WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

CHRISTINA CABRAL, *Applicant*

vs.

SOUTHERN CALIFORNIA EDISON,
permissibly self-insured, *Defendants*

Adjudication Number: ADJ13702747
Van Nuys 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 determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*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 determinations. (*Id*.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 18, 2023

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

CHRISTINA CABRAL
GLAUBER BERENSON VEGO
KARLZEN & ASSOCIATES

PAG/*cs*

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

1. Applicant's Occupation: Bill Collector
   Applicant's Age on Date of Injury: 50
   Date of Injury: June 1, 2003 through September 17, 2020
   Parts of Body Injured (Claimed): Cervical spine, right wrist, thoracic spine, right upper extremity, right shoulder, left wrist, gastrointestinal system, respiratory system, sleep, and headaches
   Manner in Which Injury Occurred: Repetitive physical trauma
2. Identity of Petitioner: Defendant filed the petition
   Timeliness: The petition is timely filed
   Verification: The petition is properly verified
3. Date of Issuance of Findings of Fact & Order: September 28, 2023 (date of service)
4. Petitioner's Contentions:

   A. That this court erred in finding injury arising out of and during the course of employment to the applicant's cervical spine and right wrist.

   B. That this court erred in finding that the medical record requires the parties to further develop the record as to the applicant's right shoulder, left wrist, gastrointestinal system, respiratory system, sleep, and headaches.

II

FACTS

The applicant, Christina Cabral, claims a 17-year cumulative trauma injury from June 1, 2003 through September 17, 2020 while employed as a bill collector by Southern California Edison (SCE) to her cervical spine, thoracic spine, right shoulder, right upper extremity, left wrist, gastrointestinal system, respiratory system, sleep, and headaches as a result of her repetitive job duties.

To a certain extent, the defendant admits an industrial injury to the applicant's right shoulder. The Further Minutes of Hearing and Summary of Evidence dated September 13, 2023 (SOE) on page 3, lines 10-12, reflect that the applicant injured her right shoulder in July, 2013, treated for about seven months, and was given restrictions. It was one to two years earlier that she began her position as a customer billing resolution specialist where her job was mostly administrative consisting of computer data entry. Id at p. 2, lines 11-14. Additionally, on direct examination, she testified that she developed pain in her neck in approximately 2012 and her mid back in 2011 or 2012. *Id*. at p. 2, lines 15-16.

Furthermore, pain in her right shoulder returned in February, 2020, *id*. at page 3, lines 12-13, by defendant's own admission. During cross-examination the applicant was shown a claim form reflecting that it was returned on October 8, 2020. *Id*. at page 3, lines 14-15. Much of the defendant's denial of this claim rests on the fact that the applicant had an intervening, nonindustrial motor vehicle accident on September 18, 2020. *Id*. at page 3, line 16. Before that accident, however, the applicant testified that she self-procured treatment for her right shoulder. *Id*. at page 3, lines 14-16. Subsequent to the motor vehicle accident, the applicant treated for pain to her cervical spine, thoracic spine, lumbar spine, right shoulder, and for headaches, as reflected in the medical report of Dr. Garcia. *Id*. at page 3, lines 16-19. Dr. Garcia's history is that the applicant's right shoulder pain had full function, and that the motor vehicle accident is the sole cause of her condition. *Id*. at page 3, line 20-24. This claim was settled for bodily injury in the amount of $6,500. *Id*. at page 4, lines 9-10.

Bolstering the defendant's denial is that the applicant, on July 7, 2014, was involved in a motor vehicle accident with injuries and complaints to both lower extremities, lower abdomen, left arm, breast area, right ankle, collar bone, both shoulders, chest, and neck. (Exhibits 2 and 3, Kaiser records). Additionally, on October 15, 2014 she reported to Kaiser that she injured her left shoulder one month earlier while walking her dog and presented with complaints to her back, left shoulder, and neck. (Exhibit 4, Kaiser records).

Notwithstanding the prior injuries, and based upon 17 years of employment, the applicant filed this claim and treated with Dr. Kambiz Hannani. In his report dated January 21, 2021 (offered jointly by both parties as Exhibit J1), the doctor takes a history of the applicant's work-related complaints from repetitive work duties to her neck, right shoulder, left wrist, and low back for

the prior four to five years, prescribes physical therapy, and releases her to modified work. There is no mention of the nonindustrial injuries.

