

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

NANCY DECHANNES, *Applicant*

vs.

**COUNTY OF LOS ANGELES, DEPARTMENT OF HEALTH SERVICES,
*Defendant***

**Adjudication Numbers: ADJ15734362
Van Nuys 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, 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/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 9, 2023

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

**NANCY DECHANNES
ROWEN, GURVEY & WIN
GREENUP, HARTSON & ROSENFELD**

LN/pm

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

Defendant County of Los Angeles has filed a timely, verified petition for reconsideration of the July 17, 2023 Findings and Award, which found that applicant Nancy Dechannes sustained injury arising out of and in the course of employment to her psyche, gastrointestinal system, and in the form of headaches and bruxism while employed during the period of August 1, 2005 through January 7, 2022 as a registered nurse, Occupational Group Number 311, at Los Angeles, California, by Los Angeles County, Department of Health Services, permissibly self-insured. Applicant was 54 years of age at the end of the period of cumulative trauma exposure. The Findings and Award found that applicant's earnings were at least \$2,340.05 per week, entitling applicant to the maximum temporary total disability rate of \$1,539.71 for temporary disability indemnity paid within two years of the date of injury. Temporary disability and future medical care were also found and awarded, but permanent disability and apportionment were not among the issues submitted for decision.

Defendant's petition alleged that the undersigned acted without or in excess of his powers, and that the evidence does not justify the findings of fact. Specifically, the petition asserts that the undersigned "acted without or in excess of his powers when he failed to address the parties' issues identified on the PTCS [Pre-Trial Conference Statement] and at the trial of 5/25/23, regarding PQME Dr. Egan's cross examination on 5/16/2023" (Petition 8/8/2023, p.3, I. 22-24). The petition also asserts that the evidence does not justify the finding of injury arising out of and in the course of employment (AOE/COE) to applicant's psyche and gastrointestinal system, and defendants' due process rights and California Labor Code Section 5502(d)(3) were violated by not admitting Dr. Egan's July 14, 2023 supplemental report, which was received after trial, into evidence.

No answer has been received from applicant's counsel as of the date of this report, but a response is anticipated.

II **FACTS**

As recounted in the petition, this case was originally set for trial on April 11, 2023 over the objection of defendant County of Los Angeles that discovery was ongoing based on a supplemental report dated January 12, 2023 received from internal medicine panel qualified medical evaluator (PQME) Koruon Daldalyan, M.D., about which defendant's counsel of record had scheduled the cross examination of the PQME in psychiatry, Linslee Egan, M.D. The undersigned continued the commencement of trial for the sole purpose of permitting the cross examination of Dr. Egan, which took place on May 16, 2023, and did not change her opinions. At the cross examination, Dr. Egan did not change her opinions, and she did not indicate that review of applicant's Kaiser records, which defendant initially chose not to send to Dr. Egan, then sent without advance notice to applicant in violation of Labor Code Section 4662.3(b) nine days before trial, was required. Dr. Egan concluded the deposition by stating only that she "would welcome" any additional records (Deposition of Dr. Egan 5/16/2023, Joint 2, p. 21, l. 17-20).

Because the deposition did not change Dr. Egan's opinions or result in a statement that she required additional records, trial proceeded on May 25, 2023 with the admission of PQME Dr. Egan's September 13, 2022 report (Joint I) and May 16, 2023 deposition transcript (Joint 2), along with PQME Dr. Daldalyan's report dated April 20, 2022 (Joint 3) and supplemental report dated January 12, 2023 (Joint 4). A denial notice dated April 6, 2022 was admitted as Joint 5, an employee's report of incident date January 8, 2022 was admitted as Joint 6, a job description was admitted as Joint 7, and Forms W-2 were admitted as Joint 8. No testimony was offered by either pmty at trial, but admitted into evidence were treating reports in psychology from Marcia Lamm, Ph.D. (Applicant's I through 6), Vera David, Ph.D. (Applicant's 7 through 10), email exchanges

between applicant's and defendant's counsel (Applicant's 11), a proposed joint PQME letter dated July 21, 2022 that included a medical index with the Kaiser records, noted as "1620 pgs. - 9 volumes" (Applicant's 12), and excerpts from the Kaiser records (Applicant's 13 and 14). Defendants moved into evidence applicant's April 27, 2022 deposition transcript (Defendant's A), an earnings history report (Defendant's B), and defense counsel's May 16, 2023 letter to PQME Dr. Egan with 1623 pages of Kaiser records and PQME Dr. Daldalyan's two reports, with a proof of service indicating that the letter was sent simultaneously to the PQME and to applicant's counsel.

