

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

**MICHAEL SHEPARD, Deceased
CATHERINE SHEPARD (Widow), *Applicant***

vs.

**COUNTY OF LOS ANGELES, permissibly self-insured,
administered by SEDGWICK CMS, INC., *Defendants***

**Adjudication Number: ADJ12011890
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.

Applicant's Exhibit seven (7) consists of a follow up visit report for Valencia Sports Medicine and Rehabilitation. It notes "Date of Visit: 1/23/2019." This is consistent with the summary of applicant's testimony:

Ms. Shepard's husband, Michael Shepard, died on January 23, 2019 in a motor vehicle accident on the 14 Freeway, 14 to 15 miles from his home, two exits away from the off ramp to return home from Valencia [S]ports Medicine and Rehabilitation. He had received physical therapy and chiropractic care for an industrial low back injury sustained when, after fighting a fire, he slipped, twisted his knee and fell to the ground. Valencia Sports Medicine and Rehabilitation was 30 minutes from Mr. Shepard's home. Mr. Shepard left his home at 8:45 a.m. to 8:50 a.m., and arrived at 9:25 a.m. for his appointment at 9:30 a.m. He left at 10:45 a.m. and sustained his fatal motor vehicle accident at 11:17 a.m.

(Minutes of Hearing and Summary of Evidence (MOH/SOE), 3/2/21, at p. 5:9-15.)

Despite defendant's argument that the billing codes for the January 23, 2019 date of service related only to treatment for the cervical and thoracic spines, the January 23, 2019 record from Valencia Sports Medicine and Rehabilitation clearly indicates that treatment was also provided to the lumbar spine. (Exhibit 7, at p. 2.)

We have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witnesses. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determinations. (*Id.*)

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/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

June 10, 2021

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

**CATHERINE SHEPARD
STRAUSSNER SHERMAN
LOS ANGELES COUNTY COUNSEL**

PAG/abs

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

**AMENDED REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE ON PETITION FOR RECONSIDERATION**

INTRODUCTION:

On April 15, 2021, the Defendant filed a timely and verified petition for reconsideration dated April 15, 2021, alleging that the undersigned WCJ erred in his Findings of Fact & Award dated March 26, 2021. The Defendant contends that the gravity of the documentary evidence should have compelled the undersigned WCJ to discount the medical report of Jeff Browne, D.C., dated January 23, 2019, [Applicant's Exhibit "7"] and the testimony of the Applicant's witness Carol Moore in finding that the decedent sustained a compensable consequence motor vehicle accident resulting in his death and instead find no industrial death based on the billing records from Valencia Sports Medicine & Rehabilitation, [Defendant's Exhibits "A" to "D"] the deposition testimony of Patty Gonzalez, the office manager of Valencia Sports Medicine & Rehabilitation, dated September 22, 2020, [Joint Exhibit "A"] and the deposition testimony of Tina Tatto, the billing manager of Valencia Sports Medicine & Rehabilitation, dated September 22, 2020, [Joint Exhibit "B"] to show that the Applicant's medical treatment appointment on January 23, 2019 was for non-industrial purposes.

STATEMENT OF FACTS:

The Applicant, the widow of the decedent, Michael Shepard, claimed that, while employed as a firefighter, by County of Los Angeles, on January 23, 2019, he sustained a compensable consequence motor vehicle accident that proximately resulted in his death on January 23, 2019.

The decedent had previously sustained an industrial injury on July 16, 2018 to his low back, right hip and right knee on when, while fighting a fire, he slipped, twisted his knee and fell to the ground. [MOH/SOE, 03/24/2021, 5:12] His injury was admitted by the Defendant on August 20, 2018. [Applicant's Exhibit "6"]

On January 23, 2019, the decedent drove from his home to attend a scheduled appointment at the Valencia Sports Medicine and Rehabilitation with Dr. Browne to receive chiropractic and physical therapy. [MOH/SOE, 03/24/2021, 5:11-12] According to the medical report by Dr. Browne dated January 23, 2019, the decedent complained of neck and low back pain and received adjustments and massage therapy to both his neck and low back.

When the decedent left Valencia Sports Medicine and Rehabilitation to return home, he was involved in a fatal motor vehicle accident. [MOH/SOE, 03/24/2021, 5:9-11]

The Defendant denied the industrial compensability of the decedent's death on the grounds that the medical billing from Valencia Sports Medicine and Rehabilitation as well as the deposition testimonies of Ms. Gonzalez and Ms. Tatto did not document that the decedent had ever treated for his low back, right hip and right knee at that facility.

To rebut the Defendant's evidence, the Applicant offered the testimony of Ms. Moore, patient care coordinator for the Los Angeles County Firefighters Local 1014 Health and Welfare Plan, who is

responsible for paying the medical treatment bills from facilities such as Valencia Sports Medicine and Rehabilitation. Ms. Moore testified that Local 1014 members, of which the decedent was a member, oftentimes self-procure treatment for their workers' compensation claims and shift the costs to Local 1014 in order to avoid the limitations of the workers' compensation system such as utilization review and the Official Medical Fee Schedule. In addition, while the workers' compensation system allows up to 24 occupational visits subject to utilization review, Local 1014 will authorize up to 30 chiropractic visits per year without proof of medical necessity. Ultimately, notwithstanding those practices, Local 1014 is without any viable remedy to cure those abuses. [MOH/SOE, 03/24/2021, 7:22 to 8:3]

On March 26, 2021, the undersigned WCJ issued his Findings of Fact & Award, finding that the decedent's motor vehicle accident on January 23, 2019 was a compensable consequence resulting from attending an appointment for self-procured medical treatment for his July 16, 2018 industrial injury and awarded the Applicant death benefits and burial expenses in connection thereof.

