

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

GLADYS LARA, *Applicant*

vs.

**WONDERFUL PISTACHIOS & ALMONDS, LLC, permissibly self-insured, administered
by BROADSPIRE SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11006262
Fresno District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

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

Defendant seeks reconsideration of the Findings of Fact and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on April 12, 2021, wherein the WCJ found in pertinent part that applicant's injury caused 4% permanent disability and that applicant is in need of further medical treatment for her right knee and right ankle.

Defendant contends that based on the testimony of Lola Ramirez, applicant could not have fallen and sustained an injury as claimed.

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 applicant.

We have considered the allegations in the 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 affirm the F&A, except that we will amend the F&A to include the findings that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her right knee, and right ankle, and that she claimed injury AOE/COE to her back, left shoulder, and chest.¹

¹ We note that although the F&A awards benefits based on applicant's injury, it does not include findings of injury to those body parts. It appears this a clerical error which we will correct herein. 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]).

BACKGROUND

Applicant claimed injury to her back, chest, left shoulder, right knee, and right ankle, as the result of a fall that occurred on March 3, 2017, while she was employed by defendant as sorter.

Orthopedic qualified medical examiner (QME) Jason J. Chiu, M.D., evaluated applicant on December 19, 2017. Dr. Chiu examined applicant, took a history, and reviewed the medical record. The diagnoses included right lateral ankle sprain and right knee contusion. Dr. Chiu stated:

It is my opinion that Ms. Lara tripped and suffered a ground level fall on March 3, 2017. This diagnosis is most consistent with the description of her original injury (her right foot tripped over the leg of a restroom stall divider; she fell forward onto her hands and onto her right knee). This opinion is supported by documentation in the contemporaneous medical reports.

(Joint Exh. Y, Jason J. Chiu, M.D., December 19, 2017, p. 20.)

Dr. Chiu then stated it was his opinion that applicant sustained a right lateral ankle sprain, a right knee contusion, a thoracic myofascial strain, and a left pectoralis tendon strain as a result of the March 3, 2017 ground level fall. He also stated it was his opinion that applicant did not sustain an injury to her lumbar spine as a result of the March 3, 2017 fall. (Joint Exh. Y, p. 20.)

On July 10, 2019, Dr. Chiu re-evaluated applicant. He re-examined applicant, reviewed additional medical records, and indicated he did not change his opinions regarding the cause of applicant's symptoms, as previously stated in his December 19, 2017 report. (Joint Exh. Z, Dr. Chiu, July 10, 2019, pp. 31 – 32.) He determined that applicant's condition reached maximum medical improvement (MMI) as of December 19, 2017, that the injury caused 2% right ankle whole person impairment (WPI), and 2% right knee WPI. (Joint Exh. Z, pp. 32 - 34.) As to the issue of future medical treatment, Dr. Chiu stated that applicant needed anti-inflammatory medication for her right knee and ankle, and that otherwise she had received "sufficient treatment to alleviate the aftereffects" of her March 3, 2017 injury. (Joint Exh. Z, pp. 34 - 35.)

Dr. Chiu's deposition was taken on February 12, 2020, and his testimony indicates that his opinions regarding applicant's injury had not changed. (Joint Exh. X, Dr. Chiu, February 12, 2020, deposition transcript.)

The parties proceeded to trial on September 15, 2020. The stipulations and the issues were identified, exhibits were submitted, applicant and defense witness Jacob Delgado testified, and the matter was continued for further testimony. (Minutes of Hearing and Summary of Evidence

(MOH/SOE), September 15, 2020.) At the January 6, 2021 hearing, applicant and defense witness Lola Ramirez testified and the matter was submitted for decision. (MOH/SOE, January 6, 2021.)

DISCUSSION

It appears that defendant's Petition is based solely on its argument that "[T]he stall door where the fall allegedly occurred opened into the stall. ... Therefore, there is no way for applicant to have fallen by tripping on a stopper between the stalls as she pushed the door open, to walk out of the stall." (Petition, p. 2.) As noted by the WCJ:

[A]pplicant testified that after using the restroom, she "opened the door, and hit the divider. She does not recall if the door opened in or out, but she thinks out because she pushed it." (MOH & SOE, 9/15/20, p. 4, line 21.) There was no conflict in the testimony. Defendant testified that the bathroom door stall in question swung in, yet other bathroom doors at the facility swung out. The applicant testified she did not recall if the door went in or out. (Report, p. 4.)

Defendant provided no explanation, nor did it submit any evidence, as to its contention that applicant could not trip and fall if the stall door, where the fall allegedly occurred, opened into the stall instead of opening out of the stall. The fact that applicant "did not recall if the door swung in or out" is not evidence that she did not fall, as she claimed.

Further, in his report, the WCJ explained that:

The applicant was found to be credible at trial. [see Finding of Fact #7] There was no evidence put forth that the applicant faked her injury other than speculation on the part of the employer. The panel QME noted that the mechanism of injury was supported by the medical reports at the time of injury, and that the diagnosis was consistent with the applicant's description of injury. While the employer testified the door to the stall swung only inward, the applicant testified she did not recall if the door swung in or out. The facts of this case do support an industrial injury, considering all of the testimony and medical evidence introduced. (Report, p. 5.)

It is well established that a WCJ's opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers' Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358].) Also, as noted above, QME Dr. Chiu found the diagnoses to be consistent with the claimed mechanism of injury, and that the injury claim was

supported by the contemporaneous medical reports. (Joint Exh. Y, p. 20.) Having reviewed the trial record, we agree with the WCJ's conclusion that the trial record contains substantial evidence to support the finding that applicant sustained injury AOE/COE.

Accordingly, we grant reconsideration, and we affirm the F&A except that we amend the F&A to include the findings that applicant sustained injury AOE/COE to her right knee, and right ankle, and that she claimed injury AOE/COE to her back, left shoulder, and chest.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 12, 2021 Findings of Fact and Award is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

1. Applicant sustained injury arising out of and occurring in the course of employment to her right knee, and right ankle, and claimed injury arising out of and occurring in the course of employment to her back, left shoulder, and chest; the injury caused permanent partial disability of 4% equal to 12 weeks of indemnity payable at a rate to be determined by the parties with jurisdiction reserved to the Board, less reasonable attorney fees in the amount of 15% of Applicant's Award.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DEIDRA E. LOWE, COMMISSIONER
PARTICIPATING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JANUARY 13, 2022

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

**GLADYS LARA
CARLTON LAW
YRULEGUI & ROBERTS**

TLH/pc

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