

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

ADAN SANTIAGO, *Applicant*

vs.

**THE UNIQUE, LLC,
dba THE SUSHI HEROES, *Defendants***

**Adjudication Number: ADJ11574921
San Jose 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, and for the reasons stated below, we will deny reconsideration.

Defendant questions the substantiality of the CPRS diagnosis by treating physicians Robert Aptekar, M.D., and Peter Abaci, M.D., in part, because there is "no evidence that any type of physical examination took place." (Petition for Reconsideration, at p. 4:13-15.) However, the summary of applicant's August 27, 2019 office visit with Dr. Aptekar, contained within the September 23, 2019 report of panel qualified medical examiner (PQME) Robert Stone, D.C., specifically states, "The applicant *was here* for a follow up..." (Dr. Stone's 9/23/19 report, at p. 2, Joint Exhibit 4, emphasis added.) Dr. Aptekar's August 13, 2020 report, as summarized in Dr. Stone's March 8, 2021 report clearly describes a physical examination of applicant noting, "The patient *was seen* for routine follow up.... Left wrist was tender to palpation. Motion was limited. Rotation was painful. Grip strength was reduced...." (Dr. Stone's 3/8/21 report, at p. 18, Joint Exhibit 1, emphasis added.) The same evidence of a physical examination is true of Dr. Abaci's September 21, 2020 visit note, which was also summarized in Dr. Stone's March 8, 2021 report. The summary states:

“[Patient] *was seen* as requested in consultation The patient presented with a brace around the left wrist, forearm and hand. He was able to remove the brace. He *had signs of atrophy* of the left hand and moderate limitations to mobility at the left wrist and in the fingers of the left hand in comparison to the right. *Changes in hair growth were noted over the left hand and forearm in comparison to the right where the, left side appeared to have darker and more fuller hair noted. On sensory testing there was an area of allodynia to light touch along the ulnar side of the left hand and wrist. Sensation discrimination to pinprick was diminished in the left hand in comparison to the right. There was substantial measurable weakness in the left upper extremity compared to the right. Jamar Grip strength in the right hand measured 81 and in the left hand 6.*

DX: 1) Complex regional pain syndrome I of left upper limb. 2) Chronic pain syndrome.

(*Id.*, at p. 19, emphasis added.)

Based on our review and for the reasons stated in the report, we are persuaded that Dr. Stone appropriately relied on the diagnoses of treating physicians, Dr. Aptekar and Dr. Abaci, and that Dr. Stone’s opinion is substantial medical evidence upon which the WCJ properly relied. To be considered substantial evidence, a medical opinion “must be predicated on reasonable medical probability.” (*E.L. Yeager Construction v. Workers’ Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416–17, 419 [33 Cal.Comp.Cases 660].) A physician’s report must also be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Yeager Construction 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, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.).)

Finally, we note that it was not inappropriate for defendant to cite to excerpts/summary of treatment records that are contained in Dr. Stone’s PQME reports.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 8, 2022

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

**ADAN SANTIAGO
AUBAIN & GUEVARA
LAW OFFICES OF MELODY COX
EMPLOYMENT DEVELOPMENT DEPARTMENT**

PAG/abs

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Applicant, Adan Santiago, while employed on 09/26/2018, as a chef, occupational group number 322, in San Jose, California, by The Unique LLC dba The Sushi Heroes, sustained an injury arising out of and arising in the course of employment to the left upper extremity (including wrist and forearm) and left shoulder, and claimed injury to the cervical spine, psyche and injury resulting in Chronic Regional Pain Syndrome (CRPS).

The Findings and Award in this case issued on 01/14/2022. The Petitioner is Defendant, who has timely filed the verified Petition for Reconsideration on 02/07/2022. The Petition for Reconsideration is not legally defective. Applicant has not filed an Answer.

Petitioner contends that the finding of injury resulting in CRPS is in error as the reports of Panel Qualified Medical Examiner (PQME) Robert Stone, D.C., are not substantial evidence.

II. FACTS

The facts of the mechanism of injury are not in dispute. Applicant was working as a sushi chef when he stepped on a piece of fish and fell. While falling, Applicant struck his left upper extremity on a metal sink. Applicant received various modalities of treatment including injections, physical therapy, occupational therapy, medication and a wrist brace. Applicant was not a surgical candidate.

Applicant was examined by PQME Robert Stone, D.C., who issued several reports. There was a dispute amongst the medical providers as to whether or not Applicant had developed CRPS. PQME Stone requested and received a consult from Annu Navani, M.D., on this issue. Dr. Navani concluded that Applicant did not have CRPS. PQME Stone considered Dr. Navani's opinion and rejected it, ultimately agreeing with doctors Aptekar, Abaci, Kaisler- Meza and Cheng that Applicant DID have CRPS.

Whether or not CRPS is present makes a significant difference in the value of this case, as the *AMA Guides* have a separate rating table for CRPS, and it has a large impact on the overall impairment/rating.

This Judge accepted the reports of PQME Stone and found them to constitute substantial evidence, and agreed with the determinations that Applicant did have CRPS. A rating was provided.

Defendant has filed the Petition for Reconsideration and there has not yet been any response from Applicant.

III. LEGAL ARGUMENTS

1. DEFENDANT ALLEGES THE REPORTS OF PQME STONE ARE NOT SUBSTANTIAL MEDICAL EVIDENCE

PQME Stone reviewed all of the relevant medical evidence, and complied with Labor Code section 4628. The opinions of PQME Stone are not conclusory nor are they based on speculation, but rather are well-supported.

Defendant alleges that the issue here of CRPS is outside PQME Stone's expertise, and therefore the opinions cannot constitute substantial evidence. I disagree. Defendant asserts that "Dr. Stone essentially told the parties in September 2020 that he did not have the expertise needed to evaluate CRPS and would refer the applicant to Dr. Navani." This is a "stretch" by Defendant; there is no evidence that this is "essentially" what PQME Stone said. What PQME "actually" said in September 2020 was that Applicant possibly had CRPS, was not permanent and stationary, and needed more treatment. PQME Stone indicates in his 09/21/20 report at page 14 under "Permanent and Stationary" that Applicant is demonstrating complaints consistent with CRPS, and is being referred to Dr. Navani for evaluation for confirmation of diagnosis and possible treatment. PQME Stone goes on to state at page 15 under the "Treatment" section that he is referring Applicant for evaluation of CRPS and for pain management further noting that Dr. Navani treats patients with this condition. [Joint Exhibit 2]

Dr. Navani did examine Applicant, and found that there was no evidence of skin, hair or nail changes, no temperature or sweating abnormalities, no allodynia and no hyperpathia **at the time of her examination**. She concluded no evidence of CRPS. [Defendant's Exhibit B]

PQME Stone considered this opinion, and rejected it.

We need to keep in mind that Dr. Navani was not a PQME. She was not an Agreed Medical Examiner. She was a treatment consult requested by PQME Stone. At no time did PQME Stone "defer" any ultimate determinations to Dr. Navani, and at no time did PQME Stone say the CRPS issue was outside of his expertise.

In his final analysis, PQME Stone again reviews the reports and opinions of the other medical doctors who have diagnosed CRPS, reviews the *AMA Guides*, considers the Medical Treatment Utilization Schedule (MTUS), performed medical research, and considered the "Budapest Criteria" for arriving at his conclusions. PQME Stone also indicates at page 35 that he has personally provided treatment for patients with CRPS. His analysis is very thorough and well-supported.

There is no medical evidence presented by Defendant to establish that evaluation of an upper extremity, reviewing medical evidence, and making a diagnosis are in any way outside of PQME Stone's expertise.

2. DEFENDANT ALLEGES THAT PQME STONE’S FINDING OF CRPS IS NOT SUBSTANTIAL EVIDENCE AS IT IS BASED ON SPECULATIVE, INADEQUATE MEDICAL HISTORY

A review of the reports of PQME Stone show that he reviewed hundreds of pages of medical reports. Defendant asserts that the information in the treatment reports cannot be relied upon because not all of the visits were in person and therefore the opinions of the treating physicians amount to speculation. Again, this is a “stretch” by Defendants. That some of the treatment visits were by telemedicine is NOT a basis to determine that those visits have an inaccurate history. There is no evidence that any of the information contained within any of the treatment record is inaccurate.

Applicant was personally examined by the PQME, on more than one occasion. PQME Stone himself found objective evidence of left hand allodynia, hypoesthesia to pinprick, weakened left hand/grip strength, atrophy and temperature changes. The findings by PQME Stone serve to supplement and reinforce the opinions and findings of the treating doctors. Again, there is no evidence that any of the treatment reports are inaccurate, and there is no error for PQME Stone to have relied upon the treatment records to analyze his own determinations. Further, Defendant is citing excerpts/summary of treatment records, and many/most of those records were not offered into evidence. It is inappropriate to cite to documents not in evidence.

3. DEFENDANT ASSERTS THAT THIS JUDGE ACTED IN EXCESS OF HER POWERS IN DETERMINING THAT THERE WAS EVIDENCE OF CRPS

The parties specifically requested that this Judge make a determination of whether the injury resulted in CRPS [See Minutes of Hearing/Summary of Evidence, 2:12-14] and the issue of whether making such a determination was beyond my jurisdiction, was never raised. This Judge was charged with determining whether the reports and opinions of the medical providers were substantial evidence. I found that the reports and opinions of PQME Stone were in fact substantial evidence, and I agreed with his determination that Applicant carries the diagnosis of CRPS. This Judge determined that the reports and opinions of Dr. Navani were not substantial evidence as there was no evidence that Dr. Navani reviewed the voluminous medical records in this case. It was not error to decide the issues presented at trial, and it was not error to agree with the PQME Dr. Stone.

**IV.
RECOMMENDATION**

The Petition for Reconsideration should be denied.

DATE: 02/11/2022

**ADORALIDA PADILLA
WORKERS’ COMPENSATION JUDGE**