The parties utilized James Hamada, M.D. as the orthopedic panel qualified medical evaluator (PQME). In his first report dated February 10, 2022 (Exhibit J2), the PQME took a history of pain onset in the applicant's neck, right shoulder, both wrists, and back as a result of her repetitive work duties which consisted of data entry and telephone work with a headset. The doctor also took a history of a 2011 industrial injury to her hands, a 2013 industrial injury to her right shoulder, a slip and fall injury at Costco (date unrecalled), and a December 2020 motor vehicle accident (page 3). She was taken off work from April 30, 2021 through September, 2021 due to lung cancer (page 2), but at the time of the evaluation on February 10, 2022 she had returned to her regular work duties, consisting of a 40-hour work week with daily sitting, standing, walking, twisting, and turning, and repetitive use of her hands for gripping, grasping, and typing (page 2).

The PQME reviewed the Kaiser records that, inter alia, dealt with the July 7, 2014 motor vehicle accident and the October 15, 2014 dog-walking injury. Although the applicant reported that the date of the 2020 nonindustrial motor vehicle accident occurred in December 2020, the PQME noted on page 21 that it occurred on September 18, 2020 and referenced it as a "[s]ignificant motor vehicle accident". He was therefore made aware of this as evidenced by his review of the medical report of Dr. Alfred Garcia dated September 28, 2020 where he incorporated a history of being rear-ended and then pushed into the car in front of her, causing injury to her neck, right shoulder, collarbone, low back, and headaches. The PQME discussed his review of the applicant's history, her diagnostic studies, her medical records, and her deposition testimony (page 21), and he then concluded that "…there is sufficient evidence to support industrial causation to the cervical spine and right wrist on a cumulative trauma basis" (page 22). In the following paragraph he concluded that there was no specific injury on October 8, 2020 (for which had been previously filed but dismissed on the day of trial), and the basis for that opinion was that the applicant had suffered an injury in the September 18, 2020 nonindustrial motor vehicle accident to her head, neck, right shoulder, upper back, mid back, and low back. In short, the PQME had a full and complete history of all the applicant's medical conditions and injuries, which caused him to arrive at his conclusion of an industrial injury to her cervical spine and right wrist. To support this, he provided impairment and addressed apportionment as well.

Dr. Hamada's supplemental report dated September 16, 2022 reviewed various records, including further records of the September 28, 2020 motor vehicle accident, an August 25, 2006 motor vehicle accident when she was rear-ended (but without mention of injuries), and her volume II deposition transcript. (Exhibit J3) The PQME did not change any of his opinions. On November 4, 2022, the defendant initiated the PQME's cross-examination (Exhibit J4). Dr. Hamada conceded that the applicant did not volunteer her July 2014 motor vehicle accident or that she injured her hip, left wrist, and right knee in a domestic violence incident. He was aware that she had a right shoulder injury in 2013 but had no medical records. The doctor, however, also testified that the applicant's memory was foggy and that it was important to note that she has stage 4 carcinoma of the cecum with frequent headaches. After presenting various inconsistencies throughout her medical records and deposition testimony, in an effort to change his mind and conclude that the applicant did not sustain a cumulative trauma injury, the PQME refused to do so. Specifically, although Dr. Hamada called into question the applicant's credibility, he nonetheless concluded "…that if the applicant's credibility was proven to be untrue…" his opinion as to causation "…would change, but how much it would depend upon [his] understanding of the documents…" from AAA auto club sent to him. *Id*. at page 15, lines 19-25. Furthermore, because of the applicant's stage 4 cancer and the defendant calling into question the applicant's credibility, the doctor recommended a neuropsyche consult with neurocognitive battery testing and an MRI of her brain. He also recommended an MRI of her right shoulder and an MRI of her left wrist. The neuropsyche consult with neurocognitive battery testing was warranted, in his opinion, to determine if the applicant had cognitive dysfunction, and if not, then she would have a serious credibility problem. The specific testimony elicited from the PQME on page 20, line 19 to page 21, line 11 surrounding the neuropsyche consult with neurocognitive battery testing is as follows:

> Q Why would that be necessary in this case?
>
> A It would go to clarify why she has made different statements at different times. If she is found to have post-tumor changes cognitively of her brain either due to her metastatic lesion or stress or whatever, that's outside of my specialty.
>
> Q So if the neuro consult showed no kind of cognitive dysfunction, then you would agree the applicant has a serious credibility problem; correct?
>
> A Yes.

> Q And before you did all this other additional testing, wouldn't it be appropriate to have a judge make a determination on whether there's even industrial causation on this case before that additional testing is done?
>
> A I think that's a legal issue. I think the reasoning is sound, but I don't think that's a decision for me to make.

With the cross-examination having come to an end, the PQME had concluded that the extent of any changes would depend on additional records and the results of a neuropsyche consult with neurocognitive battery testing and an MRI of her brain. But thereafter, no further reports issued by the PQME, no further records were sent to him, and no neuropsyche consult with neurocognitive battery testing or an MRI of her brain was performed. "All this other additional testing" referenced above by Dr. Hamada (i.e., the MRI of right shoulder, and left wrist) was not performed either.

Instead, on the same day as the cross-examination, the defendant filed a Declaration of Readiness to Proceed (DOR) seeking a Priority Conference on the sole issue of "AOE/COE". Trial commenced on April 12, 2023, with that single issue to be decided, and it concluded on September 13, 2023.

This court issued its Findings of Fact and Order (F&O) finding that the applicant sustained a cumulative trauma (CT) injury from June 1, 2003 through September 17, 2020 to her cervical spine and right wrist, that she did not sustain a CT injury to her thoracic spine and right upper extremity, and that further development of the record was warranted in terms of her right shoulder, left wrist, gastrointestinal system, respiratory system, sleep, and headaches. It is from this F&O that the defendant seeks reconsideration.

III

DISCUSSION

Labor Code §3600 provides in relevant part:

> (a) Liability for the compensation provided by this division…shall, without regard to negligence, exist against an employer for any injury sustained by his or her employees arising out of and in the course of the employment…in those cases where the following conditions of compensation concur:
>
> (1) Where, at the time of the injury, both the employer and the employee are subject to the compensation provisions of this division.

(2) Where, at the time of the injury, the employee is performing service growing out of and incidental to his or her employment and is acting within the course of his or her employment.

(3) Where the injury is proximately caused by the employment, either with or without negligence.

In other words, the injury must occur as a result of arising out of employment and in the course of employment.

Labor Code §3202's mandate is to liberally construe the workers' compensation laws "…with the purpose of extending their benefits for the protection of persons injured in the course of their employment."

Labor Code §3202.5 provides in relevant part:

> All parties…shall meet the evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. "Preponderance of the evidence" means that evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.

To arise out of employment, an injury must "occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion." *Madin v. IAC* (*Richardson*) (1956) 21 CCC 49, 50; *Maher v. WCAB* (1983) 48 CCC 326, 329; *LaTourette v. WCAB* (1998) 63 CCC 253, 256; *South Coast Framing, Inc. v. WCAB (Clark)* (2015) 80 CCC 489, 493. To be considered in the course of employment, the nature of the injury refers to the time, place, and circumstances of its occurrence. *Maher v. WCAB* (1983) 48 CCC 326, 328; *LaTourette v. WCAB* (1998) 63 CCC 253, 256; *Scott v. Pacific Coast Borax Co.* (1956) 21 CCC 138, 141; *South Coast Framing, Inc. v. WCAB (Clark)* (2015) 80 CCC 489, 493.

To support a finding of industrial causation for a physical injury, the relevant inquiry is whether the work is a *contributing cause* to the applicant's injury. *Alameda-Contra Costa Transit District v. WCAB (Collins)* (2022) 88 CCC 36 (writ denied). (emphasis added)

Reasonable doubts about whether an injury is work related must be resolved in favor of the applicant, and the employment need not be the sole or exclusive cause of the injury. It also need not be a "significant" or a "material" factor. For purposes of causation, the connection between

work and the injury need be only a *contributing cause* of the injury, with causation being interpreted in the broadest manner possible. (emphasis added). If an employee's injuries meet the general requirement that they arise out of the employment, then the injuries will also be proximately caused by the employment. *Clark (supra); Maher (supra); Nash v. WCAB* (1994) 59 CCC 324, 336. See also *Murray v. City of Fresno*, 2016 Cal. Wrk. Comp. P.D. LEXIS 567; *Gutierrez v. Barrett Business Services, Inc*., 2017 Cal. Wrk. Comp. P.D. LEXIS 115; *Fagundes v. US Dairy Systems*, 2022 Cal. Wrk. Comp. P.D. LEXIS 307.

