

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

MARTHA CONTRERAS, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT, permissibly self-insured,
administered by SEDGWICK CLAIMS SERVICES, *Defendants***

**Adjudication Number: ADJ10024395
Santa Ana District Office**

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

Defendant seeks reconsideration of the July 27, 2021 Findings, Award and Order wherein the workers' compensation administrative law judge (WCJ) found applicant sustained an industrial injury to her psyche while employed as a school principal during the period February 1, 2012 through October 12, 2016. The WCJ found that applicant's average weekly earnings were \$1,961.80. The WCJ also found that the record required further development on the issue of causation of multiple body parts.

Defendant contends that the WCJ erred in calculating applicant's average weekly wage. Defendant also contends that the WCJ erred in ordering further development of the medical record rather than setting the case for trial.

The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be granted to allow the WCJ to consider additional evidence regarding applicant's average weekly wage.

We have considered the Petition for Reconsideration and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed by the WCJ in his Report, which we adopt and incorporate by reference and for the reasons discussed below, we will grant reconsideration and amend the Findings, Award, and Order to defer the issue of applicant's average weekly earnings. We will otherwise affirm the WCJ's decision.

The WCJ relied on defendant's wage statement for the calendar year 2014 to calculate applicant's average weekly earnings. Defendant calculated the earnings by dividing the earnings

for the year by 52 weeks. The WCJ noted that the wage records did not include wages for the month of November and divided the sum of wages earned in 2014 by 47.57. (Report, p. 4.) However, Exhibit B only includes 10 months of wages (it is missing both September and November).

In general, average weekly wages are calculated by multiplying the number of days worked per week by the average daily wage. (Cal. Lab., Code §4453(c)(1).) In this case, applicant was paid monthly. Typically, determining an average weekly wage based on a monthly paystub requires that the sum of applicant's wages be divided by the number days in the months included in the wage statement. The daily rate should be multiplied by 7. If special circumstances apply that would cause this approach to be inaccurate, the special circumstances should be documented and another approach may be used. Therefore, as recommended by the WCJ in his Report, we will grant reconsideration and defer the issue of applicant's average weekly wage.

Turning to defendant's contention that the WCJ erred by ordering the record be further developed, we note that this order is a non-final order. Accordingly, we will evaluate this contention under the removal standard. Removal is an extraordinary remedy rarely exercised by the Appeals Board. (*Cortez v. Workers' Comp. Appeals Bd.* (2006) 136 Cal.App.4th 596, 599, fn. 5 [71 Cal.Comp.Cases 155]; *Kleemann v. Workers' Comp. Appeals Bd.* (2005) 127 Cal.App.4th 274, 280, fn. 2 [70 Cal.Comp.Cases 133].) The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, § 10955(a); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, § 10955(a).)

In this case, defendant has not demonstrated that further development of the medical record will cause irreparable harm. Furthermore, because all decisions by the WCAB must be based on substantial evidence, further development of the record is appropriate in order to reach an expeditious and just resolution in this case.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 27 2021 Findings, Award and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration that the July 27, 2021 Findings, Award, and Order is **AFFIRMED, EXCEPT** Finding of Fact No. 3 is **AMENDED** as follows:

FINDINGS OF FACT

3. The issue of applicant's average weekly wage is deferred with jurisdiction reserved at the trial level.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 11, 2021

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

**ALVANDI LAW GROUP
MARTHA CONTRERAS
TOBIN LUCKS**

MWH/oo

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION JUDGE
ON PETITION FOR RECONSIDERATION

I

INTRODUCTION

1. Applicant's occupation : School Principal
- Applicant's Age : 47
- Date of Injury : February 1, 2012 through October 12, 2016
- Parts of Body Injured : psyche, headaches, neurological with dizziness and vertigo, internal with gastrointestinal issues, hypertension, and weight gain.
- Manner in which it occurred : Los Angeles Unified School District
2. Identity of Petitioner : Defendant Los Angeles Unified School District
- Timeliness : Petition is timely
- Verification : Petition is verified
3. Date of Findings and Order : July 27, 2021
4. Petitioner contends that the WCJ erred in finding that :
 - a) The applicant's average weekly earnings were \$1,961.80;
 - b) Ordering development of the record on the issue of causation of the applicant's alleged injuries of headaches, neurological with dizziness and vertigo, internal with gastrointestinal issues, hypertension, and weight gain.

II FACTS

The applicant Martha Contreras, while employed by the Los Angeles Unified School District in Los Angeles, California, as a school principal, during the period of February 1, 2012 through October 12, 2016, sustained an injury arising out of and in the course of employment to her psyche, and claims injury in the form of headaches, neurological with dizziness and vertigo, internal with gastrointestinal issues, hypertension, and weight gain.

