

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

**JASON HUNTER, *Applicant***

**vs.**

**SAFETY NATIONAL CASUALTY COMPANY, administered by AMERICAN CLAIMS  
MANAGEMENT, INC., *Defendants***

**Adjudication Numbers: ADJ15508746; ADJ15509259**

**San Diego District Office**

**OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of the Joint Findings and Award (F&A) issued on February 13, 2023, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed as a nurse on January 22, 2021 (ADJ15508746) and during the period April 2021 through November 11, 2021 (ADJ15509259), applicant sustained industrial injury arising out of and in the course of employment to his psyche; (2) the injury caused temporary total disability from November 11, 2021 to the present and continuing; (3) the reasonable value of applicant's attorney's services is fifteen percent of the temporary disability award; and (4) applicant is in need of further medical treatment to cure or relieve from the effects of the industrial injury.

The WCJ issued an award to applicant of temporary disability benefits, attorney's fees, and further medical treatment.

Defendant contends that the WCJ erroneously found that applicant sustained industrial injury to the psyche on the grounds that the reports of Dr. Lyons and Qualified Medical Evaluator (QME) Dr. Tribble are unsupported by substantial medical evidence. Defendant further contends that the WCJ erroneously found that applicant sustained cumulative injury to the psyche by misapplying Labor Code section 3208.3<sup>1</sup>

We received an Answer from applicant.

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<sup>1</sup> Unless otherwise stated, all further statutory references are to the Labor Code.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have reviewed the Petition, the Answer, and the contents of the Report. Based upon our review of the record, and for the reasons discussed below, we will deny reconsideration.

### **FACTUAL BACKGROUND**

On February 2, 2023, the matter proceeded to trial as to the following issues:

1. Injury arising out of and in the course of employment.
2. Temporary disability, with applicant claiming the following period, November 11, 2021 through the present and continuing.
3. Need for further medical treatment.
4. Attorney fees.

(Minutes of Hearing, February 2, 2023, p. 2:18-21.)

In the Opinion on Decision, the WCJ states:

The facts surrounding the specific injury on January 22, 2021 are not in dispute, and appear in the history provided to the Qualified Medical Evaluator: Applicant was performing his usual and customary occupation as a psychiatric nurse for the male acute unit when a patient came up to him in an aggressive manner. There was Plexiglas between them, and he told the patient to calm down. This patient was apparently disrupting the unit, and in response Mr. Hunter told patient that he might be placed in a quiet room.

As Mr. Hunter escorted the patient to the quiet room, the patient began throwing punches. Applicant said "I was on his left side when he was throwing haymakers at me with his right arm. I took him down and controlled it down to the ground so that we did not fall." The patient was on his back and Mr. Hunter was on top of him. Then, the patient brought his knees into his chest and kicked Mr. Hunter on the right side of his face. Mr. Hunter said "He kicked me three times on the right side of my face over my eye, nose, and mouth." There was a medical assistant who was helping him, but other staff seemed slow to respond. "Other staff showed up after about a minute, but it seemed like forever." Mr. Hunter said he was trying to wrap up the patient so that he could not move, but they had a hard time getting the patient on his stomach. Once the patient was subdued, Mr. Hunter noticed he was bleeding from a busted lip and so he was put in the nurse's station.

Applicant was transported to the hospital where he had a CT scan, a review of systems, a quick physical, and he was prescribed naproxen and Robaxin. (Joint exhibit 2)

...

A correction of the issues presented in this case needs to be made at the outset of this opinion: Applicant clearly sustained an industrial injury on January 22, 2021

when he was physically assaulted at work and thereafter taken to the hospital. The question in this case is whether the physical industrial injury thereafter caused psychiatric disability and the need for further care. Therefore the parties' dispute concerns the parts of the body that were injured, rather than the injury itself.

...  
The WCJ finds that applicant was the victim of a violent act when he was assaulted at work on January 22, 2021. Therefore it is applicant's burden to submit substantial evidence demonstrating that at least 35 to 40% of applicant's psychiatric injury was caused by the events at work on January 22, 2021. Defendant has denied the claim, arguing that applicant's pre-existing PTSD, which results from his combat experience in the Marines, is the cause of applicant's disability and need for medical care.