A July 17, 2023 Findings and Award and Opinion on Decision addressed the submitted issues of injury AOE/COE, earnings, temporary disability, need for further medical treatment, liability for self-procured medical treatment, attorney fees, and defendant's assertion that trial was premature because a supplemental report was unilaterally requested by defendants nine days before trial.

The Findings and Award found based on the stipulations of the parties at trial that applicant Nancy Dechannes was born April 7, 1967 and was employed during the period of August 1, 2005 through January 7, 2022 as a registered nurse, Occupational Group Number 311, ay Los Angeles, California, by Los Angeles County, Department of Health Services, permissibly self-insured.

Based on the un rebutted medical expert opinions of Panel Qualified Medical Evaluator (PQME) Linslee Egan, M.D. in psychiatry and of PQME Kouron Daldalyan in internal medicine, which are further supported by the expert opinions of Primary Treating Physician (PTP) Marcia Lamm, Ph.D. and Vera David, Ph.D. in psychology, it was found that applicant sustained injury arising out of and in the course of employment to her psyche, gastrointestinal system, and in the form of headaches and bruxism. Dr. Egan diagnosed PTSD, with a GAF of 55, not yet at maximal medical improvement (MMI), causing temporary disability from January 7, 2022 and ongoing. Dr. Egan's causation

analysis complied with the requirements of Labor Code Section 3208.3 and *Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 241 (Appeals Board en banc) by finding that actual events of employment were the predominant cause of applicant's psychiatric injury, with 55% of injury caused by workplace trauma working with homeless people on the streets of Los Angeles, 25% of injury caused by excessive workload, which Dr. Egan noted may be by perceived or actual, 10% of injury caused by poor coping skills and impaired distress tolerance. As the trier of fact, the undersigned accepted all of the events described by applicant in Dr. Egan's report as actual events and not figments of her imagination. Of the causes of injury identified by Dr. Egan, only the 10% attributed to the employer's lack of support or mistreatment would constitute personnel actions, and since the percentage of causation attributed to this factor is less than 25%, it is not a substantial cause of injury to the psyche that would bar a finding of compensable injury to the psyche under Labor Code Section 3208.3(h).

Based on applicant's gross earnings from the County of Los Angeles as shown on her 2001 Form W-2, admitted as Joint 8, it was found that at the time of injury, applicant's earnings were at least \$2,340.05 per week, entitling applicant to the maximum temporary total disability rate of \$1,539.71 for temporary disability indemnity paid within two years of the date of injury. The average weekly earnings of at least \$2,340.05 was calculated by dividing the gross wages of \$121,682.42 shown on the Form W-2 by 52 weeks. Under Labor Code section 4653, the temporary disability rate is two-thirds of this amount, which is reduced by the provisions of section 4453(a) to a maximum of \$1,539.71 per week for injuries that occurred in 2022.

Based on the un rebutted medical expert opinion of PQME Dr. Egan, M.D. in psychiatry, as further supported by the expert opinions of PTP Dr. Lamm and Dr. David in psychology, and PQME Dr. Daldalyan in internal medicine, it was found that as a result of the injury, applicant was temporarily disabled from January 7, 2022 to present and continuing, for which applicant is entitled to

temporary disability indemnity at the rate of \$1,539.71 per week. The decision noted that psychiatric PQME Dr. Egan unambiguously indicated that applicant was temporarily disabled from January 7, 2022 to the present and continuing, and that internal medicine PQME Dr. Daldalyan found that from January 13, 2022 to April 20, 2022, applicant was temporarily disabled and deferred to "a psychological examiner" with respect to other periods, so his opinions support those of Dr. Egan.

Based on the un rebutted medical expert opinion of PQME Dr. Egan, M.D. in psychiatry and PQME Dr. Daldalyan in internal medicine, as further supported by the expert opinions of PTP Dr. Lamm and Dr. David in psychology, it was found that further medical treatment is required to cure or relieve the effects of the injury, including but not limited to the specific provisions of PQME Dr. Daldalyan for further psychological treatment and consultations regarding further treatment with a gastroenterologist, a neurologist, and a dentist. It is found that the psychological treatment should be with current PTP Marcia Lamm, Ph.D. or any other psychologist of applicant's choice, and consultations regarding further treatment with a gastroenterologist, a neurologist, and a dentist should also be with physicians of applicant's choice.

