

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

JOHANNA MILLS, *Applicant*

vs.

**ADP TOTAL SOURCE INCORPORATED/INTELLIGENT TECHNOLOGIES, LLC;
AIU INSURANCE COMPANY BY HELMSMAN MANAGEMENT SERVICES, LLC,
*Defendants***

**Adjudication Number: ADJ16280220
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order and Opinion on Decision (F&O) issued by the workers' compensation administrative law judge (WCJ) on November 21, 2023. By the F&O, the WCJ found that applicant did not sustain a specific injury arising out of and in the course of employment (AOE/COE) on July 7, 2021 to her back, hips, legs, foot, wrist plantar fasciitis, stress, anxiety, psyche, and insomnia.¹ As a result, the WCJ ordered that applicant take nothing by way of her claim.

Applicant contends that the evidence does not justify the WCJ's findings, where the evidence demonstrates that she suffered specific injury AOE/COE on July 7, 2021.

Defendant filed an Answer. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report with respect thereto. Based on our review of the record, and for

¹ We note that the parties framed the issue for adjudication as "whether or not an *incident* occurred on July 7, 2021." (Minutes of Hearing/Summary of Evidence (MOH/SOE), September 11, 2023, p. 2, emphasis added.) However, as the WCJ properly stated in the F&O, the triable issue was whether applicant sustained an injury arising out of and occurring in the course of employment (AOE/COE) on July 7, 2021. (F&O, p. 2; see *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a), 5705 [the employee bears the burden of proving injury AOE/COE by a preponderance of the evidence].)

the reasons stated in the WCJ's Report, which we adopt and incorporate herein, and for the reasons discussed below, we will deny reconsideration.

DISCUSSION

The sole issue in this case is whether applicant demonstrated that she suffered a specific injury AOE/COE on July 7, 2021 to her back, hips, legs, foot, wrist, plantar fasciitis, stress, anxiety, psyche, and insomnia. (MOH/SOE, September 11, 2023, p. 2.) After trial, the WCJ found that applicant failed to provide sufficient evidence to satisfy her burden to prove that she suffered said specific injury. (F&O, p. 2, Finding of Fact No. 1.)

The burden of proving injury AOE/COE rests with the employee. (*Clark, supra*, 61 Cal.4th at pp. 297-298, 302; Lab. Code, §§ 5705, 3600(a).) The employee's burden must be met by a preponderance of the evidence. (Lab. Code, § 3202.5.) Here, the WCJ considered the evidence, including applicant's testimony and the medical records, consisting of notes issued by two doctors, Dr. Vladislav Tsaltskan, M.D., and Dr. Sean Rodriguez, M.D. (Joint Exhs. GG, HH.) Upon review, the WCJ found that applicant did not testify credibly regarding her alleged injury on July 7, 2021, and that the medical reports were incomplete and did not constitute substantial evidence of a specific injury on that date. (F&O, p. 6.)

The courts have clearly explained that "any award, order or decision of the board must be supported by substantial evidence in the light of the entire record..." (*Garza v. Workmen's Comp. Appeals Bd. (Garza)* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "[A] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620 (Appeals Board en banc), citing *Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [36 Cal.Comp.Cases 93]; *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794, 798 [33 Cal.Comp.Cases 358].) With respect to witness testimony, a WCJ's credibility determinations are "entitled to great weight because of the [WCJ's] opportunity to observe the demeanor of the witnesses and weigh their statements in connection with their manner on the stand..." (*Garza,*

supra, 3 Cal.3d at pp. 318-319.) Only evidence of considerable substantiality would warrant rejecting the WCJ's credibility determinations. (*Ibid.*)

Upon review, we agree with the WCJ that the medical notes provided by Dr. Tsaltskan and Dr. Rodriguez contain limited information that does not support a finding of specific injury AOE/COE on July 7, 2021. As explained by the WCJ, neither doctor's notes contain any details, discussion, or analysis of the alleged July 7, 2021 injury, and, indeed, make no reference to that date at all. We also conclude that there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Garza, supra*, 3 Cal.3d at pp. 318-319.)