...  
[A]n aggravation of a previous non-industrial condition will constitute an industrial injury when the industrial aggravation causes the need for treatment and a period of temporary disability. *Johnson v. Cadlac, Inc., dba Del Taco and Technology Insurance Co., 2021 Cal. Wrk. Comp. P.D. LEXIS 194. . . .*

...  
[S]ection 3208.3 sets the standard of causation: Applicant must demonstrate that the alleged psychiatric disability and need for medical care is substantially caused (at least 35 to 40%) by the violent act that caused applicants' physical injuries at work. This is a higher standard than is applied in other cases, where applicant need only demonstrate that the industrial injury was a contributing factor in causing the alleged disability and need for medical care.

The question for the WCJ then becomes whether applicant has submitted substantial evidence to demonstrate that 35% to 40% of his current psychiatric disability and need for medical care has resulted from the physical attack he suffered on January 22, 2021. After a thorough review of the evidence, the WCJ finds the QME has unquestionably answered this question in the affirmative.

The parties presented the question of industrial causation to the qualified medical examiner, Dr. Tribble. The QME provided a report, and his deposition was taken. Here are the relevant portions of the doctor's opinion regarding causation:

"On January 22, 2021, during the course of his work as a registered nurse for Paradise Valley Hospital, Mr. Hunter was dealing with an aggressive patient who was disrupting the unit. The Applicant began to escort this patient to a quiet room when the patient began throwing punches. To restrain this individual, Mr. Hunter took him cautiously to the ground. While on top of the man, the patient was able to get his knees up to his chest which enabled him to begin kicking the Applicant in the face. As Mr. Hunter was being assaulted, he said it took quite a while for other staff to respond to the code gray. Eventually, the disruptive patient was subdued, but Mr. Hunter was retraumatized in the process, which seemed to have a gradual onset. This led to an aggravation of his PTSD, originally brought on by his service in the Marines where he was under constant mortar attack while in Iraq in 2004 and

2005. **In my opinion, there is 40% causation from the specific injury.**" (Joint exhibit 2 page 48)

Dr. Tribble's deposition was taken in which he reiterated his opinion regarding causation:

Q. "How are you able to conclude with reasonable medical certainty that the applicant's claimed date of injury on January 22nd, 2021, actually increased his current symptoms than what they were dating all the way back to 2012, 2020, and up to the present?"

A. "That would probably take us into a description of the work injuries, which is pages 14, 15 -- mostly pages 14 and 15 where he is describing the effect that the initial work injury had on him and then subsequent difficulty with his employer where he is not functioning well at work, by his account, to the point he was unable to function at work because of what had what happened at Paradise Valley. So I'm acknowledging there was definitely preexisting mental health issues going on, but that was **made significantly worse by what happened with this work injury if we're talking about causation of the injury.**" (Joint exhibit 1 Page 22 line 2 emphasis added)

Q. So other than the fact that you said it was made worse because of the employment injury, I'm trying to understand how it was actually made worse. I mean, what was worse about it? I mean, what is now different now than it was before?

A. Yeah. So going back into his description of the work injury, you know, it was a significant assault at work, by his description, getting punched in the face by this guy who was apparently bigger than him, extremely aggressive, throwing punches at his face. He got kicked in the face repeatedly. It was a really significant assault.....And then if you go into the other situations he is describing how he felt, you know, understaffed and kind of left alone with some of these code guys, and he said, you know, the first assault lit the fuse and that's when he first felt like it wasn't safe at work, and then he starts to feel like he is the only person dealing with these combative or aggressive patients. So that particular environment to me made his condition worse than it would have been otherwise if he didn't have that employment. So that's how I see the aggravation."  
(Joint exhibit 1, Page 27 line 14)

...

It is clear that the doctor is of the opinion that the physical assault sustained by applicant at work is 40% of the cause of his current need for medical care and temporary total disability.

Therefore, the WCJ finds that substantial evidence supports a conclusion that applicant has met his burden of demonstrating industrial causation of the specific injury of January 22, 2021.

...

In applying the legal principles stated above to the facts surrounding the cumulative trauma claim, the WCJ finds that applicant has met his burden by proving at least 35% of his current disability was caused by the cumulative trauma.

However, the cumulative trauma claim is more interesting in that it includes the sequelae of the psychiatric symptoms arising from the physical assault which occurred on January 22, 2021. In reviewing the history provided to the QME, the WCJ concludes that the specific industrial injury and cumulative industrial injury are both inextricably intertwined in causing applicant's current disability and need for further medical care. This is based upon the QME's conclusion that "the first assault lit the fuse and that's when he first felt like it wasn't safe at work, and then he starts to feel like he is the only person dealing with these combative or aggressive patients. So that particular environment to me made his condition worse than it would have been otherwise if he didn't have that employment." (Joint exhibit 1 page 27 line 14)

In his QME report, Dr. Tribble made the following conclusions regarding causation of the cumulative trauma injury:

"Describing the cumulative injury claim, Mr. Hunter said that in April 2021 he began work in the crisis stabilization unit which was reportedly sold to him as a low acuity unit with only suicidal patients that could be cleared within 24 hours. However, his employer reported began to send patients who were classified as a danger to others, on methamphetamine or heroin, and medically compromised which put him under significant stress over the course of time.

He had to work with aggressive patients, and he apparently lacked the support of coworkers who would stand by and not get involved, this despite his coworkers all being trained on how to respond to workplace violence and aggressive patients. He said that he complained almost daily to his supervisor that they were understaffed with males, who were the only ones who would engage in restraining code gray patients. Mr. Hunter said that over the course of time, and reasonably due to the traumatic work incident on January 22, 2021, his mental health functioning worsened over time until he reached the point where he could no longer function due to poor mental health. He was taken off work TTD by his psychiatrist on November 11, 2021, and he has not worked since that date.

In my opinion, the cumulative injury played a significant role in worsening the applicant's mental health due to his allegation of ongoing difficulties being understaffed and having to continue to restrain patients, especially after the January 22, 2021, traumatic injury. I find it reasonable to attribute 30% causation to the cumulative injury."

The Applicant disclosed that he was written up in early November 2021 for talking back to the medical director. He said that he refused a patient to their unit that he felt was not medically stable to transport. He told the hospital director, Dr. Bindle,

that he did not give a fl\*\* about his desire to transfer the patient and that if the director did so, Mr. Hunter would send the patient back. This happened shortly before he went off on disability and it appears to be a significant work event. In my opinion, although significant, this is a minor contribution to the work injuries and it accounts for 5% causation.”  
(Joint exhibit 2 pages 48 – 49)

The WCJ finds this opinion of the QME to be well reasoned and constitutes substantial evidence. In regards to the 5% causation to an incident where applicant was “written up” for talking back to the medical director, the WCJ finds this incident to be part of the cumulative trauma claim and is not significant enough to be considered a separate injury. In addition, defendant did not present any evidence or argument that this incident constituted a “good faith personnel action.” Therefore, any such defense appears to have been waived.

In addition, the WCJ has found that the specific injury and cumulative injury are inextricably intertwined. The specific injury “lit the fuse” per the QME:

“Mr. Hunter said that over the course of time, and reasonably due to the traumatic work incident on January 22, 2021, his mental health functioning worsened over time until he reached the point where he could no longer function due to poor mental health. He was taken off work TTD by his psychiatrist”  
(Joint exhibit 2 pg. 49)

It is therefore reasonable to conclude that the physical assault applicant sustained in the specific injury is, in part, a cause of the cumulative trauma. Therefore, the WCJ finds that the cumulative trauma injury arose from applicant being the victim of a violent act. Pursuant to labor code section 3208.3(b)(2) and (3), applicant has provided substantial evidence that this injury is at least 35% caused by industrial factors. Applicant has therefore met his burden of proving industrial causation pursuant to labor code section 3208.3.  
(Opinion on Decision, pp. 3-8.)

In the Report, the WCJ states:

The primary treating physician is Dr. Lyons.

...

The WCJ based his opinion upon the reporting of the qualified medical examiner, Dr. Tribble. Defendant has argued that Dr. Tribble's report and deposition are not substantial medical evidence because his findings rely upon the history of injury as stated by applicant. Petitioner has alleged that this history is not credible.

Neither party chose to provide any testimony at the time of trial, and the case was submitted for decision based solely upon the medical record. Therefore, the WCJ was provided with a history of injury as stated by applicant to the qualified medical evaluator. Defendant chose not to call applicant as an adverse witness for

cross-examination, and did not provide any testimony from witnesses to rebut the history of injury as stated in the medical record. . . . The parties submitted a deposition of the qualified medical evaluator in which he elaborated on his opinions, but did not change them in any way. . . .

The issue of applicant's credibility is raised for the first time in defendant's current petition for reconsideration. Petitioner attempts through various arguments to cast applicant as an unreliable witness. However, the WCJ finds nothing in any of these arguments to cast doubt upon applicant's history of injury as provided to the qualified medical evaluator. Applicant was attacked and violently beaten to the point where he had to be taken to the hospital. Petitioner presents several arguments in an attempt to cast doubt on applicant's credibility, but has provided no evidence to support any of these arguments.

...

Applicant was violently attacked and beaten by a psychiatric patient while performing his job. This fact is not in dispute. The qualified medical evaluator has opined that physical injury sustained on January 22, 2021 was the direct cause of applicant's psychiatric injury and the cause of the cumulative trauma thereafter. The QME explained that the specific injury "lit the fuse" for the events at work after the injury that constitute the cumulative trauma. . . .

...

The un rebutted evidence submitted at trial supports a finding that applicant's psychiatric injuries result at least 35 to 40% from the violent physical assault that he sustained. No evidence was provided to the contrary.  
(Report, pp. 2-4.)

## DISCUSSION

Defendant contends that the WCJ erroneously found that applicant sustained injury to the psyche on the grounds that the reports of Dr. Lyons and QME Dr. Tribble are unsupported by substantial medical evidence.

All decisions by a WCJ must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [113 Cal. Rptr. 162, 520 P.2d 978, 39 Cal.Comp.Cases 310]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [83 Cal. Rptr. 208, 463 P.2d 432, 35 Cal.Comp.Cases 16]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246 [262 Cal. Rptr. 537, 54 Cal.Comp.Cases 349].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159 [48 Cal.Comp.Cases 566].) To constitute substantial evidence "... a medical opinion must 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." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support the Board's findings if it is based on surmise, speculation, conjecture or guess." (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162, 169 [93 Cal. Rptr. 15, 480 P.2d 967, 36 Cal.Comp.Cases 93, 97].)

Defendant argues that Dr. Lyons's reporting is internally inconsistent and relies on incomplete medical history. However, as stated in the Report, the WCJ found that applicant sustained injury to the psyche based upon the reporting of QME Dr. Tribble, not that of primary treating physician, Dr. Lyons. (Report, p. 3.) It follows that any deficiencies in Dr. Lyon's reporting had no bearing on the WCJ's determinations herein. Accordingly, we discern no support for defendant's contention that the WCJ erroneously found that applicant sustained injury based upon the reporting of Dr. Lyons.

Defendant also argues that QME Dr. Tribble's reporting relies on applicant's inaccurate medical history and insufficient objective evidence. However, as stated in the Opinion on Decision and Report, the WCJ relied upon uncontroverted evidence in the form of QME Dr. Tribble's reporting and deposition testimony and the undisputed fact that applicant was attacked and beaten at work. (Opinion on Decision, p. 4, Report, pp. 3-5.) Given the absence of evidence controverting the reasons or grounds for QME Dr. Tribble's reporting, the WCJ was presented with no good reason to conclude that his opinion is unpersuasive—and we also conclude that it constitutes substantial medical evidence. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

Accordingly, we are unable to discern error in the WCJ's conclusion that Dr. Tribble's reporting was substantial medical evidence.

Defendant further contends that the WCJ erroneously found that applicant sustained cumulative injury to the psyche by misapplying section 3208.3.

Section 3208.3(b) provides:

(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.



(2) Notwithstanding paragraph (1), in the case of employees whose injuries resulted from being a victim of a violent act or from direct exposure to a significant violent act, the employee shall be required to demonstrate by a preponderance of the evidence that actual events of employment were a substantial cause of the injury.

