

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

ANTIONETTE FERRIS, *Applicant*

vs.

**STATE OF CALIFORNIA DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
*Legally Uninsured, Defendant***

**Adjudication Number: ADJ12765250
Sacramento District Office**

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

Applicant seeks reconsideration of a workers' compensation administrative law judge (WCJ) Findings and Order of July 20, 2021, wherein it was found that, while employed during a cumulative period ending on November 14, 2019, applicant "did not sustain injury arising out of and in the course of employment" The WCJ thus ordered that applicant take nothing by way of her claim. In this matter, applicant claims industrial injury to her psyche, legs, nervous system, teeth and in the form of headaches, although the only medical-legal reports in the evidentiary record were prepared by psychologists panel qualified medical evaluator (PQME) Stephen E. Francis, Ph.D. and treating physician Jessica Rowe, Psy.D.

Applicant contends that the WCJ erred in finding no industrial injury, arguing that the WCJ should have relied upon the reporting of treating psychologist Dr. Rowe rather than PQME Dr. Francis, and arguing that further development of the record should have been allowed regarding the complaints of physical injury. We note that the references to the evidentiary record in applicant's Petition do not specify the relevant page numbers as required by Appeals Board Rule 10945(b)(2)(D) (Cal. Code Regs., tit. 8, § 10945, subd. (b)(2)(D).) Applicant's counsel is cautioned to follow Appeals Board rules and regulations in future proceedings. We have received an Answer, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will affirm the finding of no industrial injury to the psyche, for the reasons stated in the Report, as quoted below. However, we will grant reconsideration and amend the Findings and Order to defer the issue of body parts other than the psyche.

In the Report, the WCJ discusses both Dr. Francis's September 23, 2020 report and Dr. Rowe's July 5, 2021 report in depth (Report at pp. 2-4) and concludes that Dr. Francis's report was "better reasoned and more persuasive." (Report at p. 4.) As stated in the Report, "At trial, Applicant offered reports by the treating physician Dr. Jessica Rowe however, the opinions of Dr. Rowe are less persuasive, contain no record review, appear self-serving, and consider an inadequate history. The QME Report by Dr. Francis, upon which the findings and opinion are based, is substantial medical evidence and is better reasoned and more persuasive." (Report at p. 2.) The relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. (*Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 639 [35 Cal.Comp.Cases 16].) The WCJ is empowered to choose among conflicting medical reports and rely on those deemed most persuasive. (*Jones v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 476, 479 [33 Cal.Comp.Cases 221].) We note that in our own review of the record, Dr. Rowe did not fully discuss the contribution of applicant's father's death to her psychological profile. Dr. Francis had taken a history that applicant was her father's caretaker (September 23, 2020 report at p. 5) and that her restless leg syndrome returned when her father died (September 23, 2020 report at p. 8, 21). Additionally, while Dr. Rowe's own psychological testing revealed that applicant "easily becomes quite anxious" (July 5, 2021 report at p. 5) and is "overly sensitive" (July 5, 2021 report at pp. 7), she does not adequately discuss whether these psychological traits contributed to the alleged injury. The requirement that *actual* events of employment cause psychiatric injury, means that there must be "objective evidence of harassment, persecution, or other basis for the alleged psychiatric injury." (*Verga v. Workers' Comp. Appeals Bd.* (2008) 159 Cal.App.4th 174, 186 [73 Cal.Comp.Cases 63].)

We thus affirm the finding of no industrial injury to the psyche. However, Dr. Francis states that while applicant had preexisting restless leg syndrome, applicant reported that it was exacerbated by work events. (September 23, 2020 report at p. 21.) Additionally, applicant reported the onset of chronic migraine headaches coinciding with her claimed cumulative injury period. (September 23, 2020 report at p. 21.) We recognize that "[t]he applicant for workers' compensation benefits has the burden of establishing the 'reasonable probability of industrial

causation’” (*LaTourette v. Workers’ Comp. Appeals Bd.* (1998) 17 Cal.App.4th 644, 650 [63 Cal.Comp.Cases 253] citing *McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]). It was thus applicant’s burden to procure and introduce evidence of industrial causation of her claimed physical injuries. Nevertheless, the WCAB has a constitutional mandate to ensure “substantial justice in all cases.” (*Kuykendall v. Workers’ Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) In accordance with that mandate, “it is well established that the WCJ or the Board may not leave undeveloped matters” within its acquired specialized knowledge. (*Id.* at p. 404.) We therefore grant reconsideration and amend the Findings and Order to defer the issue of injuries other than to the psyche, so that the applicant be afforded an opportunity to develop the medical record on these claims.

We note that in the Report, the WCJ writes, “any physical manifestations of physical injury are nonindustrial” because the psyche injury was found noncompensable. However, this heightened causation standard of Labor Code section 3203.8 applicable to psyche injuries does not apply to physical injuries, even if the injuries were caused by emotional stress. (*Verizon/GTE v. Workers’ Comp. Appeals Bd. (Garth)* (2002) 67 Cal.Comp.Cases 856, 857 [writ den.]; *May Co. Department Stores v. Workers’ Comp. Appeals Bd. (Hull)* (2001) 66 Cal.Comp.Cases 1378, 1380 [writ den.]; *City of Cypress v. Workers’ Comp. Appeals Bd. (Spernak)* (1996) 61 Cal.Comp.Cases 612, 613 [writ den.].) The relevant inquiry in a claim for physical injury, such as a claim for injury in the form of headaches or restless leg syndrome, is whether the work-related stress is a contributing cause to the applicant’s injury. (*McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 418 [33 Cal.Comp.Cases 660]; *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].)

We incorporate the following discussion from the WCJ’s Report in affirming the finding of no industrial injury to the psyche. We have edited out the sentence, “As such any physical manifestations of the psychological injury are nonindustrial as well” (Report at p. 2), since as discussed *ante*, this is incorrect.

At trial, Applicant offered reports by the treating physician Dr. Jessica Rowe however, the opinions of Dr. Rowe are less persuasive, contain no record review, appear self-serving, and consider an inadequate history. The QME Report by Dr. Francis, upon which the findings and opinion are based, is substantial medical evidence and is better reasoned and more persuasive. Dr. Francis found 70% of the psychological injury due to non-industrial factors which does not meet the threshold.

The employee has the burden to prove the claim for workers' compensation benefits. *Hercules Powder Co. v. IAC* (1933) 131 Cal. App. 587. In order to prove psychiatric injury is compensable, Labor Code section 3208.3(b)(1) provides that "an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury." This means the work-related cause has to be greater than 50% of all the causal factors. *Department of Corrections v. WCAB (Garcia)* (1999) 64 Cal. Comp. Cases 1356.

At trial, Applicant's testimony included the following: She received excessive micromanaging and they walked past her office 40 times a day, hovered over her, and said she was on her personal cell phone excessively but she was not. She was doing the work of two people with the help of an intern on certain days and then they took away her work. They would walk into her office talking which lead to mistakes. She passed probation and then two days later they took all her work away and she had a panic attack. She was taken off work by Dr. Beach and then went on a prescheduled vacation and then she was taken off work by Dr. Nguyen. She complained of restless leg syndrome, panic attacks, teeth grinding, confusion, short-term memory loss, stomach cramps, and weight gain and was told by Dr. Nguyen that stress caused her symptoms. She saw Dr. Rowe for treatment and returned in order to get the report. Applicant did not have the funds but Dr. Rowe decided to provide an evaluation and report based on their financial agreement. She still does not have the funds and has not paid for the report yet.

Applicant saw psychologist Dr. Francis on September 17, 2020 for a QME evaluation which included an interview with Applicant, a record review, mental status exam, behavioral observation, and psychological testing. In his report, Dr. Francis provided a history of the injury from Applicant as follows: Applicant reported she was doing the work for two people without help. She applied for the accounting officer specialist position and was written up the next day. Ms. Atkinson started walking pas[t] Applicant's desk 24 to 48 times per day and said Applicant was using her phone excessively. Applicant passed probation on November 12, 2019 and then experienced a panic attack on November 14, 2019 when she went to her office and all of her work was gone. (Exhibit AA.)

Dr. Francis indicated that Applicant reported restless leg syndrome that started five years earlier, was intermittent, and varied with stress. Dr. Francis indicated that Applicant reported migraines since her father's death. Dr. Francis opined that the migraines or tension headaches did not seem to have been exacerbated by work stress based on the time frame. Dr. Francis indicated that Applicant acknowledged past anxiety which he found more of a character feature than situational anxiety. Dr. Francis opined that Applicant appeared well organized and able to keep track of her thought process as she looked through her documents. Dr. Francis indicated that Applicant reported panic attacks with the

most severe panic attack on November 14, 2019. Dr. Francis opined that the psychological testing showed that Applicant over-endorsed somatic symptoms and that she has an elevated sense of persecution. Dr. Francis found Applicant to be an anxious individual whose anxiety preceded the workers' compensation claim. Dr. Francis diagnosed Applicant with Generalized Anxiety Disorder based on his record review, psychological testing, and diagnostic criteria. Dr. Francis found 70% of the psychological injury of Generalized Anxiety Disorder to be due to non-industrial factors and the remaining 30% to be due to the events of employment. Dr. Francis found Applicant's mood to be high strung and described her as having an overwhelming sense of injustice. Dr. Francis indicated that Applicant discussed the suicide of her former boyfriend. Applicant found his body on September 21, 2015 and received accusations from his family afterward. Dr. Francis indicated that Applicant discussed her father and brother being disabled by the age of 30 due to cauda equine syndrome, and her father succumbing to cancer in May 2019. (Exhibit AA.)