Because the medical reports in evidence clearly showed that applicant had to self-procure treatment on a denied claim, but no detailed evidence was provided to show all of the treatment that was self-procured and amounts that were charged or paid, it was found that applicant is entitled to payment of or reimbursement for self-procured medical treatment expenses in an amount subject to proof, to be adjusted by and between the parties, with the Board retaining jurisdiction in the event of any dispute.

Based on the criteria for determining attorney fees set forth in California Labor Code Sections 4903 and 4906(d), California Code of Regulations, Title 8, Section 10844, and WCAB Policy and Procedure Manual Index No. 1.140, it was found that the reasonable value of the services of applicant's attorneys of

record with respect to the findings and order herein is an amount equal to 15% of retroactive temporary disability accrued through the date of this decision, payable from the award of temporary disability. The amount of this attorney fee was calculated based on 566 days between January 7, 2022 and July 17, 2022, divided by seven days per week and multiplied by the weekly temporary disability rate of \$1,539.71. Fifteen percent of this amount was calculated as \$18,344.55, which was ordered to be paid to the Law Firm of Rowen, Gurvey, and Win from accrued temporary disability benefits.

The opinion on decision explained that with respect to the submitted issue of defendant's request to further delay the determination of injury arising out of and in the course of employment and entitlement to temporary disability benefits pending the receipt of a supplemental report from Dr. Egan, which was requested in Defendants' C, a May 16, 2023 letter from defense counsel to the PQME with Kaiser records and Dr. Daldalyan's two reports. Although such a report can and should eventually be obtained, it appeared that it was requested improperly in violation of Labor Code section 4062.3(b) as interpreted by *Suon v. California Dairies, et al.* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en banc), and any report obtained in response to that letter was clearly after the discovery cutoff at the Mandatory Settlement Conference and therefore did not qualify as evidence that "was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference" under indicated by Labor Code section 5502(d)(3), because defendant apparently had the Kaiser records by July 21, 2022 as shown in the proposed medical index sent to applicant's counsel prior to Dr. Egan's initial evaluation (see Applicant's 12), but defendant failed to send Dr. Egan these records at that time or anytime thereafter until May 16, 2023, nine days before trial, and without 20 days' advance notice to applicant's counsel as required by Labor Code section 4062.3(b). The opinion also noted, as a footnote, that the medical-legal fee schedule that went into effect on April 1, 2021 (California Code of Regulations, Title 8, section 9795) provides for an additional \$3.00 per page for any records reviewed by a medical-legal

evaluator in excess of 200 pages of records, and because Dr. Egan was sent exactly 204 pages of records, according to page 2 of her September 13, 2022 report (Joint 1), so it seemed that defendant decided not to send all of the records in its possession in order to save costs. The opinion also reasoned that the conditions assessed by Dr. Daldalyan were sequelae of the injury to the psyche, and not vice-versa, so Dr. Daldalyan's opinions would not be expected to change the opinions of Dr. Egan. Furthermore, the opinion explained that Dr. Daldalyan did review the Kaiser records and made no change to his opinions regarding causation of injury, and apportioned only 20% of gastrointestinal disability, 10% of disability from headaches, and none of the disability from bruxism to preexisting conditions.

The opinion reasoned that because the Appeals Board in *Suon*, cited above, gave workers' compensation judges the discretion to fashion an appropriate remedy for a violation of Labor Code section 4062.3, in this case the appropriate remedy would be to exclude any improperly-obtained report from evidence with respect to the May 25, 2023 trial, but not from future proceedings regarding other issues such as permanent disability. The opinion explained that while Dr. Egan's review of Kaiser records and Dr. Daldalyan's opinions may be relevant and even necessary regarding issues that are not yet ripe such as permanent disability and apportionment, the letter was apparently sent in violation of Labor Code section 4062.3 due to defendant's desire to stay the present proceedings, and the violation should not be rewarded by admission of any resultant evidence, at least with respect to the issues presently decided.

After trial, PQME Dr. Egan issued a supplemental report dated July 13, 2023 in response to defendants' request that was sent in violation of Labor Code Section 4062.3 and *Suon*. Based on the review of records, Dr. Egan changes her opinion to include causation to "lighting up" of preexisting conditions.

III **DISCUSSION**

Under Labor Code Section 5904, "[t]he petitioner for reconsideration shall be deemed to have finally waived all objections, irregularities, and illegalities concerning the matter upon which the reconsideration is sought other than those set forth in the petition for reconsideration." Accordingly, because defendant's petition for reconsideration makes no contentions regarding earnings, periods of temporary disability, attorney fees or medical treatment, any argument against the findings on these issues "shall be deemed to have finally waived" and need not be discussed in this report.

Each contention actually raised by the petition for reconsideration is addressed in turn.

1. Each issue submitted for trial was addressed in the opinion on decision dated July 17, 2023, and is further discussed in this report

Contrary to the assertions of the petition, the opinion on decision served with the July 17, 2023 Findings and Award does in fact address each of the submitted issues, as set forth above. Although it does not include detailed commentary on Dr. Egan's opinions as expressed in her September 13, 2022 report May 16, 2023 deposition, the additional explanation and comments provided in this report should be regarded as a supplement to the opinion to cure any defect in satisfying the requirement of Labor Code Section 5313 to provide "a summary of the evidence received and relied upon and the reasons or grounds upon which the determination was made." (*City of San Diego v. Workers' Comp. Appeals Ed. (Rutherford)* (1989) 54 Cal.Comp.Cases 57 (writ den.); *Smales v. Workers' Comp. Appeals Ed.* (1980) 45 Cal.Comp.Cases 1026 (writ den.).)

In its argument, the petition for reconsideration focuses on one issue in particular, to wit, defendant's objection to trial proceeding based on the cross examination of Dr. Egan and defendant's contention that Dr. Egan's testimony

supported their request for a supplemental report with review of records. These points were addressed in the opinion on decision as follows:

The undersigned must respectfully deny defendant's request to further delay the determination of injury arising out of and in the course of employment and entitlement to temporary disability benefits pending the receipt of a supplemental report from Dr. Egan, which was requested in Defendants' C, a May 16, 2023 letter from defense counsel to the PQME with Kaiser records and Dr. Daldalyan's two reports. Although such a report can and should eventually be obtained, it appears that it was requested improperly in violation of Labor Code section 4062.3(6) as interpreted by *Suon v. California Dairies, et al.* (2018) 83 Cal.Comp.Cases 1803 (Appeals Board en bane), and any report obtained in response to that letter is clearly after the discovery cutoff at the Mandatory Settlement Conference and does not qualify as evidence that "was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference" under indicated by Labor Code section 5502(d)(3), because defendant apparently had the Kaiser records by July 21, 2022 as shown in the proposed medical index sent to applicant's counsel prior to Dr. Egan's initial evaluation (see Applicant's 12), but defendant failed to send Dr. Egan these records at that time or anytime thereafter until May 16, 2023, nine days before trial, and without 20 days' advance notice to applicant's counsel as required by Labor Code section 4062.3(6). It is furthermore unreasonable to believe that Dr. Egan will change her opinions regarding causation, TD and treatment based on the Kaiser records or the review of Dr. Daldalyan's report. It is clear that the conditions assessed by Dr. Daldalyan were sequelae of the injury to the psyche, and not vice-versa, so Dr. Daldalyan 's opinions would not be expected to change the opinions of Dr. Egan. Furthermore, Dr. Daldalyan did review the Kaiser records and made no change to his opinions regarding causation of injury, and apportioned only 20% of gastrointestinal disability, 10% of disability from headaches, and none of the disability from bruxism to preexisting conditions.

As the Appeals Board explained in *Suon*, cited above, a workers' compensation judge has discretion to fashion a remedy for a violation of Labor Code section [4062.3], and in this case it is found that while Dr. Egan's review of Kaiser records and Dr. Daldalyan' s opinions may be relevant and even necessary regarding issues that are not yet ripe such as permanent disability and apportionment, any such report sent in response to defense counsel's May 16, 2023 letter should be excluded from the present decision regarding injury arising out of and in the course of employment, temporary disability, and need for treatment. The letter was apparently sent in violation of Labor Code section [4062.3] due to defendant's desire to stay the present proceedings, and the violation should

not be rewarded by admission of any resultant evidence, at least with respect to the issues presently decided.