(3) For the purposes of this section, “substantial cause” means at least 35 to 40 percent of the causation from all sources combined.

(§ 3208.3(b).)

In this case, QME Dr. Tribble opined that applicant sustained a specific injury to the psyche from the violent attack at work, an injury which in turn “lit the fuse” of applicant’s cumulative injury to the psyche: Applicant’s continued work with aggressive patients without the apparent support of coworkers qualified to restrain them gradually caused his “mental health functioning [to] worsen[] over time until he reached the point where he could no longer function.” (Opinion on Decision, pp. 7-8.) Dr. Tribble further opined that the specific injury to the psyche resulted in forty percent causation as to applicant’s disability and that the cumulative injury resulted in thirty percent causation, adding that a work incident in which applicant was reprimanded in November 2021 resulted in five percent causation. (*Id.*, pp. 4, 8.)

Based upon Dr. Tribble’s medical opinion, the WCJ concluded that (1) both applicant’s specific injury and cumulative injury arose from his being victim of a violent act; (2) the cumulative injury resulted in thirty-five percent causation because the five percent causation Dr. Tribble attributed to a separate work incident was properly viewed as part of the cumulative trauma claim; and, therefore, (3) the cumulative injury was compensable under section 3208.3(b)(2)(3). (*Id.*, p. 8.)

Notwithstanding this record, defendant argues that the WCJ’s statements that the specific injury and cumulative injury are inextricably intertwined as to the cause of applicant’s injury suggests that he did not apply section 3208.3(b)(c), but rather the standard for determining causation as to apportionment.

However, as we have explained, the Opinion on Decision and the Report explicitly state that the WCJ applied section 3208.3(b)(2)(3) to determine the issues presented; namely, whether applicant sustained a specific injury to the psyche and a cumulative injury to the psyche. (*Id.*, pp. 4-5; Report, p. 4.)

In addition, while the WCJ’s use of language usually recited to describe an insufficiency of evidence for determination of the percentage of disability attributable to an employee’s

successive injuries for apportionment, the WCJ's statements herein plainly refer to QME Tribble's reporting that the violent attack upon applicant at work was a cause of both applicant's specific injury and cumulative injury—and thus further demonstrate the application of section 3208.3(b)(2)(3). (Opinion on Decision, pp. 7-8.)

Accordingly, we are unable to discern merit to defendant's contention that the WCJ did not apply section 3208.3(b)(c), but rather the apportionment standard.

Defendant also contends that the WCJ erroneously concluded that the work incident in which applicant was reprimanded (and Dr. Tribble opined resulted in five percent causation of applicant's disability) was properly viewed as part of the cumulative trauma claim. Specifically, defendant argues that the WCJ arrived at this determination by substituting his own opinion for that of Dr. Tribble.

Here we observe that the issue of what, if any, actual events of employment were involved in an employee's psychiatric injury is a factual/legal determination for the WCJ to determine and not a medical determination. (See *Rolda vs. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) (*Rolda*.)

In this regard, Dr. Tribble's reporting was that applicant had ongoing difficulties connected to his continued work with aggressive patients without the apparent support of coworkers qualified to restrain them, that these difficulties included the November 2021 incident for which applicant was reprimanded for talking back to defendant's medical director, and that the November 2021 incident appeared to be "a significant work event." (Opinion on Decision, pp. 6-8.)

Here, while Dr. Tribble's reporting and deposition testimony details the work events culminating in applicant's cumulative injury to the psyche, it was the WCJ's task to determine what, if any, actual events of employment were a part of applicant's cumulative injury claim. It follows that the WCJ did not err by concluding that the November 2021 incident was a part of applicant's cumulative injury claim.

Accordingly, we are unable to discern merit in defendant's argument that the WCJ erroneously substituted his opinion for that of Dr. Tribble.

Accordingly, we will deny the Petition.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration of the Joint Findings and Award issued on February 13, 2023 is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**MAY 9, 2023**

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

**JASON HUNTER  
LAW OFFICE OF MIKE HERRIN  
HERMANSON, GUZMAN & WANG**

**SRO/es**

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