 lines 8-16; page 38 lines 3-7).

Diagnostic X-rays were reviewed by Dr. Schwarz who in his supplemental report of May 5, 2022 states "Overall, it remains my opinion that a cumulative trauma injury did not occur to the left knee, cervical spine, or lumbar spine." (Exhibit AA, page 4). No mention is made of his change of opinion in his deposition in the report.

The undersigned disagrees with defendant's assertion in their Petition for

Reconsideration that “Dr. Schwarz unequivocally opined no industrial causation...” in his May 5, 2022 report. Dr. Schwarz’s deposition testimony and subsequent report are contradictory and unable to be reconciled without clarification as to whether or not his final opinion was that Applicant had sustained an industrial injury.

Dr. Schwarz’s report of May 5, 2022 does not indicate that Dr. Schwarz reviewed his deposition when issuing the supplemental report, as it only references his prior medical report and examination. This is further exemplified by the doctor’s own statement that “...it remains my opinion that a cumulative trauma injury did not occur...” when in fact Dr. Schwarz changed his opinion during his deposition testimony.

In this matter, the case was set for trial on June 28, 2022 after which time Applicant’s counsel requested the supplemental report on July 18, 2022. Defendant objected at trial that the document was procured after the matter was set for trial, and that it was also based on “inaccurate facts”.

Defendant’s objection to the exhibit on the grounds that the facts are inaccurate is not a proper objection to the admissibility of the document and instead goes to the weight of proposed evidence. While defendant’s objection regarding the procurement of the report does have merit, the undersigned ultimately determined that the report should be allowed into evidence.

Defendant makes citation to the *Suon* decision in their Petition for Reconsideration, however the issue in that case differs from the issue in the present matter. In *Suon*, the defendant requested a supplemental report and included with the letter a copy of another doctor’s report for review and comment. The proof of service included with that letter stated Applicant counsel’s name but not their address. This is not the situation in the present matter.

The letter Applicant’s counsel sent to Dr. Schwarz requesting the supplemental report was included as an attachment to his July 27, 2022 report. The letter was also served upon the defendant and requests clarification of the doctor’s opinion as to whether or not his opinion was that industrial causation was found to exist. The letter also makes brief citations to portions of the doctor’s deposition. No new medical information was included. The crux of the underlying issue is, as objected to by defendant, the admissibility of the document based on it being procured after the case was set for trial.

As discussed in the Opinion on Decision and above, upon reviewing the reports of Dr. Schwarz that were accepted into evidence the undersigned determined that his reports and the deposition transcript were unclear in his determination of causation; his statement in the May 5, 2022 report could not be reconciled with his deposition transcript testimony. It was determined that development of

the record was necessary to resolve the discrepancy. Upon subsequent review of Dr. Schwarz's report for purposes of determining whether it should be excluded from evidence, the undersigned found that the report addresses and resolves the question of Dr. Schwarz's determination on industrial causation.

Dr. Schwarz stated in the final report of July 18, 2022 "I have reviewed my report dated May 5, 2022 as well as the deposition transcript for my deposition of February 1, 2022 wherein I modified my opinion regarding the issue of causation based upon a further discussion of the applicant's employment duties. He continues that "...my opinion remains unchanged from the opinion expressed in my deposition. Based upon reasonable medical probability, the applicant sustained the claimed cumulative trauma injury on an industrial basis to the cervical spine, lumbar spine, and knees." (Exhibit 11, page 2). For this reason, the undersigned allowed the document into evidence rather than vacating submission for development of the record that would result in a duplicative report being issued.

#### **RECOMMENDATION**

It is respectfully recommended that the Defendant's Petition for Reconsideration be denied.

For the foregoing reasons,

**IT IS ORDERED** that Defendant's Petition for Reconsideration of the Findings and Order of March 2, 2023 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**JOSÉ H. RAZO, COMMISSIONER**  
**CONCURRING NOT SIGNING**



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

**May 26, 2023**

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

**ANASTASIA HENDRICKS  
JESSE MELENDREZ  
HANNA, BROPHY, MacLEAN, McALEER & JENSEN**

**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*