The applicant Martha Contreras was the Mira Monte Elementary School principal from July 1, 2012 to December 12, 2015. Her job at Mira Monte Elementary School was to reopen the school after the child abuse and sexual assault scandal and to make the school operational and functional.¹

The scandal in question occurred in January of 2012 when it was revealed that a teacher was taking inappropriate pictures of the students, including blindfolding the students and taking pictures with things on them, including bugs. The teacher was also noted to be placing his semen in cookies and feeding the cookies to the students.²

She was not personally named in the lawsuits concerning the scandal but was named in other lawsuits occurring afterward. In her time as principal, there were nine lawsuits, eight of which she was named personally.

In August of 2013, when she arrived at her office, two large knives were sitting outside her window, so she could not miss seeing them.³

The applicant required an escort to and from her car regularly.⁴

At times pornographic material was laid out all across the front of the entrance to the school, and someone painted a very graphic and detailed penis on the front of the walkway to the school and labeled it rapist school.⁵

The applicant was required to do interviews regularly with the media. In the first three days that the applicant worked as a principal, she had 13 TV, radio, and newspapers interviews.

¹ MOH/SOE February 10, 2021 Page 4, Lines 21 to 24

² MOH/SOE February 10, 2021 Page 4, Lines 24 & 25 and Page 5 Lines 1 & 2

³ MOH/SOE February 10, 2021 Page 6, Lines 3 & 4

⁴ MOH/SOE February 10, 2021 Page 6, Line 10

⁵ MOH/SOE February 10, 2021 Page 6, Lines 10 to 13

Many days after work, the applicant was required to go to the attorneys' offices to fill out the paperwork concerning the multiple lawsuits filed against the school and herself.

The applicant filed an application on May 8, 2015, alleging injury to her psych, stress, digestive and excretory system, and nervous system.⁶

The matter proceeded to trial on body parts injured, earnings, temporary disability, permanent disability, apportionment, need for further medical treatment, and attorney fees.

The trial was completed, and the matter was submitted for determination on April 29, 2021. On July 27, 2021, the Undersigned Judge issued a Findings and Award, finding that applicant had sustained an injury arising out of and during the course of employment to her psych, had an average weekly wage of \$1,961.80, needed future medical care to cure or relieve the effects of the injuries found and ordered the development of the record on the issue of causation for the alleged injuries of headaches, neurological with dizziness and vertigo, internal with gastrointestinal issues, hypertension, and weight gain.

The defendant Los Angeles Unified School District, filed a Petition for Reconsideration on August 12, 2021, asserting that the Undersigned Judge miscalculated the applicant's average weekly earning and erred in ordering development of the record on the issue of causation.

III

DISCUSSION

Average Weekly Earning

The undersigned judge determined that the applicant's average weekly earnings were \$1,961.80. The defendant asserts that this calculation is in error and that the applicant's average weekly earnings were \$1,794.30.

The undersigned judge based his calculations on the defendant's wage records, which he determined was the more accurate record of the applicant's wages.

Based on these records, the applicant earned \$93,325.98 from January 1, 2014 to December 31, 2014. However, like the defendant, the undersigned Judge noted that the records did not include the month of November. As such, the undersigned Judge deducted the days of November from the period being calculated. This left the weeks worked at 47.57. When \$93,325.98 is divided by 47.57 weeks, the amount is \$1,961.80.

⁶ APPLICATION FOR ADJUDICATION EAMS Doc ID: 56982654

The defendant is not asserting that the applicant did not work in November, stating that the wage statement did not list earnings for the period of November 1, 2014, to November 30, 2014, for an unknown reason. Nevertheless, the defendant asserts that the period of November 1, 2014 to November 30, 2014, should be included in the calculation.

No evidence was submitted or testimony provided that the applicant had no earnings in the month of November 2014. The wage records submitted did not cover a fifty-two-week period.

Absent evidence establishing what the applicant earned no wages in November of 2014, the undersigned Judge agrees that the finding of the applicant's average weekly wage as \$1,961.80 is unsupported by the evidence. In addition, the defendant's assertion that the applicant's average weekly wage is \$1,794.30 is based on the same incomplete wage record and is not supported by the evidence.

Based on the above, the undersigned Judge recommends that the defendant's petition for reconsideration be granted and the matter be returned to the trial court to develop the record on the issue of the applicant's average weekly earnings.

Development of the Record

The defendant asserts three basis for its assertion that the undersigned Judge exceeded his authority in ordering development of the record on the issue of causation of the applicant's internal claims.

The first is that California Labor Code §5502(d)(3) is bar to the record being developed on the issue of causation; second that the record does not support the use of California Labor Code sections 5701 and 5906 to develop the records; and third that the medical evidence produced is substantial and does not require development.

California Labor Code §5502(d)(3) provides that "discovery shall close on the date of the Mandatory Settlement Conference. Evidence not disclosed or obtained after that 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 conference."