The Applicant's Cervical Spine and Right Wrist

The defendant takes issue with the finding of an industrial CT injury on the primary basis that the applicant is so un-credible that she cannot sustain her burden of proof pursuant to *Labor Code* §3202.5, and thus a "take-nothing" is warranted. The defendant posits that because the applicant's work-related right shoulder injury from July 2013 was fully resolved, that because her claim form from her February 2020 reported injury was returned to her employer in October 2020, that because she had a motor vehicle accident on September 18, 2020, and that because she had injuries on August 25, 2006, July 7, 2014, and October 15, 2014, it must necessarily be the case that the applicant intended to deceive the defendant and thus must not prevail. The defendant's theory is flawed.

We know that the applicant had an admitted right shoulder injury at work in July 2013. We also know that she has had several nonindustrial injuries. On top of this, however, we know that she reported an injury to SCE in February 2020 but did not return the claim form given to her until October 2020. The court does not find it a coincidence that she returned the claim form in the month following her September 18, 2020. And the court cannot ignore the history provided to the PQME by the applicant that she provided a history of that motor vehicle accident occurring in December 2020. But the defendant's theory that she has intentionally misled the PQME into finding in her favor is misplaced. The PQME evaluated the applicant in February 2021. Whether she reported to him that the motor vehicle accident occurred in September 2020 versus December 2020 is irrelevant. What is crucial is whether the doctor had, at the time of hos evaluation in February 2021, by any means, an accurate history of the September 18, 2020 motor vehicle accident. He did.

His review of the medical records demonstrate such, and in fact he stated that she had a "significant motor vehicle accident". He then turned to causation to find injury AOE/COE to her cervical spine and right wrist, which forms the basis for this court's F&O. After review of further records pertaining to the September 18, 2020 motor vehicle accident, the PQME did not change his opinion. And after cross-examination, the PQME left open the door of only possibly changing his opinion. Although defendant argues that the doctor did so, the undersigned does not find that to be so. The PQME specifically testified that the applicant has stage 4 cancer, headaches, and a foggy memory. As a nod to the defendant's efforts, the PQME said his opinion may change if further records from AAA were sent to him, and if the applicant underwent a neuropsyche consult with neurocognitive battery testing and an MRI of her brain where the results demonstrated no cognitive dysfunction. No such records were sent, no such consult was had, and no such testing was performed. Accordingly, there is no supplemental report or any kind of evidence from the PQME changing his mind as to causation – because the defendant opted to file a DOR instead.

The PQME is well aware of all injuries, incidents, and complaints, and he is aware that the applicant had worked at a desk using the phone and computer for data entry for over 17 years. The applicant's job duties at SCE was a contributing cause to her cervical spine and her right wrist. The applicant has met her burden of proof under *Labor Code* §3202.5 in this regard. She testified in a credible fashion throughout the trial, and this court found such. The WCJ's findings of credibility should be rejected only on the basis of contrary evidence of considerable substance. *Lamb v. WCAB* (1974) 39 CCC 310, 314; *Western Electric Co. v. WCAB (Smith)* (1979) 44 CCC 1145, 1152. Here there was no such contrary evidence presented, and the board should defer to this WCJ's findings of credibility. *Fernandez v. WCAB* (1999) 64 CCC 440 (writ denied); *Fremont Unified School District v. WCAB (Russo)* (2001) 66 CCC 1209 (writ denied); *Russell v. WCAB* (2013) 78 CCC 1350 (writ denied); *County of San Diego v. WCAB (Llamas)* (2015) 80 CCC 221 (writ denied).

Although there are instances when careful cross-examination may be used to challenge an applicant's credibility, which also may be impeached by the medical record, see *Kocalis v. WCAB* (1997) 62 CCC 1299 (writ denied); *Garcia v. WCAB* (2014) 79 CCC 356 (writ denied), such is not the case here. It is one thing if the PQME did not have all medical records and was unaware of the nonindustrial injuries, but it is another issue altogether when he does. In this case,

he reviewed all medical records, and he answered all hypothetical questions asked at the time of his cross-examination. Indeed he left the possibility open to further critique the applicant's credibility if further records justified it or if a neuropsyche consult and neurocognitive battery testing along with an MRI of her brain supported it. But that was not done. Had the defendant opted for that route, this case may be presented differently. Instead, however, the defendant did not do what the PQME stated was necessary, and instead filed a DOR under penalty of perjury that they were presently ready to proceed to hearing, on the very same day of the cross-examination seeking a Priority Conference and a trial on AOE/COE.