(Opinion on Decision, 7/17/2023, pp. 5-6.) As also noted in the preceding section of this report, Dr. Egan did not change her opinions at cross examination, and she did not indicate that review of applicant's Kaiser records was required. Defendant initially chose not to send to Dr. Egan over 1,600 pages of Kaiser records, which it clearly had in its possession, ostensibly to save money on review of records under the current medical-legal fee schedule. After defendant had Dr. Egan's report, it failed to pursue review of the omitted records for the better part of a year, when it unilaterally sent this information to the QME nine days before trial, without providing advance notice to applicant as required by Labor Code Section 4062.3(b). Dr. Egan concluded the deposition by stating only that she "would welcome" any additional records (Deposition of Dr. Egan 5/16/2023, Joint 2, p. 21, L 17- 20). For this reason, the cross examination of Dr. Egan was not regarded as requiring a supplemental report with review of records.

2. The evidence submitted does justify the finding of injury AOE/COE to the psyche and gastrointestinal system, and it was not without or in excess of the undersigned's powers to decide submitted issues without Dr. Egan's illegally obtained supplemental report

This section of argument in defendant's petition for reconsideration does not take issue with any specific reasoning offered by either psychiatric PQME Dr. Egan or internal PQME Dr. Daldalyan, or even the frequently thorny issues surrounding of the analysis required by *Rolda* (cited above), but rather argues that Dr. Egan's supplemental report is required based on her deposition testimony and should have been admitted into evidence. Defendant argues that Labor Code Section 5502(d)(3) and that due process require admission of the July 13, 2023 supplemental report that was obtained after trial in violation of Labor Code Section 4062.3 as explained by *Suon*, cited above.

As explained in *Suon*, cited above, and as explained in the preceding sections and the opinion on decision, a workers' compensation judge has discretion to fashion a remedy for a violation of Labor Code section 4062.3, and in this case it is found that Dr. Egan's report sent in response to defense counsel's May 16, 2023 letter should be excluded from the present decision regarding injury arising out of and in the course of employment, temporary disability, and need for treatment. The letter was apparently sent in violation of Labor Code section 4062.3 due to defendant's desire to stay the present proceedings, and the violation should not be rewarded by admission of any resultant evidence, at least with respect to the issues presently decided.

Labor Code Section 5502(d)(3), cited in defendant's petition, provides that "[d]iscovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been discovered by the exercise of due diligence prior to the settlement conference." The supplemental report of Dr. Egan reviewing Kaiser records and Dr. Daldalyan's opinions, including his April 20, 2022 report, could easily have been obtained by defendants in 2022 by the exercise of due diligence. Accordingly, Section 5502(d)(3) requires the exclusion of Dr. Egan's supplemental report.

Although the above analysis is sufficient to justify the decision of issues without waiting for and admitting Dr. Egan's illegally obtained supplemental report, which is not in evidence, it is worth noting that even if the report had been timely and properly obtained, its modified analysis of causation of injury is problematic insofar as 45% of causation of injury to psyche is attributed by Dr. Egan to a "lighting up" of applicant's multifaceted pre-existing conditions. As stated in the well-reasoned panel opinion in *Ricardo Alvarez v. Recology Sunset Scavenger, et al.*, 2022 Cal. Wrk. Comp. P.O. LEXIS 325:

The Workers' Compensation Act is a no-fault system, which provides generally for liability "without regard to negligence ... against an employer for any injury sustained by his or her employees arising out of and in the course of the employment." (Lab. Code, § 3600.) A corollary of the no-fault principles of workers' compensation is that an employer takes the employee as he finds him at the time of the employment. Thus, "an employee may not be denied compensation merely because his physical condition was such that he sustained a disability which a person of stronger constitution or in better health would not have suffered." (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd. (Clarlr;)* (2015) 61 Cal.4th 291, 300 [188 Cal.Rptr.3d 46, 349 P.3d 141] (internal citations omitted).) Additionally, it is well-settled that "the acceleration, aggravation or 'lighting up' of a preexisting disease is an injury in the occupation causing the same." (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590]; see *Brodie v. Workers' Comp. Appeals Bd.* (2007) 40 Cal.4th 1313, 1326 [57 Cal.Rptr.3d 644, 156 P.3d 1100].)

IV
RECOMMENDATION

It is respectfully recommended that the petition be denied.

Date: August 21, 2023

Clint Feddersen
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE