

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

GRISELDA GONZALEZ, *Applicant*

vs.

**G6 HOSPITALITY; LIBERTY MUTUAL INSURANCE COMPANY, Adjusted By
HELMSMAN MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ11344091
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of August 12, 2021, wherein it was found that, while employed on May 1, 2018 as a housekeeper, applicant sustained industrial injury to her knees, lumbar spine, and right foot, causing permanent disability of 24% and the need for further medical treatment.

Defendant contends that the WCJ erred in finding injury and disability to any body part other than the right knee (despite stipulating to injury to the lumbar spine and right foot). We have received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

For the reasons stated in the Report, which we adopt, incorporate and quote below, we will deny the defendant's Petition. We note that primary treating physician Allen Kaisler-Meza, M.D. and qualified medical evaluator Jonice M. Owen, D.C. both ascribed 7% whole person impairment to the right knee¹, so the difference in their opinions comes down to the fact that Dr. Kaisler-Meza found lumbar injury and impairment. While defendant objects to allegedly old range of motion measurements, Dr. Kaisler-Meza utilized the Diagnosis-Related Estimates method to rate applicant's lumbar spine permanent impairment rather than utilizing a Range of Motion method.

The WCJ's Report, which we incorporate is as follows:

¹ Defendant incorrectly states in its Petition that Dr. Kaisler-Meza "did not provide a rating for the right knee." (Petition at p. 2.) Dr. Kaisler-Meza clarified at his Deposition that the reference to the left knee was a typographical error and that impairment was with regard to the right knee. (November 17, 2020 deposition at p. 18.)

I.
INTRODUCTION

Applicant, Griselda Gonzalez, while employed on 05/01/2018, as a housekeeper, occupational group number 340, in Campbell, California, by G6 Hospitality (aka Motel 6), sustained an injury arising out of and arising in the course of employment to the right knee, right foot and low back, and claimed to have sustained injury arising out of and in the course of employment to the left knee.

The Findings and Award in this case issued on 08/11/2021 and was served on 08/13/2021. The Petitioner is Defendant, who has timely filed the verified Petition for Reconsideration on 09/03/2021. The Petition for Reconsideration is not legally defective. Applicant has filed an Answer on 09/13/2021. The WCAB has granted this Judge an extension of time in which to file this Report and Recommendation as this Judge was on an extended vacation in Europe at the time the Petition for Reconsideration was filed.

Petitioner contends that the PR-4 report of Dr. Kaisler-Meza is not substantial evidence and therefore any determinations based thereon are not supported, and asserts that the reports of Dr. Jonice Owen, D.C., are substantial medical evidence and should be followed.

II.
FACTS

Applicant was employed as a housekeeper at Motel 6 (G6 Hospitality). On 05/01/2018, while in the parking lot, Applicant (as a pedestrian) was hit by a truck.

The California Highway Patrol (CHP) arrived on scene and interviewed the parties and witnesses, and completed a report. The CHP report of the incident notes that Applicant was complaining of pain to both legs.

Applicant received medical care from Dr. Sova Khuong, Dr. Peter Abaci, and Dr. Allan Kaisler-Meza. Applicant underwent a right knee MRI on 05/27/2019, a left knee MRI on 07/15/2019 and a lumbar MRI on 03/18/2019.

The parties utilized Dr. Janice Owen, D.C., as the Panel Qualified Medical Examiner (PQME) in this case, and Dr. Owen issued two reports.

Applicant relied upon the PR-4 from the primary treating physician, Dr. Allan Kaiser-Meza, M.D., as well as the treatment records.

This Judge found the reports and opinions of Dr. Owen to not constitute substantial medical evidence. This Judge issued her determinations based on the

PR-4 from Dr. Kaisler-Meza, as supported by the other treatment records offered and admitted into evidence.

It is noted that PQME Owen did not review either of the two knee MRIs, nor the lumbar MRI and found that the medical records did not “adequately” document low back involvement.

III. **LEGAL ARGUMENTS**

1. DEFENDANT ALLEGES THE REPORTS OF DR. KAISLER-MEZA ARE NOT SUBSTANTIAL MEDICAL EVIDENCE

Defendant asserts that the PR-4 from Dr. Kaisler-Meza is speculative as the findings were based on previous and “outdated” physical examinations. Defendant asserts that the measurements utilized by Dr. Kaisler-Meza were “inaccurate.” And, Defendant asserts that the examination was by videoconference and therefore infers that the information cannot be relied upon.

Defendant’s assertions are overbroad and conclusory and not supported by citation to the medical record(s). Defendant offers no concrete examples of what information is allegedly inaccurate or speculative.

It is noted that examinations by telemedicine are acceptable, allowed, admissible and considered reliable. If they were not, the majority of medical-legal examinations over the last year would be worthless.

Further, Defendant asserts that the last measurements are “23 months” old and that is simply not accurate. Dr. Kaisler-Meza took range of motion measurements on 01/15/2019 which was 18 months prior to the PR-4, and he last measured using palpitations on 12/19/2019, which was 7 months prior to the PR-4. Dr. Kaisler-Meza also testified in his deposition that the last “face to face” with Applicant was on 03/12, which was just 4 months prior to the PR-4.

More importantly, this Judge did not solely rely upon the PR-4 of Dr. Kaisler-Meza in order to make the determinations in this case. It is clear from the decision that all treatment records, taken together, formed the basis for the determinations in this case. It is noted that Applicant had an admitted low back injury, and received low back treatment, and underwent a lumbar MRI. In spite of all this, QME Owen found that there was not “adequate” documentation of low back involvement in this case, and therefore made no findings as to the low back. That just simply makes no sense. Coupled with PQME Owen not having reviewed any of the three MRIs in this case, I simply could not rely on the PQME report. Taken together, the medical treatment records were more persuasive and constituted substantial medical evidence upon which to properly base the determinations on herein.

2. DEFENDANT ASSERTS THE REPORTS OF PQME OWEN ARE SUBSTANTIAL MEDICAL EVIDENCE

While it is true that PQME Owen did conduct an in-persona examination of Applicant in the days before the nation-wide shelter-in-place orders, PQME Owen did not review any of the three MRI reports in this case.

Further, PQME Owen indicates that there was not “adequate” documentation as to low back involvement in this case, and therefore did not include the low back. However, this opinion by PQME Owen is simply not supported. The medical evidence shows that on 06/14/2018 Applicant complained of constant low back pain to Dr. Khuong, and Dr. Khuong diagnosed a lumbar sprain. These complaints are within two months from the specific injury. On 07/03/2018 Dr. Abaci notes low back pain. Dr. Abaci again notes low back pain on 08/08/2018. Dr. Kaiser-Meza notes low back pain on 04/22/20, 05/20/20, 06/02/20, and 06/19/20. Further, Applicant underwent a lumbar MRI on 03/18/2019.

PQME Owen does not define what she means by “adequate” documentation. What more does Applicant need to do other than to report the injury, file her application, seek medical treatment, have the condition evaluated, and offer evidence to support all of the above? What would be considered “adequate” documentation to PQME Owen? There was no medical report offered to rebut that Applicant had suffered an injury to her spine other than the conclusory, inconsistent and unsupported opinions of PQME Owen.

I strongly disagree that the reports of PQME Owen are substantial medical evidence. It would not be proper to base the determinations in this case on said reporting.

**IV.
RECOMMENDATION**

The Petition for Reconsideration should be denied.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of August 12, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 2, 2021

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

**GRISELDA GONZALEZ
AUBAIN & GUEVARA
STANDER REUBENS THOMAS KINSEY**

DW/oo

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