

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

PETER SHUERE, *Applicant*

vs.

**STATE OF CALIFORNIA, DEPARTMENT OF YOUTH AUTHORITY,
legally uninsured, adjusted by STATE COMPENSATION INSURANCE FUND/
STATE CONTRACTS, *Defendants***

**Adjudication Number: ADJ11413863
Oxnard District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the November 18, 2020 Findings and Order wherein the workers' compensation administrative law judge (WCJ) found that applicant, while employed by the State of California as a vocational instructor during the period January 14, 2014 through June 1, 2018, sustained injury arising out of and in the course of his employment to his respiratory system and in the form of valley fever.

Defendant contends that the WCJ erred in finding that applicant sustained an industrial injury, arguing that the opinion of the panel qualified medical evaluator (PQME) Dr. Hendel is not substantial medical evidence because his conclusion that it is medically probable that applicant contracted valley fever at work is not supported by an adequate analysis of the relevant facts. Defendant also contends that applicant is not at greater risk for exposure to the fungus that causes valley fever than the general public.

The WCJ prepared a Report and Recommendation for Reconsideration (Report), recommending that the Petition be denied. We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed in the Report, which we adopt and incorporate by reference, and for the reasons discussed below, we will deny the Petition for Reconsideration.

FACTS

As mentioned above, Eli Hendel, M.D., acted as PQME in this case. At his deposition, Dr. Hendel testified that applicant “was found to have the elevated antibody of coccidioidomycosis in September of 2017. The antibody that he was discovered was the IgM type, which is the acute antibody. (Exh. C, November 13, 2019, Deposition of Eli Hendel, M.D., p. 14:21-25.) Dr. Hendel was able to determine that applicant was infected in July or August of 2017. (Id. at 15:3-4.) Dr. Hendel explained “But to the level of reasonable medical probability, the preponderance of the time that he’s been outdoors during that period was during work. (Id. at 31:22-24.) When questioned about whether soil samples would be helpful in assessing where applicant was exposed to the valley fever spores (coccidioidomycosis), Dr. Hendel testified as follows:

I know I get that question asked often and that has not been done. The prevalence of coccidioidomycosis in certain areas is done based on the cases. It is not—unlike environmental studies, indoor studies where they do scrapings off the floor, when they do air testing for indoor, when they compare the parts per million of certain funguses indoors compared to outdoors.

That is not done with cocci. It’s not possible. The—it has two different states. The lifestyle—the life cycle of the fungus is different inside one’s body and outside is very deep and it gets stirred up. If you dig down his back yard and front yard, would you take samples from different areas? I do not know. I have not read any literature that has done that— (Id. at 32:23-25, 33:1-13.)

After explaining why there would be unlikely to be direct evidence of where applicant was exposed to coccidioidomycosis, Dr. Hendel reiterated that his opinion was based on the available evidence of the proportion of time spent outdoors when at work and the amount of time spent outdoors at home. “I’m basing that on the—on his description of his activities during those months and the preponderance of the time he was outdoors. That crosses reasonable medical probability. And I look at the preponderance of the time inside and outside of work.” (Id. at 34:11-16.)

DISCUSSION

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) Substantial evidence of industrial causation must be based on reasonable medical probability--it is not required to prove causation to a “scientific certainty.” (See *McAllister v. Workmen’s Comp. App. Bd.* (1968) 69 Cal.

2d 408, [33 Cal.Comp.Cases 660]; *Rosas v. Workers' Compensation Appeals Board* (1993) 16 Cal.App.4th 1692 [58 Cal.Comp.Cases 313, 319].) To be substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and set forth reasoning to support the expert conclusions reached. (*E.L. Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) In this case, the PQME set forth reasons for his medical opinion that it was reasonably probable that applicant's injury was industrial. Therefore, we will deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the November 18, 2020 Findings and Order is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 8, 2021

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

**PETER SHUERE
GORDON EDELSTEIN KREPACK GRANT FELTON & GOLDSTEIN
STATE COMPENSATION INSURANCE FUND**

MWH/oo

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