

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

**DANAE SCHMITZER, *Applicant***

**vs.**

**MCCLATCHY NEWSPAPERS dba THE FRESNO BEE, permissibly self-insured,  
administered by SEDGWICK CMS, *Defendants***

**Adjudication Number: ADJ9536904  
Fresno 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 and opinion on decision, which we adopt and incorporate, we will deny reconsideration.

For the foregoing reasons,

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

**WORKERS' COMPENSATION APPEALS BOARD**

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

**I CONCUR,**

**/s/ NATALIE PALUGYAI, COMMISSIONER**

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



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

**September 1, 2023**

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

**DANAE SCHMITZER, IN PRO PER  
LEWIS BRISBOIS BISGAARD & SMITH LLP**

**AS/mc**

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

# REPORT AND RECOMMENDATION ON PETITION FOR REMOVAL

## I

### INTRODUCTION

1. Applicant's Occupation: Account Executive  
Age at Injury: 43  
Date of Injury: 4/12/10 – 10/7/13  
Parts of Body Alleged Injured: stomach, nervous system, stress, excretory system – kidneys, bladder, intestine, musculoskeletal system – bones, joints, tendons, muscles, respiratory system – lungs, trachea, skin dermatitis, reproductive system, brain, eye – optic nerves and vision, nose including nasal passages, sinus and smell, scalp, chest including ribs, breast bone and internal organs of the chest, bilateral breasts, circulatory system including heart, blood, arteries, veins, psychiatric consisting of anxiety and depression, mouth including lips, tongue, throat and taste, abdomen – internal organs and groin, lower extremities, sloop, liver, uterus, hormones, nerves, blood cells, capillaries, gut, immune system and both hands.

Manner in Which Injury Alleged Occurred: Exposure to mold

1. Identity of Petitioner: Applicant  
Timeliness: The Petition was timely filed on 7/3/23  
Verification: The Petition was Verified.
2. Date of Award: 6/9/23
3. Petitioner contends:
  - a. By the order, decision or award, the Board acted without or in excess of its powers.
  - b. The order, decision, or award was procured by fraud.
  - c. The evidence does not justify the findings of fact.
  - d. Petitioner has discovered new material evidence, which she could not with reasonable diligence have discovered and produced at the hearing.
  - e. The findings of fact do not support the order, decision or award.

## II

### FACTS

The applicant was employed by the Fresno Bee from 4/12/2010 through 10/7/2013 as an Account Executive. It is undisputed that applicant suffered an industrial exposure to mold which developed on the ceiling tiles, near her work station, following a roof leak during the winter of 2012 – 2013. The primary disputed issue was the nature and extent of her injury as a result of the exposure.

Applicant contends that the exposure resulted in development of a condition known as Chronic Inflammatory Response Syndrome (CIRS), which has affected virtually every system and part of her body and has led to her becoming permanently and totally disabled. In support of her position, the applicant relies primarily upon the opinions of her treating physician, Dr. Lysander Jim.

The applicant was initially evaluated by QME, Dr. Scott Anderson with medical specialty of Rheumatology, Allergy and Clinical Immunology who opined that the applicant had a normal physical examination with no industrial injury. (Exh. K, Dr. Anderson QME report dated 9/7/16.) The issue of industrial injury was submitted for decision on 2/8/18. The submission was vacated on 4/11/18 to further develop the record. The court appointed Independent Medical Evaluator, Nachman Brautbar, M.D. due to his education, training and expertise in Forensic Medicine, Internal Medicine and Toxicology. Based upon Dr. Brautbar's recommendation that a psychological evaluation was needed, the court also appointed Dr. Myron Nathan as Psychiatric IME.