Applicant saw Dr. Rowe for a psychological evaluation on July 5, 2021 which included an interview and psychological testing. The report states "Patient was referred by lawyer to determine level of psychological complaints after enduring a work injury. This is also a countering report to that of Stephen Francis' report." Applicant complained of high anxiety, restless legs, depression, self-doubt, hopelessness, worthlessness, being withdrawn socially, lacking confidence in social settings, suffering from somatic symptoms of feelings of poor health, fatigue, gastrointestinal issues, difficulty concentrating, heart palpitations, sweating, tearfulness, having difficulty attending to tasks, and being unable to return to work due to depression and anxiety. Dr. Rowe indicated that Applicant's former boyfriend committed suicide in 2015, she found him dead, and his family harassed her and blamed her for his death. Applicant began working for ABC in November 2018. Dr. Rowe indicated that Applicant's brother and father developed caudal equine syndrome and her father died of cancer in May 2019. She applied for a promotion and was ranked higher but another individual was hired due to politics. She was disciplined for using her phone too much when she applied for the promotion. She was given extra duties and was severely micromanaged. Her supervisor and other employees would pass by her office every 40 minutes and walk into her office pretending to look for something. She filed a complaint after she passed probation on November 12, 2019. She arrived at work on November 14, 2019 to find all her work was removed from her office leaving her confused and with no work to do. She felt panicked and cried. She told her supervisor that she needed the rest of the day off and her supervisor smiled. She was taken off work, prescribed an antidepressant and medication for restless leg syndrome. She was unable to return to work. (Applicant Exhibit 15.)

Dr. Rowe indicated that the psychological test results showed Applicant's attitude was unrealistically moral. Dr. Rowe explained that may decrease validity and suggests that Applicant has difficulty disclosing personal

information. Dr. Rowe indicated that the data suggested Applicant may be reporting more psychological symptoms than really exist. However, Dr. Rowe found that the employer caused over 50% of the injury. Dr. Rowe found that Applicant had put her former boyfriend's suicide and her father's death behind her. Dr. Rowe found 67% industrial of which 21 % was from her supervisor walking past her office 40 times a day and micromanaging, 16% was from being assigned the work of two people, 20% was from the supervisor clearing her desk and refusing to give her work, 10% was from the supervisor disclosing that Applicant applied for the promotion, and the remaining 33% was due to non-industrial prior traumas. (Applicant Exhibit 15.)

The report by Dr. Rowe indicates that Applicant does not have a legal history. (Applicant Exhibit 15.) However, during the trial, Applicant testified that she sued someone for a hit and run in 2007. She testified that the police investigated the case and she won but did not receive payment. She testified she was involved in a lawsuit regarding a "financial thing" over 10 years ago, that was dismissed. She testified that she filed bankruptcy 10 years ago and again in 2016. Furthermore, the report by Dr. Rowe contains no record review.

Based upon the QME report of Dr. Francis, which is better reasoned and more persuasive, it is found that Applicant did not sustain an injury arising out of and occurring in the course of employment during the period of July 13, 2019 through November 14, 2019.

(Report at pp. 2-5.)

For the foregoing reasons,

IT IS ORDERED that Applicant's Petition for Reconsideration of the Findings and Order of July 20, 2021 is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order of July 20, 2021 is **AMENDED** as follows:

FINDINGS OF FACT

1. Applicant Antionette Ferris, while employed during the period July 13, 2019 through November 14, 2019 as an accounting trainee, occupational group number 111, at Sacramento California, by the State of California Department of Alcoholic Beverage Control did not sustain industrial injury to the psyche.
2. The issue of industrial injury to the legs, nervous system, teeth, and in the forms of restless leg syndrome and headaches is deferred, with jurisdiction reserved.
3. The report by Dr. Rowe dated July 5, 2021 is admissible.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 12, 2021

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

**ANTIONETTE FERRIS
SHATFORD LAW
STATE COMPENSATION INSURANCE FUND**

DW/oo

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