At the time of trial, the applicant was found credible when testifying that she was hired as a phone representative in June 2003 and was later promoted to a customer billing resolution specialist in either 2011 or 2012, a position she worked until her last day in either April or May of 2022. She credibly testified that her job as a billing specialist was such that she worked mostly at a desk, on a computer. She went on to credibly testify that pain in her neck began in approximately 2012, whereas pain in her right wrist began in late 2020 or early 2021.

The defendant has the burden of proof on apportionment. [*Escobedo v. Marshalls* (2005) 70 CCC 604, 613-14 (appeals board en banc); *Pullman Kellogg v. WCAB (Normand)* (1980) 45 CCC 170]. If it was their intent to apportion all of the applicant's disability to the nonindustrial injuries and the September 18, 2020 motor vehicle accident, then they failed to sustain their burden. The PQME did not do so and in fact refused to do so based on the records and history he had.

Furthermore, if a party fails to meet its burden of proof in obtaining and introducing competent evidence, it is not the job of the appeals board to rescue that party by ordering the record developed. *[Lab. Code § 5502; San Bernardino Community Hospital v. WCAB (McKernan) (1999) 74 Cal.App.4th 928, 64 CCC 986; Telles Transport Inc. v. WCAB (2001) 92 Cal.App.4th 1159, 66 CCC 1290]*. Here, again, the path towards a finding of nonindustrial injury was posed by the defendant at the PQME's cross-examination. That path was not traveled by the defendant, and instead they opted for an alternative route vis-à-vis its immediate DOR.

This court found that the PQME's conclusions as to causation constituted substantial medical evidence due to the fact that employment and injury are causally linked and that work over 17 years is, at the very minimum, a *contributing cause* of the applicant's injury, even if it is not the

sole or exclusive cause. Injury AOE/COE should be found to the applicant's cervical spine and right wrist.

The Applicant's Thoracic Spine and Right Upper Extremity

There is no conclusion by the PQME that the applicant sustained an industrial injury to her thoracic spine or her right upper extremity. In fact he is aware of not only other nonindustrial injuries, but he is also aware of the motor vehicle accident on September 18, 2020 and the injuries it caused to these parts of body. The PQME does not leave the door open for these parts of body; his reports and conclusions are specific to the cervical spine and right wrist in finding injury AOE/COE. There is no substantial evidence, let alone any evidence at all, supporting a finding of a CT injury to these parts of body.

The Applicant's Right Shoulder, Left Wrist, Gastrointestinal System, Respiratory System, Sleep, and Headaches

Turning to the applicant's right shoulder and left wrist, during his cross-examination, the PQME requested an MRI to both body parts. In order to finalize the issue of causation, such tests are needed before rendering a final decision on injury AOE/COE. There is no conclusive evidence, one way or the other, on these two parts of body. The same goes for the allegations to the applicant's gastrointestinal system, respiratory system, sleep, and headaches. No evidence has been offered by either party, and both should be afforded due process accordingly.
The WCJ and the WCAB have a duty to further develop the record when there is insufficient evidence on an issue. *McClune v. WCAB (1998) 62 Cal.App.4th 1117, 63 CCC 261; Tyler v. WCAB (1997) 56 Cal.App.4th 389, 62 CCC 924*. Here, we have insufficient evidence to these parts of body. The fact that the applicant presented no medical evidence at the time of trial does not mandate a "take-nothing" as to these parts of body. The trial was held on the threshold issue of whether the applicant sustained injury AOE/COE. The court found that she did, pursuant to the findings of the only PQME the parties secured. The record is now deficient, and it must be perfected.

IV

RECOMMENDATION

It is respectfully recommended that the Defendant's Petition for Reconsideration dated October 17, 2023 be denied.

DATE: October 26, 2023

TODD T. KELLY

WORKERS' COMPENSATION JUDGE