The defendant further asserts that the applicant's attorney did not arrange for cross-examination of panel internal medicine Dr. Sachs, so none was ever conducted. The defendant states that the applicant should not now be allowed to use the Trial Judge's discretion to develop the record to obtain evidence.

However, California Labor Code §5502(d)(3) does not bar the record being developed when further development of the record is necessary to accomplish substantial justice by obtaining additional evidence.

Furthermore, the WCJ has a duty to develop an adequate record and may not leave undeveloped matters which he has identified as requiring further evidence.⁷

The Court of Appeals in the matter of *Tyler v. Workers' Comp. Appeals Bd.*, 56 Cal. App. 4th 389 found that California Labor Code sections 5701 and 5906 authorize the WCJ and WCAB to obtain additional evidence, including medical, at any time during the proceedings.

However, before directing augmentation of the medical record, the WCJ must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent, or incomplete.⁸

The parties utilized Dr. Michael Sachs D.O. as the panel qualified medical examiner in internal medicine.

Dr. Sachs initially evaluated the applicant on January 19, 2019. At the time of the evaluation, Dr. Sachs diagnosed the applicant with a history of bowel perforation and subsequent surgery assumed to be diverticulitis, chronic obesity with two bariatric interventional surgeries, essential hypertension, and a history of constipation.⁹

Dr. Sachs issued a supplemental report dated December 26, 2019 that chronicled his review of records. After reviewing the records, Dr. Sachs stated that it was not probable that any of the conditions he diagnosed, including diverticulitis, hypertension, and gallbladder disease, were related to any occupational activity, noting that the applicant liked her work getting good reviews and got along with everyone.¹⁰

At the time of trial, the applicant extensively talked about the events and the stress she experienced while working as the Mira Monte Elementary School principal.

In addition, the parties submitted the medical reporting of her primary treating physician Barry A. Halote, Ph.D., who diagnosed the applicant with Major Depressive and Panic Disorders.¹¹

⁷ Kuykendall v. Workers' Comp. Appeals Bd., 79 Cal. App. 4th 396, 401, 94 Cal. Rptr. 2d 130, 133, 2000 Cal. App. LEXIS 222, 65 Cal. Comp. Cases 264,

⁸ Tyler v. Workers' Comp. Appeals Bd., 56 Cal. App. 4th 389

⁹ Joint Exhibit Y : Medical report of Dr. Michael Sachs dated January 19, 2019, Page 19

¹⁰ Joint Exhibit Y : Medical report of Dr. Michael Sachs dated January 19, 2019, Page 20

¹¹ Joint Exhibit W Medical report of Dr. Barry Halote dated February 2, 2017, Page 17

The undersigned judge found the applicant to be a credible witness. Based on her testimony and the opinions of Dr. Halote, the applicant was under a tremendous amount of stress while working as the principal of Mira Monte Elementary School, despite liking her work and getting good reviews.

Having found that the applicant was under a tremendous amount of stress, the undersigned Judge, while reviewing Dr. Sachs's reporting, found that Dr. Sachs underappreciated the level of stress experienced by the applicant while working at Mira Monte Elementary School.

As such, the undersigned Judge determined that Dr. Sachs' opinions were deficient, as his description of the applicant's work environment and stress was inaccurate, incomplete, and inconsistent with the findings of the undersigned Judge.

Having found Dr. Sachs' opinions were deficient, the undersigned Judge determined that his reporting was unsubstantial evidence as to the causation of the applicant's internal complaints.

Where the WCJ determines after trial or submission of a case for decision that the medical record requires further development, the preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case.

Only if the supplemental opinions of the previous reporting physicians do not or cannot cure the need for development of the medical record should other physicians be considered.

The undersigned judge found nothing in the reporting of Dr. Sachs to suggest that upon being provided with the Judge's findings, he would not be able to cure the defect in his reporting and provide a more detailed and reasoned opinion as to why the applicant's work stress did or did not cause injury to the applicant in the form of headaches, neurological with dizziness and vertigo, internal with gastrointestinal issues, hypertension, and weight gain, or aggravate, or exacerbate, a pre-existing condition.

Based on the above, the undersigned Judge's finding that Dr. Sachs's opinions were deficient and that his reporting was unsubstantial evidence to support a finding of either industrial or non-industrial causation is supported by the record and was not in error.

Furthermore, the undersigned Judge's order to develop the record is consistent with the holding in *McDuffie v. Los Angeles County Metro. Transit Auth.*, 67 Cal. Comp. Cases 138.

IV
RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the defendant's petition for reconsideration be granted in part, on the issue of average weekly earnings and that the issue be remanded back to the trial court for development of the record.

Furthermore, for the reasons stated above, it is respectfully recommended that the defendant's petition for reconsideration be denied regarding the Judge's findings that Dr. Sachs's reports are unsubstantial evidence and that the record needs to be developed on the issue of causation of the applicant internal injuries.

DATE: September 3, 2021

Oliver Cathey
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE