

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

VELMA LANKSTER, *Applicant*

vs.

**COMPTON UNIFIED SCHOOL DISTRICT, permissibly self-insured, administered by
KEENAN & ASSOCIATES, *Defendants***

**Adjudication Numbers: ADJ9190713; ADJ9190711; ADJ9268621; ADJ9190712;
ADJ8653057; ADJ8839489; ADJ8857012; ADJ8214086; ADJ9362723; ADJ9190714;
ADJ842531; ADJ8650664**

Anaheim District Office

**OPINION AND DECISION
AFTER
RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.¹

Applicant seeks reconsideration of the Joint Findings, Award, & Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on August 2, 2022, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her left thigh (ADJ8214086), but did not sustain an industrial injury to any other body parts claimed in case number ADJ8214086, nor did applicant sustain an injury AOE/COE in any of the other cases litigated and submitted for decision.

Applicant contends that the F&O, "... appears to be a decision on procedural grounds due to the erroneous belief that Dr. Hirsch did not list the 2-19-12 compensable injury in his 2-14-14 report;" and that "... instead of submitting the case for decision and being dismissive and disdainful of applicant's testimony about Dr. Hose [sic] Kim's cavalier treatment of her, [it would be appropriate] to order the case continued to another trial setting, in order to further explore Dr. Kim's treatment of applicant." (Petition, p. 2.)

¹ Commissioner Marguerite Sweeney, who was previously a panelist in this matter, no longer serves on the Appeals Board. Another panel member has been assigned in her place.

We received a Joint Report and Recommendation on Petitions for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, (we note the Report identifies Dr. Hose Kim as Dr. Jose Kim; this is a clerical error that has no effect on our decision), and for the reasons discussed below, we will affirm the F&O except that we will amend the F&O to find that applicant's February 9, 2012 injury to the left thigh resulted in 6% permanent disability, warranting 18 weeks of permanent disability indemnity. (Finding of Fact #11).²

We note that case number ADJ8650664 was dismissed as being duplicative of another ADJ case (see Minutes of Hearing and Summary of Evidence (MOH/SOE), May 4, 2017, p. 2) and case number ADJ842531 was settled by Stipulations with Request for Award; that Award was issued June 14, 2011. The following is our decision as to the remaining ten claims listed above.

BACKGROUND

During the period from January 4, 2012, through January 9, 2014, applicant filed ten injury claims whereby she claims to have sustained injury to her: left hand, upper extremities, and shoulders. ... hypertension, circulatory system, including heart, head, and "gastrointestinal" ... respiratory system, hearing, and neck ... heart, upper respiratory system, shortness of breath, kidney, hypertension, head, shoulder, neck, lower extremities, and cardiovascular ... neck, lower extremity, back, cardio system and hypertension ... to choking, shortness of breath, nose, ears, throat, eyes, hearing, respiratory system, and cardiovascular ... lungs, kidney, heart, chest, upper respiratory system, cardiovascular, including head ... kidney, heart, lungs, head, upper respiratory system, neck, upper extremities, back, and shoulders ... back, lower extremities including groin ... left knee, right knee, left groin, left hip, left ankle, back, and neck. (See MOH/SOE, May 4,

²Although Finding #11 states the injury to applicant's left thigh "resulted in 2% permanent disability without apportionment, which is equivalent to 18 weeks of disability" the actual rating of the left thigh disability is 6%. The Opinion on Decision includes an accurate rating (Opinion on Decision, pp. 8 – 9) and the "18 weeks of disability" is based on 6% permanent disability. The term "clerical error" includes all errors, mistakes, or omissions which are not the result of the exercise of the judicial function. The Appeals Board may correct a clerical error at any time without the need for further hearings. (*Toccalino v. Workers' Comp. Appeals Bd.* (1982) 128 Cal.App.3d 543 [47 Cal.Comp.Cases 145].) This appears to be a clerical error; thus, we will amend Finding #11.

2017, pp. 2 – 10.) The only accepted claim was the February 9, 2012 injury to applicant's left thigh. (MOH/SOE, May 4, 2017, p. 9.) All other injury claims were denied.