It is from this decision that the Defendant claims to be aggrieved.

DISCUSSION:

An applicant is not required to prove the existence of an industrial injury beyond a reasonable doubt. Instead, an applicant merely needs to present substantial evidence showing that "industrial causation is reasonably probable" [McAllister v. Workers' Comp. Appeals Bd. (1968) 33 Cal. Comp. Cases 660, 665; Rosas v. Workers' Comp. Appeals Bd. (1993) 58 Cal. Comp. Cases 313, 322] and that work was a "contributing cause." [South Coast Framing v. Workers' Comp. Appeals Bd. (Clark) (2015) 80 Cal. Comp. Cases 489, 495]

While the WCAB may reject the findings of a WCJ and enter its own findings on the basis of its review of the record, [Labor Code § 5907] when a WCJ's findings are supported by solid, credible evidence, they are to be accorded great weight and should be rejected only on the basis of contrary evidence of considerable substantiality. [Lamb v. Workers' Comp. Appeals Bd. (1974) 39 Cal. Comp. Cases 310, 314] In other words, an aggrieved party's professed dissatisfaction with the conclusions of a WCJ and the unsupported imputation of unreliability of the well-grounded evidence he or she has relied upon and a preference instead for a different conclusion based on other conflicting evidence found more desirable is not sufficient to disturb a WCJ's decision. [Lee v. Mitrant U.S.A. Corp. (2013) 2013 Cal. Wrk. Comp. P.D. LEXIS 610, 5 (Appeals Board noteworthy panel decision); see Place v. Workers' Comp. Appeals Bd. (1970) 35 Cal. Comp. Cases, 525, 529 ("factual determinations of the Board must be upheld if there is substantial evidence in their support and the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence.")]

In addition, a subsequent injury will constitute a compensable consequence of an industrial injury if the industrial injury was a contributing factor in the occurrence of the subsequent injury. [Beaty v. Workers' Comp. Appeals Bd. (1978) 43 Cal. Comp. Cases 444, 448]

With respect to injuries sustained en route to medical appointments for industrial medical treatment, the Court of Appeal has held as follows:

“Where the visit to the doctor is based on the statutory obligation of the employer to furnish and the employee to submit to medical examination and nondangerous treatment, an injury sustained in the course of such a visit should be held to be an injury arising out of and in the course of employment within the meaning of [§] 3600 of the Labor Code.” [Laines v. Workmen’s Comp. Appeals Bd. (1975) 40 Cal Comp. Cases 365, 369 (internal citations omitted.)]

Finally, in determining whether the subsequent injury was a compensable consequence, it is immaterial whether or not the treatment was authorized or not, so long as it cures or relieves from the effects of the industrial injury. [See Sutter Solano Medical Center v. Workers’ Comp. Appeals Bd. (Go) (2018) (writ denied) (the WCAB held that an applicant was entitled to temporary and permanent disability from self-procured surgery); see also Barela v. Leprino Foods (2009) 2009 Cal. Wrk. Comp. P.D. LEXIS 482 (Appeals Board noteworthy panel decision) (the WCAB held that an applicant was entitled to permanent disability from self-procured surgery)]

In this case, the primary issue presented at trial was whether the decedent’s January 23, 2019 motor vehicle accident returning from a medical treatment appointment was causally connected to an industrial injury on July 16, 2018 to his lumbar spine, right hip and right knee, resulting in a compensable consequence.

The Defendant relied on the billing codes contained in the health insurance claim forms of Valencia Sports Medicine & Rehabilitation for treatment of cervical and thoracic spine complaints from October 19, 2018 to January 23, 2019. [Defendant’s Exhibits “C” and “D”] However, this was contradicted by the medical report of Dr. Bowne who provided the Applicant chiropractic treatment for his low back pain on January 23, 2019.

In addition, based on the credible testimony of Carol Moore, the patient care coordinator for the Los Angeles County Firefighters Local 1014 Health and Welfare Plan, it was a common practice for injured workers to surreptitiously self-procure medical treatment privately under its health insurance plan to avoid the restrictions of the workers’ compensation utilization review system, thereby calling into question the validity of the billing codes contained in the health insurance claim forms of Valencia Sports Medicine & Rehabilitation.

Despite the various complaints lodged by the Defendant disparaging the evidence relied upon by the undersigned WCJ and accusations that he ignored the contrary evidence, he carefully balanced the reliability of the medical report of Dr. Bowne and the credible testimony of Ms. Moore and found it more reliable and more persuasive than the billing records of Valencia Sports Medicine & Rehabilitation and the transcribed testimonies of Ms. Gonzalez and Ms. Tatto. In addition, the Defendant’s assertion that the undersigned WCJ’s failure to find the billing records persuasive evidence to deny compensability necessarily should constitute evidence of fraudulent billing compelling him to report the provider under Labor Code § 3823(b) (9:12-14) is facetious on its face.

Therefore, for the reasons that were set forth above, there is insufficient evidence of considerable substantiality that constitutes reasonable grounds to disturb the undersigned WCJ’s factual determination that the decedent’s death was industrial.

RECOMMENDATION:

The undersigned WCJ respectfully recommends that the Defendant's petition for reconsideration dated April 15, 2021 be denied.

Date: April 16, 2021

**DAVID L. POLLAK
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**