Based upon the foregoing, we deny reconsideration of the F&O issued on November 21, 2023.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the November 21, 2023 F&O is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 12, 2024

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

**JOHANNA MILLS
SHATFORD LAW
BRADFORD & BARTHEL**

AH/cs

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

**STATE OF CALIFORNIA
Division of Workers' Compensation
Workers' Compensation Appeals Board
CASE NUMBER: ADJ16280220**

JOHANNA MILLS

**-vs.- INTELLIGENT TECHNOLOGIES;
HELMSMAN MANAGEMENT ROCKLIN,
AIG CLAIMS COSTA MESA**

**WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE: Martha D. Henderson**

RECOMMENDATIONS ON PETITION FOR RECONSIDERATION

I. STATEMENT OF FACTS

On July 7, 2021 applicant was working as a warehouse worker for the defendant, Intelligent Technologies, hereinafter, "IT" She was in charge of inventory and her job included pulling inventory orders that were given to her. (MOH/SOE, 9/11/23, Pg.4, Ln. 5-7.5). Ms. Mills filed a claim form alleging a specific injury on 7/7/21, which is the subject of this trial. She alleged injuries to her back, hips, legs, foot, wrist, plantar fasciitis, stress, anxiety, psyche and insomnia. Defendants denied the claim on August 25, 2022. (Joint Exhibit "FF). The parties requested a trial on the issue of injury arising out of and occurring in the course of employment (AOE/COE) only. The question before the court is whether there is evidence that a specific incident occurred. Following the trial, the WCJ issued a Findings and Order that there was no evidence of an injury on 7/7/21. The Findings and Order was issued and served on November 21, 2023. Applicant filed a timely, verified Petition for Reconsideration on December 13, 2023. It was served on the parties of record.

II. APPLICANT'S CONTENTIONS IN THE PETITION FOR RECONSIDERATION

The principal argument made is that the evidence does not justify the finding of fact that there was no evidence of an injury suffered by Ms. Mills on July 7, 2021. It is asserted that the testimony provided by Ms. Mills on this issue is uncontested, regarding the fact that "she injured her left foot on July 7, 2021 pulling batteries on a pallet jack for the Defendant." In response the court calls to the WCAB's attention that Applicant testimony was not uncontested. Her supervisor, Tom Flores, testified that Ms. Mills, contrary to her assertion, did not report an injury to him occurring on the date of July 7, 2021. He further testified that he was aware of the process for handling an employee who gets injured at work, however, he denied that Ms. Mills reported an

injury to him on July 7, 2021. He also denied that she removed her shoe and sock to show him her foot as she claimed at trial. (MOH/SOE, 10/30/23, Pg.4 Ln. 4-9 and Ln. 22-25).

The next contention raised in the Petition is that applicant heard from Dr. Vladislav Tsaltskan "that due to pulling the pallet jack from behind and pressing on the balls of her feet she sustain an injury to her fascia." The statement made by Ms. Mills that she heard this from Dr. Tsaltskan is not supported by any medical report admitted into evidence. In fact, the one page note from Dr. Tsaltskan, Exhibit HH, dated September 1, 2021, never mentions any date of injury, let alone an injury date of July 7, 2021. This is true despite that fact that the applicant this note was issued less than 2 months after the July 7, 2021 incident occurred. Also, as noted in the Opinion on Decision, this document is not a medical report and it contains handwritten notations changing dates and adding content which was not typed into the note. This note does not confirm Ms. Mills' statements about what the doctor told her regarding her claimed injury.

Continuing in their Petition, Applicant argues that her testimony is uncontested and she was the only one in the warehouse the day she was injured. The fact that she was alone in the warehouse does not lead to the conclusion that her testimony is uncontested, nor does it prove the validity of her statement that she was injured. The court looks to the totality of the evidence and circumstances in making a credibility determination and here the witnesses' testimony does not withstand the test of credibility.

Concerning the question of whether the applicant had ever filed a prior workers' compensation claim, Applicant argues that the applicant was simply confused and "likely believed she was being questioned about filing a workers' compensation claim for this specific injury as opposed to any case ever in her life." This argument does not explain applicant's testimony, nor does it lead to an inference that she misunderstood the question. The facts are clear that she filed an application and a claim form on September 14, 2021, approximately 2 months after the alleged July 7, 2021, injury. Despite the fact that the September 14, 2021, claim form was against the same employer named in the July 7, 2021 claim and involved the same exact body parts, the applicant testified that she had not filed any other workers' compensation claims. During the trial, no effort was made by Applicant's counsel to clear up any confusion on this issue. He only asked her if she knew the difference between a cumulative trauma and a specific injury and she said she did not. However, that question is not relevant to the issue of whether she had filed any other claims be they specific or continuous trauma. Applicant does not explain the significance of her response. It

seems unlikely that applicant, while litigating the CT claim, ADJ15194453, against the very same employer, for the very same injuries that she allegedly suffered two months earlier on a specific date of July 7, 2021, would not have any documented medical evidence of the July 7, 2021 date of injury. It is also curious that the specific claim was not filed until after the Compromise and Release agreement was signed and the Order Approving C&R was issued on March 31, 2022.

The applicant did not testify credibly on the issues before the court. When asked about prior injuries to her left foot, she stated that prior to that incident on July 7, 2021, she had not had any problems in her left foot and there was nothing at all that had occurred in the same area. (MOH/SOE, 9/11/23, Pg.4, Ln. 9-14.5). Inspection of the claim form filed in ADJ15194453, the CT claim, shows that she alleged injury to her left foot and all of the same body parts alleged in the July 7, 2021 specific claim now being considered. (See Exhibit "BB")

III. APPLICANT HAS FAILED TO SET FORTH THE CORRECT BURDEN OF PROOF

The burden of proving injury AOE/COE rests with the employee. The employer does not have the burden to disprove causation. The employee's burden must be met by a preponderance of the evidence (Labor Code § 3202.5). Under Labor Code § 3202.5, preponderance of the evidence means that evidence, when weighted with that opposed to it, has more convincing force and the greater probability of truth. The rules of liberal construction established in Labor Code § 3202 do not relieve an employee of meeting this evidentiary burden of proof. Generally, an employee must present substantial medical evidence to establish industrial causation. The employee must establish industrial causation by a "reasonable probability." That has not been done here.

IV. THE WCJ IS EMPOWERED TO EVALUATE THE WITNESS' CREDIBILITY CREDIBILITY OF APPLICANT

As the sole issue for determination at trial is injury arising out of and in the course of employment and specifically whether there is evidence of an injury occurring on July 7, 2021, it is found Ms. Mills did not meet her burden of proof on establishing injury as there is a lack of credible evidence. Although Labor Code Sections 3202 allows for liberal construction by the courts with the purpose of extending benefits to injured workers, Labor Code Section 3202.5 requires that all parties shall meet the evidentiary burden of proof by a preponderance of the evidence. The Trier of Fact must weigh all the evidence, including testimony and its credibility, to determine whether there is a sufficient record based upon which a finding of employment can be reached. *Garza v. WCAB* (1970) 3 Cal.3d 312. The credibility determinations of the workers'

compensation judge are entitled to great weight and should not be disturbed when they are supported by substantial evidence because the judge has the opportunity to observe the demeanor of witnesses, weigh their statements and determine the value of the evidence provided. *Garza v. Workers' Comp. Appeals.* (1970) 3 Cal. 3d 312, 318-319, 35 CCC 500.

In the case before us, the Judge had the opportunity to hear the applicant's testimony, review the evidence and evaluate the defense witnesses' testimony. The applicant's testimony was not credible and is rebutted by the documentary and testimonial evidence presented by Defendant. Defense witness, Thomas Flores, testified in a clear, credible fashion and offered statements that were consistent with the documentary evidence presented, including the notes from the applicant's doctor which never mentioned an injury of July 7, 2021. Mr. Flores' testimony is given considerable weight and accepted by the court over the applicant's testimony. Based thereon, it is recommended that the Petition for Reconsideration be denied.

DATE: 12/20/23

MARTHA D. HENDERSON
WORKERS' COMPENSATION JUDGE