On May 13, 2013, orthopedic qualified medical examiner (QME) Hose Kim, M.D. evaluated applicant. Dr. Kim examined applicant, took a history, and reviewed the medical record. He diagnosed applicant as having a left hamstring strain (as a result of her February 9, 2012 work injury) and non-industrial bilateral knee DJD (degenerative joint disease). (App./Def. Exh. A1, Dr. Kim, May 13, 2013, p. 10.) Dr. Kim then stated:

Based on the fact that this examinee has filed in the past several industrial claims against her employers and that she has been involved in at least three non-work-related motor vehicle accidents which have caused injury to her neck, back, knees, and possibly feet and ankles, it is my opinion that the current orthopedic complaints except for the left thigh [sic] are due to a combination of the non-industrial motor vehicle accidents and work-related claims, all of which occurred prior to the currently-listed four claims. Furthermore, there is no evidence of work-related injury to any other body parts on a specific injury or cumulative trauma basis. (App./Def. Exh. A1, pp. 11 – 12.)

Applicant was evaluated by internal medicine QME Jeffrey A. Hirsch, M.D., on January 16, 2014. In his initial report, Dr. Hirsch stated:

Based on the history I obtained from the applicant, physical examination, laboratory and test results, review of medical records, and reference to the medical literature, I do believe she has sustained permanent disability in the industrial arena limited to her hypertensive disorder and predicated on confirmation by the Trier of Fact that Ms. Lankster's perceptions of stress at work are legitimately viewed as a potential cause of industrial illness (on a secondary basis) in the field of Internal Medicine. (Def. Exh. O, Dr. Hirsch, February 14, 2014, pp. 11 - 12.)

Considering non-industrial causation, Ms. Lankster has manifested high blood pressure readings since 2007 (in these records). She is obese on a non-industrial basis. She clearly has major non-industrial stressors (including homelessness and lack of financial resources). 50% of the permanent disability caused by hypertension is industrial and 50% is non-industrial. Once again, I require input from the Trier of Fact so as to determine whether I am correctly interpreting the applicant's complaints of stress at work. (Def. Exh. O, p. 19.)

In each of his supplemental reports, Dr. Hirsch stated that review of additional records, and the re-examination of applicant on December 1, 2017, affirmed his previously stated opinions. (See App./Def. Exhs. C3 [four reports, various dates]; and Def. Exhs. L and M.)

Orthopedic QME Dr. Kim re-evaluated applicant on January 12, 2015. Based on his re-examination of applicant, the interim history, and his review of additional medical records, Dr. Kim stated:

It appears that since my last evaluation Ms. Lankster has filed six additional claims. It appears that Ms. Lankster gave me the wrong date of injury. She indicated previously that on 10/29/12 she injured her left hamstring. It appears that at least according to the claim form that that injury was on 2/9/12. It was my opinion at that time there was no evidence of injury to her lower extremity other than minor strain to the left hamstring. ¶ In my opinion, the only claim of injury that remotely could be considered to be orthopedic and possibly industrial is the incident of 9/30/13 and that of 2/9/12 as previously indicated. So far I have not been presented with evidence that convinces me that this examinee actually sustained any work-related injury other than possibly the two mentioned above on 2/9/2012 and 9/30/2013, respectively. This examinee, in my opinion, recovered fully from both the 2/9/12 and 9/30/13 incidents, as there are no physical examination findings substantiating the subjective complaints of pain.
(App./Def. Exh. A1, January 12, 2015, p. 13.)

The parties proceeded to trial before WCJ Frisch on May 4, 2017. WCJ Frisch retired and during the period from April 30, 2019, through May 5, 2022, the parties subsequently tried the matter seven times before the present WCJ. In each of the ten cases the issues submitted for decision included injury AOE/COE and parts of body injured. (MOH/SOE, May 4, 2017, pp. 2 – 11.)³

DISCUSSION

We first note that subsequent to filing the Petition, applicant filed a second Petition for Reconsideration dated August 29, 2022. Pursuant to Appeals Board rule 10964:

(a) When a petition for reconsideration, removal or disqualification has been timely filed, supplemental petitions or pleadings or responses other than the answer shall be considered only when specifically requested or approved by the Appeals Board.

