

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

MARBELY URIARTE, *Applicant*

vs.

**LOS ANGELES COUNTY DEPARTMENT OF SOCIAL SERVICES,
permissibly self-insured, administered by SEDGWICK CLAIMS MANAGEMENT
SERVICES, INC., Defendants**

**Adjudication Number: ADJ11372274
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Award, (F&A) issued by the workers' compensation administrative law judge (WCJ) on December 15, 2020, wherein the WCJ found in pertinent part that applicant did not sustain injury arising out of and occurring in the course of employment (AOE/COE).

Applicant contends that the report from psychiatric qualified medical examiner (QME) Perry Maloff, M.D., is not substantial evidence that applicant did not sustain injury AOE/COE.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition), and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed a psychiatric/stress injury, and injury to her head, neck, back, shoulders, stomach, and respiratory system, while employed by defendant as an intermediate clerk during the period from January 1, 2017, through March 3, 2018.

On March 4, 2019, applicant was evaluated by psychiatric QME, Dr. Maloff. (Def. Exh. B, Dr. Maloff, March 4, 2019.) Dr. Maloff interviewed applicant, took a history (Def. Exh. B, pp. 4 – 20), reviewed the medical record (Def. Exh. B, pp. 20 – 27), and had applicant undergo

psychological testing performed by Jared Maloff, Psy.D. (Def. Exh. B, pp 28 -29; EAMS pp. 42 – 46.)

Based thereon, Dr. Maloff explained that:

It is clear the claimant had a longstanding mood disorder prior to the time she was employed by Los Angeles County. ... She had participated in a prolonged period of psychotherapy following the death of her father. These services were provided over the course of several years by Medi-Cal providers. She also participated in counseling for herself and family counseling with her son, Jonathan, when he was experiencing difficulties as a young high school student. ¶ It is my opinion the claimant's primary psychiatric diagnosis is prolonged grief disorder (PGD). This condition refers to a syndrome consisting of a distinct set of symptoms following the death of a loved one. ... In this instance, it is likely the claimant's prolonged grief disorder is predicated in part upon the very close relationship she had with her father and the perspective that he was her savior and had acted contrary to her mother's instincts to keep her within the intact family. ... The prolonged grief disorder is noted to cause incapacity through grieving which is so focused that it becomes difficult to care about much else. The claimant very clearly reports that this is her perception. She thinks every day about her father and believes that there is very little reason for her to live without him in this world. Further evidence of this condition is the fact that the claimant ruminates about her father's death and remains unsure of her own purpose, place, and identity in this world. Individuals with this condition, including the claimant, develop a flat and dull outlook on life, believing the future holds little prospect of joy, satisfaction, or pleasure. ...¶ This examiner has also concluded the claimant has suffered from persistent depressive disorder. The claimant indicates that even prior to the death of her father she lacked usual interests in hobbies, activities, interpersonal relationships, and had existed mostly alone in her life without considerable desire to reach career or family goals or partnership. This condition has also been known as dysthymic disorder. ... (Def. Exh. B, p. 35.)

Dr. Maloff later concluded:

It is the opinion of this examiner that Ms. Uriarte did not suffer any aggravation or exacerbation of the permanent impairment described by this examiner as a consequence of any work-related mental health condition, in this case adjustment disorder with mixed features, anxiety and depression. The claimant's history establishes the existence of significant psychiatric impairment pre-existing her employment for the County of Los Angeles in January 2016. One hundred percent of the claimant's permanent psychiatric disability is apportioned to nonindustrial factors preexisting the claimant's employment at the County of Los Angeles in January 2016. (Def. Exh. B, p. 40.)

The parties proceeded to trial on July 9, 2020. Applicant testified, the issue identified by the parties was injury AOE/COE, and the matter was continued to August 26, 2020. (Minutes of Hearing and Summary of Evidence (MOH/SOE), July 9, 2020, pp. 1 - 2.) The matter was again continued and at the September 24, 2020 trial it was submitted. (MOH/SOE, September 24, 2020.)

