

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

**JESS PEREZ, *Applicant***

**vs.**

**SOUTHERN CALIFORNIA GAS COMPANY, permissibly self-insured administered by  
SOUTHERN CAL GAS, *Defendant***

**Adjudication Number: ADJ14362966**

**Van Nuys District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Order (F&O) issued by the workers' compensation administrative law judge (WCJ) on August 14, 2023, wherein the WCJ found that Applicant did not sustain an injury arising out of and in the course of employment (AOE/COE) in the form of COVID-19; and the WCJ ordered that applicant take nothing by way of his injury claim.

Applicant contends that the reports from internal medicine qualified medical examiner (QME) L.V. Alonso, M.D., are not substantial medical evidence on the issue of injury AOE/COE, and that applicant's testimony is substantial evidence that he was not exposed to the COVID-19 virus except during the November 14, 2020 customer encounter at issue herein.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending that the Petition for Reconsideration (Petition) be granted for the purpose of having QME Dr. Alonso's deposition taken, or in the alternative, that the Petition be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this

opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

## **BACKGROUND**

Applicant claimed that while employed by defendant as an Energy Technician during the period from November 1, 2020, through November 29, 2020, he sustained injury in the form of COVID-19 as a result of exposure to and/or contact with a customer who had COVID-19.<sup>1</sup> On November 29, 2020, applicant was admitted into Northridge Hospital Medical Center, and was diagnosed as having COVID-19. He was discharged from the hospital on December 4, 2020. (See Joint Exh. 2, L.V. Alonso, M.D., September 30, 2021, pp. 10 – 11, Record Review.)

QME Dr. Alonso evaluated applicant on September 7, 2022. Dr. Alonso examined applicant, took a history, and again reviewed the medical record, including the transcript of applicant's June 23, 2021 deposition.<sup>2</sup> The doctor concluded that, "... there is no support that patient's COVID was AOE/COE ..." and he explained the basis for his opinion as follows:

The history given by patient as well as on deposition testimony, does not support a significant likelihood of exposure in this particular setting. The applicant was masked, and wearing gloves, with some inconsistency in the history, as to whether the customer was masked or not, and his distance from the customer. There are some discrepancies between deposition testimony, and applicant's history. The garage doors were open during the entire period, it was not in an enclosed environment, and despite inconsistencies between the history given in our visit, and deposition testimony, there was no proximate, prolonged contact with the customer. ¶ Keeping in mind the proximate distance needs for contracting COVID-19, and keeping in mind this interaction did not happen in a totally enclosed indoor setting, it was for a very short period of time (since customer did not remain there during entire service call), there's no substantial medical evidence that an occupational exposure to COVID took place during this encounter.

(Joint Exh. 1, L.V. Alonso, M.D., September 7, 2022, p. 8.)

The parties proceeded to trial on June 27, 2023. The WCJ's summary of applicant's testimony includes the following:

---

<sup>1</sup> Review of the record indicates applicant actually claimed that he was exposed to the COVID-19 virus on November 14, 2020. (Minutes of Hearing and Summary of Evidence, June 27, 2023, p. 3.)

<sup>2</sup> The doctor had previously reviewed the medical record prior to the October 6, 2021 evaluation of applicant being canceled and subsequently rescheduled. (See Joint Exh. 2, L.V. Alonso, M.D., September 30, 2021, p. 1; see also Joint Exh. 1, Records Review, pp. 1 – 16 [EAMS pp. 12 – 27].)

On November 14, 2020, Applicant received an order to re-light a water heater after a different technician, who was not qualified on water heaters, replaced a meter. On the order, in red, it stated: "Caution, customer tested positive for COVID-19." Applicant contacted dispatch and told them he did not volunteer to go to a customer that tested positive for COVID. The procedure for going to a customer that tested positive for COVID-19 is to wear a full HAZMAT personal protective equipment; full cover from head to toe, goggles, and a mask. The Applicant was wearing partial gear when he saw the COVID positive customer; a light blue mask, goggles, and gloves. When Applicant arrived at the customer and noticed [sic] the red flag, he contacted dispatch, and they asked if he was refusing to do his job. He was told to put on a mask and gloves and go in. ¶ ... When Applicant arrived at the customer with COVID's house, he parked on the street. When he exited the truck, the customer was on the other side of the truck, about six or seven feet away. The customer was not wearing a mask. The Applicant asked her if she had COVID, and she said she was positive. Applicant went back to the truck and put on a mask, gloves, and goggles. The customer went back into the house, and Applicant went into the garage. (Minutes of Hearing and Summary of Evidence (MOH/SOE) June 27, 2023, pp. 3 – 4.)

The issues submitted for decision included injury AOE/COE in the form of COVID-19. (MOH/SOE, p. 2.)

## DISCUSSION

We first note that in support of his arguments, applicant's counsel refers to and quotes various medical research entities and articles that they have published. (For example: Center for Devices and Radiological Health - Center for Disease Control Yellow Book 2024 - Journal of the Royal Society of Medicine - U.S. Food and Drug Administration (Petition, p. 7) and American Medical Association (Petition, p. 8).) None of these articles were submitted and/or admitted into evidence and will not be considered.<sup>3</sup>

An award, order or decision by the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code § 5952; *Garza v. Workmen's Comp. App. Bd.* (1970) 3 Cal.3d 312, 317-319 [33 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635-637 [35 Cal.Comp.Cases 16]; *Universal City Studios, Inc. v. Workers' Compensation Appeals Bd. (Lewis)* (1979) 99 Cal.App.3d 647 [44 Cal.Comp.Cases 1133].) To be substantial evidence a medical opinion must be well-reasoned, it may not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it

---

<sup>3</sup> Upon return of this matter to the WCJ, it may be appropriate for Dr. Alonso to be provided said articles for his review so that he may explain why he agrees or disagrees with the conclusions stated in the articles.

must set forth the reasoning behind the physician's opinion, not merely his or her conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

As quoted above, Dr. Alonso concluded that applicant did not have “an occupational exposure to COVID.” (Joint Exh. 1, p. 8.) However, the doctor does not provide any scientific basis for his reasoning, nor does he refer to any medical research that supports his conclusions as to how the COVID-19 virus is transmitted and/or the means by which an individual may become contaminated by the virus. Based thereon, his opinion appears to be speculative and does not constitute substantial evidence. In his Report, the WCJ stated:

The contents of CDC publication needs to be presented to a doctor, not first mentioned in a Petition for Reconsideration. [original in uppercase] If the Applicant thought the doctor’s opinion is inconsistent with publications by the CDC, the doctor should have been cross-examined prior to trial. ... For that reason, the board may wish to allow a cross examination [deposition] of the doctor.

(Report, p. 3.)

Having reviewed the trial record, we agree with the WCJ that upon return of this matter, it would be appropriate for the parties to depose Dr. Alonso and/or request that he submit a supplemental report providing a clear analysis and explanation of his ultimate opinion as to the issue of whether applicant sustained the COVID-19 infection as a result of his employment. In that context, it may also be appropriate that Dr. Alonso be provided the research articles discussed by applicant’s counsel (see footnote 3) as well as the WCJ’s summary of applicant’s testimony, noted above.

Accordingly, we grant reconsideration, rescind the Findings, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings of Fact and Order issued by the WCJ on August 14, 2023, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the August 14, 2023 Findings of Fact and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**

**I CONCUR,**

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

**/s/ JOSÉ H. RAZO, COMMISSIONER**



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

**November 3, 2023**

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

**JESS PEREZ  
ROSE, KLEIN & MARIAS LLP  
CIPOLLA, CALABA, WOLLMAN & BHATTI**

**TLH/mc**

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