³ As noted above, in case number ADJ8214086 the left thigh injury claim was accepted, and all other body parts were denied.

(b) A party seeking to file a supplemental pleading shall file a petition setting forth good cause for the Appeals Board to approve the filing of a supplemental pleading and shall attach the proposed pleading.

(c) Supplemental petitions or pleadings or responses other than the answer shall neither be accepted nor deemed filed for any purpose except as provided by this rule. C
(Cal. Code Regs., tit. 8, §10964.)

Applicant's counsel did not comply with the requirements of Appeals Board rule 10964 and therefore, the supplemental pleading (the second Petition for Reconsideration) is not accepted and will not be considered. Counsel is also reminded that attaching page one of the February 14, 2014 report from Dr. Hirsch to the Petition is a violation of Appeals Board rule 10945(c). We also note that counsel contends the WCJ was "dismissive and disdainful of applicant's testimony about Dr. Jose Kim's cavalier treatment of her... ." (Petition, p. 2.) This argument is not only disrespectful and unprofessional, our review of the entire record indicates there is no factual basis for counsel's argument, nor does counsel make reference to any evidence that supports his assertion. Such conduct if repeated in the future, establishing a pattern and practice of inappropriate behavior, could be deemed sanctionable.

Regarding the argument that the F&O was based on Dr. Hirsch not stating, "a date of injury," in her Opinion on Decision the WCJ explained:

The medical reports issued by Dr. Hirsch do not opine that the applicant suffered an internal injury due to any of her 10 workers' compensation claims that are being litigated. He didn't list a date of injury. The applicant described her stress from the dispute she had with the school district. He does not have a history of her termination or its being upheld. This dispute is the basis of applicant's stress. A termination that has already been adjudicated to being found proper and that finds the applicant not credible is not a ground for industrial stress. Applicant does not have a claimed psychiatric injury. Dr. Hirsch finds the applicant's stress to have been a ca[u]se of her hypertension. But all the stress mention[ed] is related to that non workers compensation litigation.
(Opinion on Decision, p. 10.)

Clearly, the decision was not made on "procedural grounds." The WCJ properly considered and addressed the "merits of the issue." (See Petition p. 2, para. 1.)

As to whether the matter should have been "continued to another trial setting" in order to further explore Dr. Kim's "cavalier treatment" of applicant (Petition, p. 2), if a party fails his or

her obligation to exercise due diligence and in turn, fails to meet his or her burden of proof by obtaining and introducing competent evidence, it is not the job of the Appeals Board to rescue that party by ordering the record to be developed. (*San Bernardino Community Hospital v. Workers' Compensation Appeals Board (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986].) Again, having reviewed the entire record, we see no evidence that Dr. Kim treated applicant in a “cavalier” or otherwise inappropriate manner. The fact that a party disagrees with a physician’s medical-legal opinions does not make the doctor’s conduct inappropriate. If counsel’s argument that Dr. Kim had been “cavalier,” and his reports do not constitute substantial evidence is accurate, then it is counsel’s responsibility to submit evidence that supports his argument. As the WCJ explained in her Report:

None of the applicant’s self-procured medical reports contain any finding of a doctor or other medical practitioner finding any industrial injury in the current litigation other than the left thigh injury, except for Dr. Hirsch deferring to the trier of fact as to hypertension. Dr. Hose [sic] Kim’s reporting is substantial medical evidence. He clearly examined the applicant and reviewed the medical records. Other than the left thigh injury, he attributes applicants’ orthopedic findings and complaints to her previous industrial injuries and non-industrial auto accidents.
(Report., p. 9; see also pp. 7 - 8.)

As discussed herein, the WCJ’s opinions, as stated in the F&O, the Opinion on Decision, and the Report, are consistent with and supported by the evidence contained in the trial record. Therefore, we see no reason, other than to correct the clerical error in Finding #11, to disturb the F&O (see footnote 2 above).

Accordingly, we affirm the F&O except that we will amend the F&O to find that applicant’s February 9, 2012 injury to her left thigh resulted in 6% permanent disability, warranting 18 weeks of permanent disability indemnity.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 2, 2022 Joint Findings, Award, & Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

11. Applicant's February 9, 2012 injury to her left thigh, after adjustment for age and occupation, caused 6% permanent partial disability, without apportionment, warranting 18 weeks of permanent disability indemnity.

* * *

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSONER

I CONCUR,

s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 15, 2023

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

**VELMA LANKSTER
GEORGE & WALTEMADE
LAW OFFICE OF MICHAEL P MANSFIELD**

TLH/mc

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

JOINT REPORT & RECOMMENDATION ON PETITIONS
FOR RECONSIDERATION

I.

INTRODUCTION

The applicant, Velma Lankster, now 71 years old, filed ten applications for benefits against her employer, Compton Unified School District, PSI, administered by Keenan and Associates, alleging injury arising out of and in the course of her employment. Ms. Lankster had been employed as a physical education teacher.

Trial initially proceeded on the 10 cases before the Hon. Patricia L. Frisch on 5/4/2017. Case Number ADJ9190713 is designated as the master file. Ms. Lankster was not able to participate in the trial again until after Judge Frisch retired at the end of 2018. The attorneys agreed to continue the case using the initial Minutes of Hearing with some amendments where Judge Frisch framed the stipulations and issues and marked and admitted some of the evidence. Judge Frisch took no testimony. Trial then proceeded with me as the new judge. The cases were submitted for decision on 5/5/2022.

A Joint Opinion on Decision and Joint Findings Award and Orders were served 8/2/2022. On 8/18/2022, applicant's attorney, Fred Waltemade, filed a verified timely Petition for Reconsideration alleging that the Findings of Fact do not support the Award and the evidence does not support the Findings of Fact. He also alleges that the Court failed to "do substantial justice" under the constitution and that the decision was based on a procedural technicality and not the merits of these cases. Mr. Waltemade also alleges I was dismissive and disdainful about "Dr. Jose Kim's cavalier treatment of her." Petitioner seeks to have Dr. Jose Kim be ordered to appear before the court to give testimony.

Applicant's initial Petition for Reconsideration violates California Code of Regulations §10945 (c)(1) in that it attaches page one of the 2/14/2014 Panel QME report by Dr. Jeffrey A. Hirsch. That medical report has already been marked and admitted into evidence as Defendant's Exhibit O. Applicant's counsel also mailed the petition to the Sacramento district

office which has no relationship to these cases. It appears that copy was scanned in Sacramento resulting in another task being created for the same petition.

Applicant's counsel filed a new and different Petition for Reconsideration on 8/29/2022. The proof of service identifies the original being filed in Sacramento and a courtesy copy served by mail on the Anaheim district office on 8/29/2022. Mr. Waltemade actually filed the supplemental Petition for Reconsideration in person at 4:03pm on 8/29/2022 at the Anaheim district office. Once again, a duplicate supplemental petition was served on the Sacramento district Office in violation of California Code of Regulations §10940(b).

In this second petition, petitioner now argues that there is insufficient evidence to support the Findings of Fact and support the decision. This petition is also verified and timely.

II.

FACTS

I found that the applicant did not sustain injury arising out of or in the course her employment on these 10 claims except to her left thigh on 2/9/2012, (ADJ8214086) and that it did not extend to her back, groin, or any other part of her lower extremities or body. In applicant's supplemental Petition for Reconsideration, it is represented that applicant is not challenging this finding. (Finding #9). That representation was not made in the initial 8/17/2022 petition.

Mr. Waltemade posed questions to the applicant, Velma Lankster, as to the nature of the 10 alleged injury claims against the Compton Unified School District, at the trial hearing held before me on 4/30/2019. The applicant was employed as a physical education teacher, occupational group 390, for all 10 claims.

ADJ9190713

This case is the applicant's claim of injury to the left hand, upper extremities, and shoulders on 9/30/2013. This claim is denied in its entirety. The pre-trial conference statement completed for the trial before Judge Frisch identifies the applicant relying on the opinion of Dr. Jose Kim in support of this claim.

Applicant testified that that the mechanism of injury as occurring when a coach opened a gate as she was approaching, injuring her left hand and wrist. She further testified that she received treatment for that injury at Long Beach Memorial Hospital.

ADJ9268621

The applicant alleges a continuous trauma injury is from 11/13/2013 to 11/20/2013. The applicant alleges injury hypertension, circulatory system, including heart, head, and gastrointestinal. Applicant relies on the opinion of Panel QME, Dr. Jeffrey Hirsch for this claim. Defendant has denied the claim. Applicant claimed that this injury occurred that she was working with no accommodations resulting in upper respiratory problems to her nose and head.

ADJ8653057

This case is applicant's claim of injury in the form of a continuous trauma from 8/21/2012 to 10/30/2012 to her respiratory system, hearing, and neck. Applicant relies on the opinion of Dr. Jeffrey Hirsch for this denied claim. Applicant testified this injury was caused by working out of doors causing sinusitis and problems with allergies.

ADJ8857012

This case is a claim for a 3/20/2013 injury to shortness of breath, kidney, hypertension, head, shoulder, neck, lower extremities, and cardiovascular. This claim is denied. Applicant relies on the opinion of Dr. Jeffrey Hirsh.

Applicant testified that this case "relates back to when she taught at Davis Middle School from 2004 to 2005." An assistant principal, Laura Henry, is alleged to have brought documents into the classroom and thrown them on the floor. The applicant testified that this act caused her to be traumatized. She further testified it caused her blood pressure to rise and her kidneys to inflame but kidneys have recovered from this incident. Ms. Lankster represents she went to Long Beach Memorial Hospital that day.

ADJ9362723

This case is applicant's claim of injury on 1/9/2014 to the neck, lower extremities, back, cardio system, and hypertension. The claim is denied. Applicant relies on the opinion of Dr. Hirsch. This claim is based on the applicant's description of a locker room attendant claiming to be assaulted by applicant. As a result of this claim by the attendant, she had to stand outside that day allegedly causing swollen knees and hypertension. She also went to Long Beach Memorial Hospital for this claimed injury.

ADJ9190711

This case is applicant's claim of injury on 10/18/2013 to her nose, ears, throat, eyes, hearing, respiratory system, and cardiovascular system. The claim is denied. Applicant relies on the opinion of Dr. Jeffrey Hirsch. Applicant claimed this alleged injury occurred when working outside in 100-degree heat causing swelling and shortness of breath. Applicant identifies also going to Long Beach Memorial Hospital for this injury.

ADJ9190712

This case is applicant's claim of injury on 9/11/2013 to her lungs, kidney, heart, chest, upper respiratory system, cardiovascular including head. The claim is denied. Applicant relies on the opinion of Dr. Jeffrey Hirsch.

Applicant testified to this claim basically being the same as the 10/18/2013 claim. She described having problems with her lungs and respiratory system. She described her kidneys as having healed. She was teaching physical education outside in the field which she claims caused swelling, meaning allergies and sinus problems. They claimed injury is a sinus headache.

ADJ8839489

This case is applicant's claim of injury as a continuous trauma from 1/4/2012 to 2/12/2013 to her kidney, heart, lungs, head, neck, back, upper extremities, shoulders, and respiratory system.

Applicant relied on the opinion of Dr. Jeffrey Hirsh. Applicant described sustaining the orthopedic injuries on this case when she was moving a physical education cart. Applicant

described that she was to be assigned a physical education assistant teacher during the period 1/4/2012 to 1/13/2013 time but it didn't happen.

When asked how she injured her kidneys during this period [of] time, applicant testified that she alleges kidney injuries because of blood pressure claims. Her blood pressure was elevated. It goes up and then back down.

ADJ8214086

This case is applicant's claim of injury on 2/9/2012 to her back, lower extremities, and groin. The claim is denied. The pre-trial conference statement represents applicant is relying on the opinion of Dr. Jose Kim for this claim.

Ms. Lankster described demonstrating exercises for the class that day and claim that "her thigh broke in the back." (April 30, 2017, Minutes of Hearing and Summary of Evidence at page 7, lines 19-20). She tore the muscle. She did not fall. She described the alleged groin injury as a muscle strain. Defendant admitted only the left thigh injury. Applicant is no longer challenging the findings on this case.

ADJ9190714

This case is applicant's claim of injury on 9/23/2013 to her neck, back, left knee, right knee, left groin, left hip, and left ankle. The claim is denied. Applicant relied on the opinion of Dr. Jose Kim for this claim. Applicant relies on the opinion of Dr. Jose Kim for her permanent and stationary date.

Applicant testified that this injury occurred when she was pushing a cart that broke. Applicant lost her balance falling on the cart but did not fall. She hit her knee.

At the 9/19/2019 trial, on page 5, lines 10 to 11 of the Minutes of Hearing and Summary of Evidence, Mr. Waltemade acknowledged that the records of Long Beach Memorial Hospital never mention the knees when applicant was seen that day.

On 5/17/2022, 12 days after the cases were submitted for decision, applicant's counsel wrote the court, making a motion for the first time to strike the medical opinion of Dr. Jose Kim.

Mr. Waltemade also later wrote that he would continue representation of the applicant in this case. Tous Law Group has never been the applicant's attorneys of record.

Defense counsel objected to Mr. Waltemade's raising an issue after submission of the cases. She asked the court to consider imposing sanctions.

III.

DISCUSSION

Petitions for Reconsideration are required to "fairly state all of the material evidence relative to the point or points at issue." (CCR §10945(a)). While arguing that the decision is based on my alleged dismissiveness and disdain for applicant's testimony, procedural technicalities, and Dr. Kim's alleged "cavalier" treatment of applicant, Mr. Waltemade fails to reference much of the evidence in this case.

The evidence includes applicant's stated reliance on the opinion of Dr. Kim as set forth in the stipulations and issues prepared for the initial trial before Judge Frisch at the initial trial hearing on 5/4/2017 as to case numbers ADJ9170713, ADJ9190714, and ADJ8214086. This last case is the case that is no longer the basis for the Petition for Reconsideration. Applicant challenged whether Dr. Kim's opinion was substantial medical evidence on ADJ9268621 which is the claimed continuous trauma from 11/13/2013 to 11/20/2013. Dr. Jose Kim's medical reports were admitted into evidence without objection.

When I took over the cases after Judge Frisch's retirement, the parties continued with her record, but Mr. Waltemade was allowed to raise new issues. In stipulations and issues drafted 2/12/2019, Mr. Waltemade now argued that Dr. Kim's reporting was not substantial medical evidence. He did not move to strike Dr. Kim's medical reports from the record.

The request 12 days after submission to strike the reports authored by Dr. Jose Kim was based on Dr. Kim barely touched the applicant. This allegation is contrary to the findings of Dr. Kim which include range of motion figures. As an officer of the court, Mr. Waltemade acknowledged those range of motion figures on page 4 lines 6 – 7 of the 9/19/2019 Minutes of Hearing and Summary of Evidence. In response, Ms. Lankster testified that she had never read Dr. Jose Kim's report. The reports authored by Dr. Jose Kim that were offered and admitted into

evidence without objection remain in evidence. At the 9/19/2019 trial, Ms. Lankster described Dr. Kim offering to help her get on the examining table and then remembered Dr. Kim moving her legs after she got on the table. (page 3 lines 12 and 13).

Dr. Kim reviewed applicant's medical records. Dr. Jose Kim's 3/10/2014 report consists of a review of medical records. Included in that record review at page 7 is a review of the 6/5/2013 Internal Medicine QME medical report authored by Dr. James F. Lineback. That report was not offered into evidence, but it entered into the record through record review. Dr. Kim noted that Dr. Lineback described himself as being retained to examine the applicant for her abdominal and groin pain. Dr. Lineback opined that there was no evidence of any abdominal wall or gastrointestinal system injury.

Dr. Jose Kim's deposition was taken 8/16/2015 and is marked and admitted as Defendant's Exhibit B2 (EAMS ID No 21084696). Dr. Kim confirmed his opinion from his reports (page 40, line 1) finding no injury except to the left thigh on 2/9/2012. He found no aggravation to the applicant's previous non-industrial knee condition (page 32).

Dr. Kim reviewed applicant's medical records from applicant's non-industrial auto accident sometime in 1999 or 2000 in which she injured her lower back, knees, and neck. She was rear-ended by an 18-wheeler that did not stop. Knee surgeries to treat that injury were performed by Dr. Jeffrey Davis in Alabama in 2000 and 2001.

Applicant also gave a history of being rear-ended again in April 2008 sustaining injuries including to her neck, lower back, and bilateral knees. There was a third non-industrial auto accident on 10/13/2012 when she was again rear ended. Applicant described some pain in her neck and back from that injury. She went to the emergency room but was not treated. She received no medical treatment for that third vehicle accident.

Dr. Jose Kim also reviewed the records from applicant's workers compensation cases from when she worked previously for Compton USD. The first is ADJ3126264 for a respiratory injury where the parties stipulated to a respiratory system injury from 9/13/2003 to 9/14/2004 resulting in 17% permanent disability equivalent to \$15,050.00. The Award is dated 6/14/2011. That settlement was based on the findings of the Agreed Medical Examiner, Dr. Bruce Gillis. It was

stipulated that applicant was not in need of further medical treatment to cure or relieve from the effects of that injury.

There is also an Award on ADJ842531 for a 9/13/2004 date of injury of 25% permanent disability to applicant's back and neck. That Award is also dated 6/14/2011. This settlement is based on the opinion of Dr. Richard Woods, who found applicant's knee complaints to be non-industrial in origin.

The applicant never chose a primary treating physician for any of these 10 more recent cases. She self-procured medical treatment including additional knee surgeries in Alabama.

Applicant's Exhibit 6 is the 7/15/2019 is the operative report by Dr. Jeffrey C. Davis at St. Vincent's in Birmingham, AL for left total knee arthroplasty. Applicant's Exhibit 7 is the 6/13/2018 operative report by Dr. Jeffrey C. Davis at St. Vincent's in Birmingham, AL for applicant's total right knee replacement. Also in evidence are the medical reports from applicant's prior knee surgeries.

Applicant's Exhibit 8 is the 8/30/2001 operative report by Dr. Jeffrey C. Davis at Healthsouth Medical Center for left knee arthroscopy and chondroplasty due to left knee arthroscopy and chondromalacia. Surgery is identified as being performed due to a motor vehicle accident in 1999 which caused pain. Waltemade represented he had received this report after the trial began. There is no prejudice to defendant. The report is admitted.

Applicant's Exhibit 9 is the 8/30/2001 operative report by Dr. Jeffrey C. Davis for right knee arthroscopy, partial medial meniscectomy, and chondroplasty.

Applicant's Exhibit 7 is the 6/13/2018 Operative Report by Dr. Jeffrey C. Davis at St. Vincent's in Birmingham, AL for applicant's total right knee replacement.

None of the applicant's self-procured medical reports contain any finding of a doctor or other medical practitioner finding any industrial injury in the current litigation other than the left thigh injury, except for Dr. Hirsch deferring to the trier of fact as to hypertension. Dr. Jose Kim's reporting is substantial medical evidence. He clearly examined the applicant and reviewed the

medical records. Other than the left thigh injury, he attributes applicants' orthopedic findings and complaints to her previous industrial injuries and non-industrial auto accidents.

The second Petition for Reconsideration refers to the 2/14/2014 Panel QME report of Dr. Jeffrey A. Hirsch. In that report, Dr. Hirsch lists the claimed dates of injury in the caption. On page 18, he finds no industrial upper airway problems. He reviewed records including those from a Dr Watson concluding that Ms. Lankster has had "intractable sinus disease for many years. It is non-industrial. He opines that working outdoors is not a recognized cause of sinus disease.

On page 19 Dr. Hirsch referred to the applicant claiming kidney injury but that she has no evidence of renal disease. Dr. Hirsch finds no industrial internal injury except he determines on page 21 that Ms. Lankster has 12% whole person impairment from high blood pressure. He finds it half caused by non-industrial factors and 50% caused by industrial injury but does not specify on any date. On page 21, he writes that they are not "amenable to separation." Ms. Lankster had described her perceptions of stress at work as the basis of his attributing 50% causation to work. On page 11, Dr. Hirsch defers to the trier of fact as to her claims of mistreatment. On page 12 of the 2/14/2014 report he described the applicant complaining of working in "a hostile and retaliatory environment."

The second Petition for Reconsideration misrepresents what it described as evidence contrary to the court's ruling. In response to finding no 9/30/2013 injury, the petitioner claims an injury was found when neither Dr. Hirsch nor any other doctor has found an injury that day. What Dr. Hirsch is summarizing an allegation on a workers compensation claim form.

As to the "alleged" evidence of a continuous trauma injury from 8/21/2012 to 10/30/2012 and an 1/9/2014, Mr. Waltemade refers to page 18 of Dr. Hirsch's report where he quotes from Dr. Gillis from the prior injury which was the basis of her prior award on her old claim. Petitioner did not refer to the language where Dr. Gillis found the same lower tract illness he found seven years before, with no new or further disability.

The court is unable to find the basis for the arguments for the other injuries as there is no page 75 of Dr. Hirsch's 2/14/2014 report except for a graph of test results.

Ms. Lankster has also been experiencing homelessness which has resulted in her sleeping in her car in a train station, and other public places. She last worked for the Compton USD on 5/1/2014 when she was terminated. Ms. Lankster testified on 11/19/2020 (page 3 lines 22-23) that the Compton USD revoked all her credentials and degrees. Ms. Lankster did not offer any evidence in support of that allegation. She offered no evidence of any University rescinding her degrees. That testimony is not credible.

The real dispute involves a CLAD certificate. The dispute as to this certificate resulted in her termination. After termination, she sought to be heard by the Commission on Professional Competence which upheld the decision on 11/29/2016. On page 23 of that document, the applicant was found to have submitted a fraudulent document and that numerous false representations were contained in the document. That document is marked and now admitted as Defendant's Exhibit F.

Applicant filed a Writ of Mandate to the Superior Court in Los Angeles which upheld the termination decision. Judge Mitchell L. Beckhoff entered a judgement in favor of the Commission on Professional Competence and the Compton Unified School District. The Judgement is marked and now admitted into evidence as Defendant's Exhibit I.

Defendant's Exhibit P is the 9/20/2021 State of California Second Appellate District decision by Administrative Law Judge Elwood Lui entering a default and dismissing applicant's appeal of her termination. It is now admitted into evidence. Applicant's challenge to the default was also appealed. As of the 5/5/2022 hearing on the applicant's remaining workers compensation cases, it was a final decision with applicant challenging the awarding of costs to defendant.

Ms. Lankster is clearly very upset about her termination which was found reasonable. Dr. Hirsch left it to me, as the trier of fact, to determine whether the applicant suffered work stress. It is clear from the totality of the record that the applicant's work-related stress is due to the events related to the termination which was found to be reasonable. It is reasonable to conclude that her termination and homeless with a lien against compensation for over \$100,000.00 filed by Sylvia Macarthur is stressful. Ms. Macarthur rented to applicant and Ms. Macarthur is seeking compensation for alleged unpaid rent and expenses. That lien for living expenses has not yet been fully adjudicated.

Based on this record, there is no credible basis to find that the applicant sustained a hypertension injury from the claims that are part of this litigation. Stress from a reasonable termination based in part on dishonest and fraudulent conduct is not compensable. The applicant has not met her burden of proving an internal industrial injury. There is no reasonable basis to develop this record other than for the issues of earnings (the parties offered no evidence of or stipulation as to earnings) and the lien against compensation.

IV.

RECOMMENDATION

For the reasons set forth above, it is recommended that the Petitions for Reconsideration be denied.

DATE: 9/1/2022

Nancy M. Gordon
WORKERS' COMPENSATION JUDGE

*SERVICE
BY: A. MORALES
ON 9-1-2022*