DISCUSSION

We first note that the Petition is not verified. Labor Code section 5902 provides in relevant part: "The petition [for reconsideration] shall be verified upon oath in the manner required for verified pleadings in courts of record. ..." (Lab. Code, § 5902.) This is a clear and specific statutory requirement that petitions be verified. The Petition in this case is not verified by applicant or her attorney, and for that reason, it does not comply with the requirements of Labor Code section 5902. Although we will generally dismiss unverified petitions for reconsideration, verification is not a jurisdictional requirement and the failure to verify the petition is not a jurisdictional defect which mandates dismissal. (*Wings West Airlines v. Workers' Comp. Appeals Bd. (Nebelon)* (1986) 187 Cal.App.3d 1047, 1055 [51 Cal.Comp.Cases 609, 614]; *Mullane v. Industrial Acc. Com.* (1931) 118 Cal.App. 283, 286 [17 IAC 328, 330].) In the usual case, we will dismiss an unverified petition however, under some circumstances (e.g., where the failure to verify is not pointed out by the WCJ's Report or the respondent's answer) we may elect not to dismiss an unverified petition. Here, defendant did not file an answer and the Report does not mention the fact that the Petition is not verified. As discussed, the Appeals Board has the discretion to dismiss or not dismiss an unverified petition. Under the circumstances of this matter, we will not dismiss the Petition and we will address the issues raised therein, but counsel is informed that such conduct in the future will likely result in dismissal of a petition.¹

It is well established that any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) The relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence

¹ We also note that the Petition "prays for damages." (Petition, p. 3.) Counsel is reminded that tort damages are not a remedy available in the Workers' Compensation system. (*Charles J. Vacanti, M.D., Inc. v. State Comp. Ins. Fund* (2001) 24 Cal.4th 800, 811 [65 Cal.Comp.Cases 1402])

(see *Place v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372, [35 Cal.Comp.Cases 525].) To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) A medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, 407 [33 Cal.Comp.Cases 647].)

As noted above, Dr. Maloff interviewed applicant, took a detailed history (Def. Exh. B, pp. 4 – 20), reviewed the medical record, and had applicant undergo psychological testing. In the context of applicant's complaints and the test results, Dr. Maloff discussed applicant's extensive history of psychiatric problems and treatment. He then explained his analysis of the various psychological factors and explained his reasoning for reaching his conclusions. (see Def. Exh. B, pp. 35 – 36; 39 - 40.) Having reviewed the trial record, including Dr. Maloff's report, it is clear that his report constitutes substantial evidence regarding the issue of injury AOE/COE.

Also, it appears that a number of applicant's arguments are factually inaccurate. For example, applicant asserts that on page two of his report, Dr. Maloff states he spent 3.25 hours face to face with applicant and that applicant "testified that Dr. Maloff only spent 20 minutes face to face with her." (Petition, p. 2.) However, review of the July 9, 2020 MOH/SOE indicates that applicant said she recalled "seeing Dr. Maloff" she did not testify at all about the amount of time she spent face to face with the doctor. (MOH.SOE, July 9, 2020, pp. 4 – 5.) Further, applicant argues that in his report, Dr. Maloff incorrectly stated that Sylvia Moreland was no longer working for defendant. As noted by the WCJ, review of Dr. Maloff's report indicates that, "This statement is not reflected anywhere in the medical evaluation...." (Report, p. 4.) Dr. Maloff actually stated that Ms. Moreland was moved, and that applicant's manager was terminated. (Def. Exh. B, p. 40.) The statement in Dr. Maloff's report is consistent with applicant's trial testimony. (MOH/SOE, July 9, 2020, p. 4.) Clearly, applicant's factually incorrect arguments are not a basis for finding that Dr. Maloff's report is not substantial evidence. Applicant's counsel is reminded that the misrepresentation of facts, as established in the trial record, may be deemed sanctionable conduct. (Lab. Code, § 5813; Cal. Code Regs., tit. 8, § 10421(b).)

Accordingly, we deny reconsideration,

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award issued by the WCJ on December 15, 2020, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 11, 2021

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

**MARBELY URIARTE
LAW OFFICE OF BRIAN VOGEL
COLEMAN, CHAVEZ & ASSOCIATES, LLP**

TLH/pc

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