The matter was re-submitted on 3/15/23 and decision issued on 6/9/23. The undersigned found that the applicant sustained injury arising out of and in the course of employment to her respiratory system consisting of cough, airway and mucosal irritation and psychiatric injury. The injury was found to have caused permanent disability of 42% based upon the whole person impairment provided by Dr. Nathan. The court relied upon the opinions of Dr. Nachman Brautbar and Dr. Myron Nathan. The applicant was awarded permanent disability indemnity and future medical. The permanent disability indemnity was ordered to be held in trust by defendant pending resolution of applicant's prior attorney's lien and the lien of EDD. It is from these findings and award that applicant seeks reconsideration. Defendant has submitted an answer to the Petition for Reconsideration.

### III

#### DISCUSSION

The primary issue in this case is whether the opinions of Dr. Brautbar and Dr. Nathan were more persuasive than those of the applicant's treating physician, Dr. Jim. The persuasiveness or weight of the evidence is a question of fact for the appeals board. The board has the power to choose among conflicting medical reports those it deems most persuasive. The relevant and considered opinion of one physician, although inconsistent with other medical opinions, might constitute substantial evidence in support of a factual determination. The undersigned found Dr. Brautbar's opinions more persuasive than those of Dr. Jim for the reasons set forth in the Opinion on Decision.

The applicant contends that Dr. Brautbar's reports do not provide a comprehensive and/or accurate review of all of the medical records provided to him. However, in reviewing the claimed discrepancies between the actual records and the summary as provided by Dr. Brautbar, it appears that the doctor is paraphrasing the reports he is reviewing. The majority of the discrepancies cited by the applicant consist of Dr. Brautbar not including all of the information from the reports in his summary. It is within the reviewing expert's discretion to determine the relative importance and the extent to which it is necessary to cite to the exact language of the reports being reviewed.

The applicant also contends that Dr. Brautbar did not review all of the medical reports that have been submitted as evidence. Judicial Notice is taken of Minutes of Hearing dated 4/20/20 (EAMS ID# 72630159) and Minutes of Hearing dated 10/12/20 (EAMS ID# 73383352), wherein, the applicant was directed to provide any additional treating physician reports to the defense attorney for submittal to the IME. The parties were then directed to meet and confer to ensure that all relevant medical records have been exchanged and reviewed by the IME. Since the applicant was self-procuring medical treatment, it was her responsibility to ensure that all of her relevant treating reports had been provided to the IME. There is no indication that Dr. Brautbar is relying upon an inadequate or incorrect medical history, so as to render his reporting as not constituting substantial medical evidence.

The applicant points out that the Fresno Bee made no attempt to correct or remove the mold or damp conditions. This is not relevant to a determination as to the nature and extent of her injury as it has not been disputed by the defendant that there were wet and moldy conditions present within the Fresno Bee building. The treatment objective to removing the mold and damp conditions is also

accomplished by removing the applicant from working within the building, which she has not done since August of 2013.

The applicant correctly points out that on page 4 of his report dated April 13, 2022, where Dr. Jim sets forth the criteria for diagnosis of CIRS, he lists 1) exposure to a damp building ... (Exh. 151, Dr. Lysander Jim report dated 4/13/22, pg. 4) However, throughout the remainder of his report he characterizes applicant's exposure to the damp building as "chronic". On page 2 of this same report, the doctor states, "Though she had developed multiple other symptoms from as early as April of 2010 for which she sought medical care, neither she nor her physicians had identified the *causative role of damp building exposure for over three years. From 2010 until she filed the claim, Ms. Schmitzer worked an average of 8 to 10 hours a day for 5 to 6 days a week. She therefore experienced a duration of chronic exposure to a damp building environment sufficient to provoke the adverse health effects observed.*" (*emphasis added*) This is an incorrect statement of the facts of this case, in that the leak in the building leading to the mold formation occurred during the winter of 2012-2013 and the applicant stopped working in the building in August 2013. A duration of exposure of less than a year is different from that of over three years.

Dr. Jim also states that the diagnosis of CIRS is established by her having 6 of 10 objective tests positive (5 or more is diagnostic). However, he does not state exactly which 6 objective tests are positive. In the Opinion on Decision, the undersigned reviews some of the objective diagnostic testing that the doctor appears to be relying upon. The doctor notes that elevated levels of secretory IgA have been associated with an upregulated immune response. (Exh. 26, Dr. Lysander Jim report dated 1/22/20, pg. 9) However, the actual lab report shows IgA levels lower than expected. (Exh. 64). The doctor also notes that low Melanocyte Stimulating Hormone is the most sensitive biomarker for CIRS and is low in 98% of patients. (Exh. 26, pg. 11) Whereas, the applicant's actual lab results show applicant's MSH levels to be within the normal range. (Exh. 57)

Applicant seeks to introduce new evidence of a different range of normal levels of MSH than what is indicated on the actual lab results. Not only has the applicant failed to provide any statement as to why this proposed exhibit could not reasonably have been discovered or produced before submission of the case as required by 8 CCR section 10974; but there is no foundation provided to support the accuracy of the proposed exhibit.

Applicant contends that Dr. Brautbar is not impartial because he was paid for his reporting. However, Dr. Brautbar as a court appointed medical evaluator would be paid the exact same amount regardless of the opinions he expressed. In contrast, as indicated by the recommended treatment costs set forth by Dr. Jim, future medical appointments with a CIRS specialist are estimated at \$5,000 per

year for 35 years, totaling \$175,000. The applicant contends that she would not necessarily have to continue treating with Dr. Jim but acknowledges that there are no similar specialist in the Fresno area. It is not unreasonable to assume that she would continue treating with the doctor from whom she has been obtaining self-procured treatment.

The applicant disputes that the urine lead laboratory values are at double the normal because it is not explicitly stated as such on page 4, however, page 1 gives a reference range of < 2 while the results indicate 4.3, which is more than double the normal range. (Exh. 75) The undersigned pointed this out as an alternative explanation for applicant's claimed cognitive impairment that was not even mentioned by her treating doctors who appear to be focused solely on evidence supporting the claimed diagnosis of CIRS.

For these and the reasons previously set forth in the Opinion on Decision, the undersigned recommends that applicant's Petition for Reconsideration be denied.

#### IV

#### **RECOMMENDATION**

It is recommended that the Petition for Reconsideration be denied.

Respectfully submitted,

/s/ Debra Sandoval 7/24/23

**DEBRA SANDOVAL**

**Workers' Compensation Judge**

## OPINION ON DECISION

It is undisputed that the applicant in this matter was exposed to wet building conditions which resulted in exposure to mold. What is disputed is to what extent the mold exposure caused injury to the applicant. There have been multiple reports produced by various medical experts and a vast array of diagnostic tests performed. After a complete and thorough review of all of the medical evidence submitted, the undersigned finds Dr. Brautbar's opinions to be more persuasive than those of Dr. Lysander Jim or Dr. Pietruszka.

Dr. Brautbar's reports, as well as the numerous scientific articles that were attached to his initial report, indicate that current research supports that exposure to mold in a wet building causes upper respiratory symptoms such as cough, wheezing, nasal stuffiness and skin irritation. The accepted treatment of these conditions is removing the mold and damp conditions contributing to its growth. The applicant's initial complaints of chronic cough, runny nose and eye irritations that worsened when she was in the Fresno Bee building and resolved or nearly resolved when she was away from the building is consistent with these generally accepted medical opinions. None of the scientific research papers not only reviewed, but provided to the court for review, by Dr. Brautbar support a mechanism whereby symptoms produced by exposure to mold and/or their toxins would continue once exposure has ceased.

Dr. Jim alternatively argues that the applicant is suffering from Chronic Inflammatory Response Syndrome (CIRS) which is responsible not only for respiratory symptoms but is also the cause her cystic breast disease, mitral and tricuspid valve regurgitation, anxiety, heart palpitations, uterine fibroid and chronic fatigue.

Not only is there disagreement between the medical experts as to whether or not CIRS is an established diagnosis recognized by the medical profession, but there also appears to be discrepancies as to whether or not the applicant fits within the diagnostic criteria as set forth by Dr. Jim. In his report dated 4/13/22, Dr. Jim discusses the diagnosis of CIRS based upon the presence of 1) chronic exposure to a damp building, 2) a multisystem illness consistent with known studies, 3) supportive biomarkers, and 4) response to treatment. (Exh. 151, pg. 4) However, the doctor misstates many of the lab results that he is relying upon to make this diagnosis. For example, the doctor repeatedly notes elevated levels of secretory IgA found in the applicant's stool analysis in December of 2018. However, a review of laboratory results shown in Exhibit 64 actually shows a lower than expected level of Secretory IgA in the stool analysis (49.8 with a reference range of 51-204). The doctor also references low levels of Melanocyte Stimulating Hormone (MSH), which according to the biotoxin pathway illustrated in



Exhibit 39, is the primary mediator of the multisystemic effects caused by CIRS. However, the laboratory results shown in Exhibit 57 indicate that the applicant's levels are within normal limits. Similarly, the doctor relies upon abnormal cortisol levels. (Exh. 26, pg. 11) However, review of the actual lab results shown in Exhibit 56 indicate that only one of the four samples of salivary steroids was slightly elevated at 1.1 ng/ml (normal range 0.4 – 1.0)

Dr. Jim also relies upon an MRI of the brain with NeuroQuant showing swelling of the hippocampus, forebrain parenchyma and cortical gray matter. However, the reading of the MRI results by the radiologist under impression states: Single nonspecific white matter lesion consistent with chronic microvascular ischemia. Other differential consideration such as demyelination and vasculitis are unlikely and Neuroquant analysis demonstrates no evidence for a neurodegenerative process.

Dr. Jim states that diagnosis of CIRS is also confirmed by improvement with treatment. However, it does not appear that any repeat lab studies have been performed to document objective evidence of improvement and the applicant's testimony indicated that her condition has continued to decline.

In his report dated 4/13/22 (Exh. 151) Dr. Jim notes the applicant's duration of chronic exposure to a damp building for over three years is sufficient to provoke the adverse health effects observed. However, according to the applicant's testimony the water intrusion resulting in the moldy conditions occurred during the winter of 2012-2013 and she last worked in the building in August 2013 when Dr. Stone provided an excuse to stay out of the building. This is a relatively short duration of exposure of less than a year. Some of the symptoms that the doctor relies upon to support development of a wide range of symptoms related to CIRS started before the water intrusion including the reports of anxiety, chest pain and pressure, cough and sore throat which were reported in October of 2010. Most of the other reported symptoms did not develop until after the applicant was no longer exposed to the Fresno Bee building.

It is not unusual for doctors to have opposing medical opinions and the court must choose which opinion is more reliable. In this case, Dr. Brautbar was selected by the court as an expert in toxicology, forensic medicine and occupational and environmental medicine. His qualifications are demonstrated by his extensive curriculum vitae. Dr. Brautbar's impartiality is supported by his appointment by the court and not by either party. In contrast, Dr. Jim has a substantial financial incentive in this case as shown by the recommended treatment and costs presented in Exh. 26. As discussed above, Dr. Jim's reports often overstate much of the medical evidence and appears to ignore lab results that do not support his position. For example, the doctor states that the applicant continues to have chronic sinusitis and pulmonary disease despite a CT scan showing paranasal sinuses free of

disease and normal pulmonary function tests. Finally, with regards to the applicant's most serious and debilitating complaints of fatigue and cognitive impairment he completely ignores the laboratory finding of elevated lead levels found in her urine at double the normal level. (Exh. 75) Despite lead poisoning being a well-known cause of neurotoxicity no mention of this finding is made and no further work-up is performed to determine its relationship to the applicant's claimed symptoms.

Permanent Disability

Dr. Brautbar found 0% WPI which is supported by normal pulmonary function tests, normal chest CT and normal sinus CT scans.

Dr. Myron Nathan provided 21% WPI which the court rates as follows:

14.01.00.00 – 21 – [1.4]29 – 110J – 40 – 42

Dr. Nathan did not find apportionment to non-industrial causes.

/s/ Debra Sandoval 6/9/23

**DEBRA SANDOVAL  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE**