

WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

KATIE Y. LAM, *Applicant*

vs.

**COUNTY OF ORANGE, permissibly self-insured, administered by SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

Adjudication Number: ADJ14808611

Santa Ana District Office

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

Applicant seeks reconsideration of the Findings and Award and Order (F&A) issued by the workers' compensation administrative law judge (WCJ) on July 6, 2022, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and during the course of employment (AOE/COE) to her “right foot, right ankle, right wrist, right hand, right elbow, low back including C6 radiculopathy, and left foot” and that applicant did not sustain injury AOE/COE to her neck.

Applicant contends that the reports from orthopedic qualified medical examiner (QME) Timothy K. Ross, M.D., are substantial evidence that she sustained injury to her cervical spine, that “if there is any confusion whether C6 radiculopathy is a neck injury” then the record should be further developed, and that she is entitled to an award of future medical treatment for her neck.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition for Reconsideration (Petition) be granted for the limited purpose of amending the NECK and LEFT FOOT portions of the Opinion on Decision to state: *The PQME does find a need for future medical treatment. Therefore applicant has carried her burden of proof she requires future medical care by a preponderance of evidence.* (Report, p. 12, italics in the original.)¹ We did not receive an Answer from defendant.

We have considered the allegations in the Petition and the contents of the Report. Based

¹ Statements in an Opinion on Decision are not findings of fact. (See Lab. Code § 5313; *Twentieth Century-Fox Film Corp. v. Workers' Comp. Appeals Bd.*, (1983) 41 Cal.App.3d 778 [48 Cal.Comp.Cases 275].) Therefore, it is the Findings of Fact that will be amended.

on our review of the record, and for the reasons discussed below, we will grant reconsideration and affirm the F&A, except that we will amend the F&A to find that applicant sustained injury AOE/COE to her cervical spine in the form of C6 radiculopathy (Findings of Fact 1 and 2).

BACKGROUND

Applicant claimed injury to her neck, right ankle, right foot, right elbow, right wrist, right hand, low back, and left foot, while employed by defendant as a deputy sheriff trainee on August 22, 2017.

QME Dr. Ross evaluated applicant on January 12, 2022. Dr. Ross examined applicant, took a history, and reviewed the medical record. The diagnoses included “Lumbar strain and mild right-sided C6 radiculopathy.” (App. Exh. 1, Dr. Ross, January 12, 2022, p. 18.)²

Dr. Ross noted that applicant complained of right ankle/foot, right wrist, right elbow, low back and radiating pain and paresthesias emanating from the right side of her cervical spine. (App. Exh. 1, p. 3.) The record review portion of his report included:

A March 13, 2021 electrodiagnostic study interpretation is reviewed: This describes a chronic right C6 radiculopathy. This is accompanied by pages of tabulations and graphical analyses.
(App. Exh. 1, p. 16 [record review].)

Dr. Ross later stated:

These records do in fact appear to depict the migration of her symptoms over time, to include her right wrist, right elbow, her contralateral left foot, her lower back and, via an EMG, a C6 radiculopathy. The various reports appear to infer that all of these conditions are industrially associated with the original specific injury claim, in association with an ambulatory imbalance and use of a handheld ambulatory assistive device. ... ¶ Taking all available information into consideration, I find it clear that Ms. Lam was in fact injured during the course of her employment on August 22, 2017, thus establishing industrial causation. Noting that she reports no prior history of injury to each of the currently symptomatic bodily regions, and absent any potential evidence to the contrary, it would appear that the totality of her current overall orthopedic condition is part and parcel to the original claim of August 22, 2017, specific to overcompensation, rather than a separate, CT claim.
(App. Exh. 1, p. 20.)

Regarding future medical treatment, Dr. Ross concluded:

² Cervical radiculopathy is defined as pinched or irritated nerve in the cervical spine (levels C1 – C7) causing pain, numbness, or weakness radiating into the chest or arm; it may also cause pain, weakness and numbness in the wrist and hand. (See Merriam-Webster Medical Dictionary; Mosby’s Medical Dictionary.)

With respect to her neck and back, at this time I do not find indication for any invasive course of treatment. It is hoped that, should her extremity conditions improve, her neck and back would also improve spontaneously, and/or via involvement of some extent of physical therapy.

(App. Exh. 1, p. 21.)

In his May 27, 2022 supplemental report, Dr. Ross addressed the issue of causation as follows:

It is recalled that my single evaluation of Ms. Lam took place well over three and a half years post-injury, and that prior to the August 22, 2017 incident there is no historical information that specific treatment was being sought for any of these same bodily regions. I therefore continue to find that industrial causation has been established to each of these bodily regions, but that, considering at least some degree of existing pathology (i.e. a prior bunion, perhaps selected regions of degeneration on diagnostic test, etc.) may [sic] ultimately necessitate consideration of apportionment when she attains maximum medical improvement.

(App. Exh. 2, Dr. Ross, May 27, 2022, p. 5.)

The parties proceeded to an Expedited Hearing on June 9, 2022. They stipulated that applicant had sustained injury AOE/COE to her “right foot, right ankle, right wrist, right hand, right elbow, and low back.” (Minutes of Hearing and Summary of Evidence (MOH/SOE), June 9, 2022, p. 2.) The issues submitted for decision were, “Parts of body injured: Neck and left foot” and “Need for medical treatment for neck and left foot.” (MOH/SOE, p. 2.)

DISCUSSION

When a physician’s report is well-reasoned, is based on an adequate history and examination, and discloses the underlying basis for the opinion, the report is substantial evidence. (*Granado v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

As noted above, after examining applicant, taking a history, and reviewing the medical record he was provided, including various diagnostics, Dr. Ross concluded that applicant sustained injury “during the course of her employment on August 22, 2017” and absent any evidence to the contrary, “the totality of her current overall orthopedic condition” was the result of the original specific injury, including the use of a handheld ambulatory assistive device due to her “ambulatory imbalance.” (App. Exh. 1, p. 20.)

An injury is a compensable consequence of a prior injury when the subsequent injury is

the direct and natural consequence of an original industrial injury; the subsequent injury is considered to relate back to the original injury (*Southern California Rapid Transit District, Inc. v. Workers' Comp. Appeals Bd. (Weitzman)* (1979) 23 Cal.3d 158 [44 Cal.Comp.Cases 107]; *Rodgers v. Workers' Comp. Appeals Bd.* (1985) 168 Cal.App.3d 567 [50 Cal.Comp.Cases 299].)

Here, Dr. Ross repeatedly indicated that applicant's orthopedic symptoms, including the C6 radiculopathy, were caused by the original injury, or were a consequence of that injury. Having reviewed the trial record, including applicant's deposition testimony that her treating doctor told her she had a "pinched nerve" in her neck (see App. Exh. 3, pp. 20 – 21, September 9, 2021, deposition transcript), we see no evidence in the record that contradicts or is otherwise inconsistent with Dr. Ross' opinions regarding the cause of applicant's orthopedic symptoms. Again, Dr. Ross examined applicant, took an accurate history, reviewed the medical record, and explained the basis for his conclusions. Thus, his reports constitute substantial evidence that, in addition to the body parts stipulated to by the parties, applicant sustained injury AOE/COE to her cervical spine (neck).

Accordingly, we grant reconsideration and affirm the F&A, except that we amend the F&A to find that applicant sustained injury AOE/COE to her cervical spine in the form of radiculopathy at the C6 vertebrae level.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Award and Order issued by the WCJ on July 6, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the July 6, 2022 Findings and Award and Order is **AFFIRMED**, except that it is **AMENDED** as follows:

FINDINGS OF FACT

* * *

1. Applicant, Katie Lamb, while employed on August 22, 2017, as a deputy sheriff trainee in Orange, California by the County of Orange Sherriff’s Department, sustained injury arising out of and during the course of employment, to her right ankle, right foot, right elbow, right wrist, right hand, low back, and left foot, and in the form of cervical radiculopathy.
2. Applicant sustained injury arising out of and during the course of employment to her cervical spine (neck) in the form of radiculopathy at the C6 cervical vertebrae level.

WORKERS’ COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 16, 2022

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

**KATIE LAM
WHITING, COTTER & HURLIMANN
WENDEROFF LAW GROUP**

TLH/pc

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