

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

**CARLOS MARTINEZ, *Applicant***

**vs.**

**MOOG, INC.;**  
**LIBERTY MUTUAL INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ578425 (VNO0544366);  
ADJ1387102 (VNO0492863); ADJ2345226 (VNO0544364)  
Van Nuys District Office**

**OPINION AND ORDER  
DENYING PETITIONS FOR  
RECONSIDERATION**

We have considered the allegations of the Petitions 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.

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 Petitions for Reconsideration are **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ NATALIE PALUGYAI, COMMISSIONER**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**June 16, 2023**

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

**CARLOS MARTINEZ  
ELIZABETH MARTINEZ  
LAW OFFICES OF KIRK & MYERS  
LAW OFFICES OF SAVIN & BURSK**

**PAG/abs**

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

**JOINT REPORT AND RECOMMENDATION  
ON PETITION FOR RECONSIDERATION**

**INTRODUCTION**

Applicant filed a timely, verified Petition for Reconsideration, dated April 17, 2023, (EAMS Doc ID 45976445), specifically to ADJ1387102. Applicant filed a second timely, verified Petition for Reconsideration, dated April 20, 2023, regarding ADJ578425 (MF) (EAMS Doc ID 46042849) with respect to the Opinion on Decision and Findings of Fact and Order, dated March 28, 2023. This matter came on for trial on January 5, 2023, with exhibits taken into evidence; no testimony was elicited by either party.

**FACTUAL BACKGROUND**

In ADJ578425 (MF) Mr. Martinez alleged a continuous trauma injury 8/11/1997 through 6/2/2006 as a Senior Test Technician while employed by Moog, Inc. Applicant claims to have sustained injury arising out of and in the course of employment to the head, heart, cardiovascular system, neurological, aggravation of diabetes, hypertension, and psyche. The treating physician, Dr. Stuart Kramer was in dispute.

In ADJ1387102, Mr. Martinez claims to have sustained injury arising out of and in the course of employment to the right index finger and right hand 3/28/2003.

In ADJ2345226, which appears not to be in dispute, but for completeness' sake shall be addressed, Applicant claimed to have sustained injury arising out of and in the course of employment to the head, heart, cardiovascular system, neurological system, aggravation of diabetes and hypertension, and psyche on 6/02/2006. This is redundant of the CT claim and was the date that Mr. Martinez suffered a catastrophe stroke.

**DISCUSSION**

In ADJ1387102, Mr. Martinez claims to have sustained an injury arising out of and in the course of employment to the right index finger and right hand 3/28/2003. The issues in Applicant s Petition for Reconsideration included:

1. Temporary disability, with the employee claiming the period 3/28/03 through 12/30/03.
2. Need for further medical treatment.
3. Attorney's fees.

Applicant's Exhibit 27 was to be used exclusively for this date of injury. In their pleadings Applicant alleges:

“Applicant industrial injury occurred on 03/28/03, and the applicant had approved right hand/finger surgery by PTP Dr. Younai on 04/04/03 (Applicant's Exhibit 27; page 71). The applicant was declared permanent and stationary by Dr. Younai on 12/30/03 (Applicant's Exhibit 27; page 28). Petitioner alleges that the applicant is entitled to temporary disability indemnity from 3/28/2003 through 12/30/03 based on this medical evidence. (PFR. p. 2.)

Between 3/28/2003 through 12/30/2003, no record in this exhibit state that Applicant is temporarily disabled. Most of the records are generated by Dr. Jeff Trisch, D.C., who was referred by Dr. Younai for rehabilitation post-surgery to Applicant right hand. In all of Dr. Trisch's reports he states 'work status' per primary physician (Younai.)

For example, date of Examination: 3/29/04 Diagnosis: Fracture 2<sup>nd</sup> Metacarpal - right Post Surgical hand, work status per primary physician. (pp. 20-21.)

US HEALTHWORKS 3/31/2003 no lifting R. hand. (p. 67.)

US HEALTHWORKS 4/29/2003 continue to work with no restrictions. (p. 65.)

US HEALTHWORKS 5/27/2003 continue to work with no restrictions. (p. 64.)

US HEALTHWORKS 7/8/2003 RTW with no restriction. (p. 63.)

US HEALTHWORKS 9/9/2003 continue to work with no restriction. (p. 44.)

Pursuant to the STD Records of Sean Younai, M.D., dated 10/21/2004. (Exhibit 27):

Dr. Younai opined that Mr. Martinez required surgical repair of a fracture of the right 2<sup>nd</sup> MCP joint in his P&S report of 12/30/2003. Causation was industrial and may return to U&C. No future medical care is required and Mr. Martinez. regained pre-injury function.

Therefore, Applicant has failed to meet their burden of proof regarding TD, Future Medical Care and Attorney fees.

ADJ578425 (MF)

In ADJ578425 (MF) Mr. Martinez alleged a continuous trauma injury 8/11/1997 through 6/2/2006 as a Senior Test Technician while employed by Moog, Inc. Applicant claims to have sustained injury arising out of and in the course of employment to the head, heart, cardiovascular system, neurological, aggravation of diabetes, hypertension, and psyche. The treating physician, Dr. Stuart Kramer was in dispute.

## PETITIONER CONTENDS

### THE APPLICANT'S HYPERTENSION WAS INDUSTRIALLY AGGRAVATED

The thrust of applicant's argument is PTP Dr. Stuart Kramer indicated on page 27 of his report dated 3/12/09 (Applicant's Exhibit 1) that "Given the great amount of stress that Mr. Martinez was under on an ongoing cumulative basis throughout his employment with Moog, Inc. described in detail above, along with the history provided by his wife that preexisting hypertension was 'pretty well controlled' at the start of his employment with Moog, Inc. but required more medication to subsequently control it, certainly it would be reasonable to conclude that Mr. Martinez's industrially aggravated hypertension was the cause of his hemorrhagic cerebrovascular accident. (PFR, p. 2.)

The undersigned found the very basis of Dr. Kramer's opinion was tainted by misinformation, as noted below.

Dr. Kramer issued a report dated 11/20/2020, (Exhibit 4) which describes his methodology in determining causation in this case.

"To begin with, I believe it is very important to realize relative to the causation Mr. Martinez's stroke on 6/2/06 that it is not about time of occurrence, but rather industrially caused risk factors due to excessive cumulative stress exposure, particularly hypertension. As I indicated at the bottom of page 26 of my initial report of 6/24/20, ...there can be little doubt that the precipitating factor was hypertension since it was hemorrhagic in nature and since the overwhelming cause of hemorrhagic stroke is hypertension."

*"Consequently, to determine Mr. Martinez's hypertension status, ideally throughout the course of his employment with Moog, Inc. but certainly in the several years prior to his cerebrovascular accident, it is critical to scrutinize his Kaiser primary care physician medical records. (Emphasis added.)*

"As I previously indicated, the critical timeframe in this case is years prior to the onset of Mr. Martinez's 6/2/06 cerebrovascular accident. Please recall that in this regard I found the Kaiser records to be wholly inadequate, stating on page 27 of my 3/12/09 report that, *"Regrettably though, two years' worth of very important medical records prior to, everything up to the cerebrovascular accident were missing, from June 2004 to June 2006, which, of course, means that the level of blood pressure control during that timeframe is unknown. (Emphasis added.)*

Records also missing are those prior to 2000, which means that the degree of control of both Mr. Martinez's hypertension and diabetes at the time he began working for Moog, Inc. in 1997, is also unknown. These include the very important records of Mr. Martinez's long standing pre-Kaiser primary care physician, Kevin Nishimori, M.D. *According to Mrs. Martinez, her husband's pre-existing diabetes was also under good control when he began working for Moog, Inc., but subsequently required more medication to control. Plus, once again, objective verification of this is not possible in the absence of all Kaiser Permanente primary care physician medical records (namely progress reports, as well as the complete medical records of Dr. Nishimori); and for still another time, near the bottom of 28 I stated, "... in order to be as objective as possible, it is still*

*important for me to receive the complete primary care physician records from Kaiser Permanente Medical Group and from Kevin Nishimori, M.D.” (Id. p.2) (Emphasis added.)*

In his subsequent report Treating Physician Report of Stuart Kramer, M.D., dated 10/23/2021, stated: I went on to state in the next paragraph that, “Given the great amount of stress that Mr. Martinez was under on an ongoing cumulative basis throughout his employment with Moog, Inc., described in detail above, along with the history provided by his wife that pre-existing hypertension was ‘pretty well controlled’ at the start of his employment with Moog, Inc., that required more medication to subsequently control it, certainly it would be reasonable to conclude that Mr. Martinez’s industrially-aggravated hypertension was the cause of his hemorrhagic cerebrovascular accident. *Regrettably though two years’ worth of very important medical records prior to, and leading up to, the cerebrovascular accident were missing – from June, 2004 to June, 2006 – which, of course, means that the level of blood pressure control during that timeframe is unknown.* (Exhibit 5, p. 2.) (Emphasis added.)

Regarding work stress, Mrs. Martinez stated, “*I used to go in with him on Saturdays or Sundays, whenever he was working overtime.*” This occurred maybe one time a month, “I would sit in his office waiting.” Her husband would “start at 10:00 AM or so. He would start the test and then about 1 or 1-1/2 hours later come back for about three hours.” Then they would go out for dinner and come back at about 7:00. They would then stay until her husband finished the test that he was running, which typically would be around 11:00 or 11:30 at night. (Id. p. 5) (Emphasis added.)

The fact that Mr. Martinez’s devastating cerebrovascular accident occurred while he was in a sex shop does not negate the significant stress he encountered over the years per his employment with Moog, based upon the information I have gleaned thus far, albeit without input from a co-worker. It continues to be my belief with reasonable medical probability that Mr. Martinez’s stroke was industrially related/caused. However, in carefully reviewing my initial report in the light of current Workers’ Compensation legislation, I believe some apportionment of causation is warranted because of Mr. Martinez’s pre-existing problem with anxiety (since 1973) as well as his pre-existing coronary artery disease and diabetes mellitus. Consequently, in accordance with Labor Codes 4663/4664 and Escobedo vs. Marshalls and CNA Insurance, with reasonable medical probability I apportion 25% of Mr. Martinez’s impairment to non-industrial causative factors and the remaining 75% to industrial causative factors. (Id. p. 7)

Dr. Kramer, in his report of 03/2/2009, *stated that he obtained Mr. Martinez’s medical history from his wife Mrs. Martinez., specifically about the amount of over overtime he worked up to 18 to 20 hours a week.* (Exhibit 1, p. 1.) Dr. Kramer reviewed medical records indicating in a medical report of 2/20/2002 that Mr. Martinez had a medical history of increased frequency of chest pain while walking less than one block over the past year. An abnormal EKG and a dilated left ventricle with ejection fraction of 61% was diagnosed in 11/21/2001. He subsequently had heart surgery consisting of a coronary artery bypass graft times 3 in 02/16/2002. Mr. Martinez was subsequently diagnosed with mild cardiomegaly in 5/10/2005. (Id. pp. 6-8.) No records were reviewed shedding any light on Mr. Martinez’ pre-2006 hypertension.

In Diagnostic Impressions, Dr. Kramer notes: “Hypertension diagnosed in about 1985, *by history, currently well-controlled.*” (Id. p. 26.) *He further note: “2 years of very important medical records prior to, and leading up to, the cerebrovascular accident, were missing - from June 2004 to June*

2006 - which, of course, means that the level of blood pressure control during that time-frame is unknown. (Id. p. 27.) (Emphasis added.)

Pursuant to the Deposition testimony of Elizabeth Martinez dated 12/17/2019, (Exhibit 16.):

Q. Let me ask you, your husband, did he have some type of preexisting condition in regard to hypertension prior to June 2nd, 2006?

A. Not that I remember.

Q. Do you recall that he was going to Kaiser in 2006?

A. Yes.

Q. Okay. So when he was going to Kaiser, was he going to Kaiser for any type of medical conditions that you know of?

A. I know he had diabetes.

Q. Any other conditions you know of other than diabetes?

A. High blood pressure.

Q. So he had high blood pressure and diabetes. Did he ever mention anything about hypertension?

A. He never told me what the doctors told him. (Id. pp. 9-10.)

Q. What did he tell you about his high blood pressure?

A. He really never told me. He just got his medication and took it. I didn't know the extent of his *condition*.

Q. Did he ever talk to you about what the doctors said in regard to his high blood pressure?

A. No. (Id. p. 12.)

Q. Do you have any idea why he would have driven after the assembly to the city of Oxnard?

A. No. (Id. p. 23.)

Q. Are you aware of your husband ever being arrested? (Id. p. 28.)

A. No.

Q. I don't know if your attorney already showed you or your attorney already told you that he was arrested for being with a prostitute.

A. No. (Id. p. 29.)

Note: Arrest Report of Carlos Martinez dated 5/16/1996. Arrested for being a client of a prostitute, lewd conduct. (Exhibit A.)

Q. And according to this, he was with a prostitute by the name of Cherry Lynn Leon.

A. I don't know.

Q. And if you want to read this, which is this is what the officers observed. It indicates that the officers observed that he was having oral sex, when they came up to the car, in his Lincoln.

A. I wouldn't know anything about that. (Id. p. 30.)

Q. This is a statement from the prostitute herself, and in the statement she mentioned that she recognized your husband, to confirm that it was him. Is this you with him?

A. Yes. (Id. pp. 30-31.)

Q. Okay. And here she indicates that she recognized this is the man by his picture. She also indicates that she recalls being paid by Mr. Martinez for sex at least 30 times.

Note: Affidavit of Cheryl Leon dated 6/2/2006. Regular customer 30 or more times. (Exhibit B.)

A. I wouldn't know about that.

Q. Many of the times that he was at work that you believed he was at work, you don't know that he was really at work; correct?

A. I mean, you tell your wife you go to work. Is she 100 percent sure that you're at work?

Q. That's what I am saying. No one knows. Right?

A. Exactly.

Q. So as far as you know, the only way you know when he was at work is what he told you; correct?

A. Correct. (Id. p. 31.)

Q. So if he was out doing whatever, going to Oxnard or being with a prostitute, you wouldn't know?

A. No. (Id. p. 32.)

Q. You earlier indicated in your statement that you believed he worked many hours; correct?

A. Yes.

Q. So based on what you heard today, do you agree that it's questionable if he really worked those hours that you thought he was working? ·

A. Yes. (Id. p. 35.)

Q. When you arrived at St. John's hospital, was Carlos there? (Id. p. 47.)

A. Yes.

Q. Was Carlos in a coma?

A. Yes.

Q. What did the doctor tell you about his medical condition?

A. *He just asked me if Carlos had had an argument or anything to elevate his blood pressure because he had had a stroke, massive stroke due -- and I believe he said an -- how do you call it? -aneurysm. (Id. p. 47.) (Emphasis added.)*

Q. When you answered your attorney about Carlos having to work long hours or weekends, that would be solely based on what Carlos told you; correct?

A. There were times that I went in with him to his company on Saturdays or Sundays and worked until late in the evenings with him.

Q. So how many times did you go in on the weekends?

A. A couple of times. Before the stroke, maybe twice.

Q. So on two different occasions you went in on Saturday or Sunday? ·

A. Yes. (Id. p. 53.)

Q. Other than those two times, any claim that he was working long hours or weekends, you wouldn't know other than what he told you; correct?

A. Exactly.

Q. And you wouldn't know whether or not he was going and doing something else for himself or going somewhere else other than working except for if he told you; correct?

A. Correct. (Id. p. 54.) (Emphasis added.)

In his deposition testimony, Leonard Lee testified as follows (Exhibit 15):

Q. Now over the years you became personal friends?

A. That is correct.

Q. How would you characterize your relationship with Mr. Martinez?

A. Best friends. (Id. p. 12.)

Q. During his years at Moog would you and he communicate about his employment?

A. Yes.



Q. Did he ever identify to you that he was under any type of stress during that period of employment? A. Yes, he did.

Q. And what did he identify as his stressors?

A. He was working an extraordinary amount of hours. At the same time I was working sixty hours a week, he was actually working more than I was. So he was working 60-plus, sometimes seventy, eighty hours at a stretch per week. (Id. p. 16.)

Note: Pursuant to Summary of Hours Worked Based on Paychecks and Personnel File, dated 9/30/2019, for the period of 6/2/2005 through 6/1/2006. (Exhibit 22.) Average hours worked per week equaled 46.76 hours.

Q. In general, did Carlos always seem to be worried about his job?

A. Yes.

Q. What would he say to you?

A. He would just tell me he was worried about unit failures and the fact that the jobs weren't going well, and that the home office wasn't happy about the way things were proceeding with the units that they were testing at that time. (Id. p. 32.)

Q. Were you aware of the fact that he had been diagnosed shortly after commencing employment with Moog with both diabetes and hypertension?

A. Yes.

Q. Did he ever discuss with you his hypertensive condition?

A. Yes.

Q. What did he say?

A. He said at times that he would feel odd and that's basically when he had found out he had hypertension when he went to the doctor because he wasn't feeling well. He felt it was aggravated by work and other issues that he was having.

Q. Now when he said it was aggravated by work, did he indicate specifically what he was referring to?

A. Both schedule pressures and interaction with his supervisor.

Q. Did he ever indicate to you in the last year of his employment at Moog whether his hypertension was under control with treatment?

A. No. No. I know he was under treatment but I don't know that it was ever really under control.

Q. Did he say it was out of control or that he was having problems keeping it in control? (Id. p. 35.)

A. He said he was having problems keeping it in control, 2 yes.

Q. What did he attribute that to? A. Overall stress between the job and home. (Id. p. 36.)

Q. You indicated that you're a friend of Carlos; correct?

A. Correct. (Id. p. 41.)

Q. Do you still consider you are a friend?

A. Yes.

Q. And would you do what you need to do to help him so he could win a Workers' Compensation claim? Objection.

Q. Let me ask you: Have you spoken to anyone in regards to this case about the applicant's claim or injury, Workers' Comp claim prior to today?

A. No.

Q. So you haven't spoken to his wife at all?

A. No.

Q. Did you ever discuss the fact that he has a Workers' Compensation injury?  
A. I knew he had one.  
Q. How did you know?  
A. Mr. Malter told me.  
Q. So you did speak to Mr. Malter about this case?  
A. Yes. (Id. p. 42.)  
Q. Okay. So how many times did you speak to Mr. Malter?  
A. Once.  
Q. Have you spoken to anyone other than Mr. Malter about this claim?  
A. No.  
Q. And when you spoke to Mr. Malter, did you have a conversation in person or by phone?  
A. In person.  
Q. And you went to his office?  
A. Correct.  
Q. How long did you spend there?  
A. Hour and a half. (Id. p. 43.)  
Q. Have you worked with Mr. Martinez anywhere other than Hughes Aircraft?<sup>44</sup>  
A. Yes.  
Q. Where else?  
A. We had a personal consulting job that we worked on together.  
Q. And you said that was from 1995 until when?  
A. Probably 1996, somewhere in that area. (Id. p. 45.)  
Q. Did you discuss any other personal issues, other than his family, about his daughter and his grandchild?  
A. Just his health.  
Q. Anything else?  
A. No.  
Q. Did he ever talk about any problems he was having with his wife?  
A. No.  
Q. Did he ever tell you he would go to bars or clubs?  
A. No. (Id. p. 66.)  
Q. Did he indicate he was going to leave work to go to that school play?  
A. Yes.  
Q. And are you aware that he was found in Oxnard? A. Yes.  
Q. Do you know why he was in Oxnard?  
A. No. (Id. p. 67.)  
Q. Did he ever mention to you before he was going to Oxnard?  
A. No.  
Q. Did you ever talk to him about any extra marital affairs?  
A. No.  
Q. Were you aware of any extra marital affairs that he had?  
A. No.  
Q. Were you aware of any issues with him and his wife with regards to any extra marital affairs?  
A. No.  
Q. Were you aware ever that he left work for any reason in the middle of the day to go anywhere other than the school play?

A. No.

Q. Did you ever discuss with him any interest in other women?

A. No.

Q. Did you ever discuss with him if he had any interest in males?

A. No.

Q. Were you aware that applicant had an interest in males?

A. No. (Id. p. 68.)

Q. Would it surprise you, in fact, to find out that club is known for older men to go -- and the Web indicates -- for older men to go have sexual relationships with younger men?

A. Yes. (Id. p. 73.)

Pursuant to the Deposition Testimony of Orlando Pablo dated 8/11/2011, (Exhibit 13):

Q. And when did you become -- you became [] Mr. Martinez's supervisor?

A. When I took over the lab, I became the test lab manager.

Q. That's in 2005?

A. Yes.

Q. So you were a supervisor of Mr. Martinez until his last date of work on June 2, 2006?

A. Yes

Q. Now, in your capacity as the direct supervisor of Mr. Martinez, how often would you see him? (Id. p. 24.)

A. Every workday. (Id. p. 18.)

Q. And what was his typical business schedule?

A. Monday through Friday.

Q. Would you say that you both worked basically the same schedule.

A. Yes[]

Q. Okay. Do you work on weekends? (Id. p. 20.)

A. Occasionally.

Q. Now, if they work on a Saturday or Sunday, is 8 that going to be reflected on the time cards?

A. Yes.

Q. And if they worked late into the evenings, is that going to be reflected into the time records?

A. Yes. (Id. p. 40.)

Q. Okay. Now, did Mr. Martinez ever work overtime?

A. Yes, he did.

Q. Did Mr. Martinez frequently work on weekends?

A. Occasionally, he did.

Q. Was job stressful?

A. No. (Id. p. 63.)

Q. Did Ms. Martinez ever complain to you that he felt that he was under a lot of stress?

Q. No

Q. Did he ever complain to you that he was working too many hours?

A. No

Q. Did he ever ask for additional assistance?

A. No. (Id. p. 64.)

Q. Were you aware of the fact that he was working 70 to 80 hours a week?

A. No. And I should say, I don't recollect.

Q. Was Carlos responsible for training any personnel?

A. Yeah. (Id. p. 67.)

Q. Just to clarify, did Carlos Martinez ever complain to you at any time about feeling overworked or feeling stressed due to his work?

A. No.

Q. Okay. Did you ever hear Carlos Martinez discuss the -- discuss "The Candy Cat" or other strip clubs with other -- with coworkers?

A. Yes. (Id. p. 94.)

Q. Now, when somebody clocks in on auto time -- does it give the actual time they clocked

A. Does it -- no, they -- they input it. It's not like the time card system. Earlier there are conversations of mutual trust and confidence; we'll work off of that. (Id. pp. 95-96.)

Pursuant to the Deposition testimony of Linda Ramos dated 9/24/2012, HR MANAGER.  
(Exhibit 14):

Q. Now, prior to May 6, 2006, how were time records maintained?

A. Time cards were completed by the employees if they were non-exempt employees. HR never saw them.

Q. And Mr. Martinez was a non-exempt employee?

A. That is correct. (Id. p. 56.)

Q. Is it the policy of Moog that if an employee, such as Mr. Martinez, wanted time off for a doctor's appointment or personal appointment that they would request that?

A. Absolutely.

Q. And would they request that to the direct supervisor? A. Yes.

Q. And Mr. Martinez' direct supervisor at the time in June 2006 was Orlando Pablo?

A. That's what the record reflects. (Id. p. 71.)

Q. Were you aware that Mr. Martinez was found laying down in a gay hang out? (Id. p. 73.)

A. No.

Q. Did you have any idea that Mr. Martinez was going to Oxnard during working hours?

A. No.

Q. Were you aware that he ever left work in the past and left during the day to go to any kind of events?

A. No.

Q. Would it be listed anywhere if he left, in time cards or anything, if he left during the day for what he would claim to be personal appointments?

A. No. He would indicate that when he filled out his own time card.

Q. That would be all based on trust?

A. Yes.

Q. So if he left during the day for hours at a time there is no -- there could be no indication if he didn't mark it down on his time card; is that correct?

A. His supervisor could be unaware of it.

Q. Is this a big plant that he works in?

A. Yes. (Id. p. 75.)

Q. And so if that's the case, Mr. Martinez, as far as you are aware, would be able to leave for an extended period of time during the workday and his supervisor might not be aware that he left?

A. It's a reasonable assumption that any employee can leave for hours throughout the weekday and their supervisor does not know. (Id. p. 78.)

Q. As far as you are aware, would Mr. Martinez be able to leave for extended periods of time without his supervisor being aware?

A. He would have been able to. (Id. p. 79.)

Q. So if he was able to leave for a couple hours or an extended period of time without his supervisor knowing, just like any other employee, would it be all up to him in regard to when he came back to indicate he did leave or didn't leave?

A. Yes.

Q. When the person would come back, did Moog have a policy of honesty where the person would write down whatever time they came in in the morning, whatever time they left, without anyone questioning whether that was a correct time?

A. That is correct. They are told in supervisor training not to be following their employees around and eyeballing them. (Id. p. 81.)

Q. And the fact that he was gone on the day of his stroke for hours until he was finally found over five hours later at an adult bookstore in one of the booths, would that, at least, make you question whether he had done it in the past?

A. No matter where he was found, whatever store he was found in, if he was found somewhere in Ventura, miles away, it would, of course, would raise questions. (Id. pp. 92-93.)

Pursuant to the Medical Report of PQME Michael Levey, M.D., dated 6/24/2020 (Exhibit E.):

On 06/02/2006, the applicant awoke at his normal time and went to work slightly early so that he could return home in time to attend an award ceremony for his granddaughter. He indeed returned home between 9:00 and 9:30 a.m. and attended the award ceremony. After that, he and his wife purchased food, brought it home and had lunch at home. He then watched some television and took a short nap, arising approximately 1:15 or 1:30 in the afternoon. [He] then stated to his wife that he needed to return to work and was likely going to work overtime hours to make up for the hours lost while he was attending his granddaughter's function as well as having lunch with his family. After he left for work, his wife did not hear from him until shortly after 9:00 p.m. when she missed a phone call from him and after reviewing the voice mail, found that he had called asking where she was, that he needed help. She stated that his speech was slurred and he appeared confused. She was concerned and felt that he likely was at work, since he usually works late and headed towards his place of employment. She arrived there at approximately 9:45 and discussed his whereabouts with the security guard who stated that he had not seen him in some time, that he had left. There was discussion as to whether or not he signed in or out of the workplace and, in fact, after reviewing the medical records, statements and depositions from other individuals, it is quite possible that he actually never did return to work after leaving his wife at 1:30 that afternoon.

Shortly after 9:00 in the evening on the day of his injury, a worker at an adult bookstore in Oxnard, California was informed by a patron that there was an individual lying on the floor in room 12. The applicant was found on the floor of the room actively seizing. (Id. p. 3.)

#### MEDICAL HISTORY:

The applicant has a longstanding history of hypertension, apparently diagnosed in the mid 1980s, although his medical records are not available prior to 2001. He had a history of diabetes which has become significantly -more severe. He has a history of coronary artery disease, having undergone 3-vessel coronary bypass surgery in 2001. Additionally, in 2005, he was admitted to

Kaiser with a non-ST elevation myocardial infarction and underwent cardiac catheterization which revealed some progression of the disease in the right coronary artery with a new stenosis distally of 80\ as well as total occlusion of the left anterior descending coronary artery. [His] bypass grafts were all patent. It was decided to treat him medically at that time. As an aside, he has a history of gallbladder disease. He has a history of hyperlipidemia. (Id. p. 4.)

#### FAMILY HISTORY:

His father died in his 70s of liver carcinoma and history of hyper-tension and diabetes. His mother died in her 60s of pancreatic cancer. She had a history of hypertension and diabetes. [He] has one brother, age 69, and one sister, age 74, both of which have hypertension. (Id. p. 5.)

#### IMPRESSION

Spontaneous intracerebral hemorrhage resulting in marked functional impairment with requirements for ventricular peritoneal shunt intracranial pressure and hydrocephalus.

No evidence of industrial causation. The cause of this event most commonly is related to changes in blood vessels due to longstanding high blood pressure. Other causes could be amyloid deposits in the blood vessel or blood vessel malformation. A cerebral angiogram was never performed in this individual, therefore, we cannot exclude the possibility of an AV malformation as a cause for this problem. The applicant does have a longstanding history of mild to moderate hypertension controlled on two medications. Additionally, he has a history of diabetes which would increase the risk of the event as well as being non-white Hispanic, there is a higher incidence of intracerebral hemorrhages in this population as well. The applicant will require long-term complete care by a caregiver, whether at home or in a skilled nursing facility, for the rest of his life. (Id. pp. 18-19.)

Was there anything in the applicant's employment that aggravated or exacerbated an underlying, pre-existing condition that could have caused this neurologic event? To this, I must answer no. The applicant has a longstanding history of hypertension dating back to at least 1985 per one report and medical records. However, the medical records that I was provided with to review began in 2001 and ended in 2010. During that period of time in particular when he was admitted to Kaiser Sunset for an angiographic study prior to his coronary revascularization, he had only mild to moderate high blood pressure with evidence of concentric hypertrophy of the left ventricle which would speak to longstanding mild hypertensive disease. Additionally in 2005 when he was seen for a non-ST elevation myocardial infarction at Kaiser Woodland Bills and transferred to Kaiser Sunset for angiography, there was no evidence of significant hypertension at that time with his blood pressure at 135/80. There was no mention in the medical records of uncontrolled or severe or fluctuating high blood pressure from 2001 until 2006, prior to his neurologic event. (Id. p. 20.)

Conclusion: Unfortunately, we have an individual who sustained a devastating neurologic event which will require lifetime home medical care and assistance. Additionally, he will have lifetime continuing medical issues. He will require frequent visits to the physician and occasional [hospitalizations]. It will not be unusual for this individual to later require long-term skilled nursing care. I find nothing, however, in the review of this case that would suggest causation due to his employment.[]

Atherosclerotic coronary artery disease, status post coronary revascularization 2002 and non-ST elevation myocardial infarction 2005, non-industrial.

Discussion: This applicant has multiple risk factors for underlying hypertensive disease, for underlying ischemic heart disease, including hypertension, diabetes and hyperlipidemia. (Id. p. 21.)

There was nothing in his employment or exposures in his employment that could have aggravated or exacerbated this process.

Hypertension: As discussed. Non-industrial as discussed in #1.

Diabetes mellitus, type 2: Non-industrial. The applicant's diabetes is genetic in nature. He has clearcut metabolic syndrome on his lipid profile and this is not related at all to his employment. (Id. p. 22.)

## **DISCUSSION**

Dr. Kramer, in his report of 03/2/2009, stated that he obtained Mr. Martinez's medical history from his wife Mrs. Martinez, specifically about the amount of over overtime he worked up to 18 to 20 hours a week.

Pursuant to Summary of Hours Worked Based on Paychecks and Personnel File, dated 9/30/2019, for the period of 6/2/2005 through 6/1/2006. Average hours worked per week equaled 46.76 hours. Therefore, the medical history in this regard appears to be less than accurate.

Dr. Kramer notes regarding work stress, Mrs. Martinez stated, "I used to go in with him on Saturdays or Sundays, whenever he was working overtime." In her deposition testimony Mrs. Martinez when asked how many times she accompanied her husband to work on the weekends, she stated "a couple of times. before the stroke, maybe twice." She further testified when asked "other than those two times, any claim that he was working long hours or weekends, you wouldn't know other than what he told you; correct? She stated "exactly." When asked based on what you heard today, do you agree that it's questionable if he really worked those hours that you thought he was working, she stated yes. This came after a long discussion regarding her husband's arrest for being with a prostitute.

Dr. Kramer explained relative to the causation of Mr. Martinez's stroke on 06/02/2006; that it is not about time of occurrence, but rather industrially caused risk factors due to excessive cumulative stress exposure, particularly hypertension. The precipitating factor involving Mr. Martinez' stroke was hypertension since the stroke was hemorrhagic in nature and the overwhelming cause of hemorrhagic stroke is hypertension. However, Dr. Kramer stated on numerous occasions in his reports that it is critical to scrutinize his (Applicant's) Kaiser primary care physician medical records in the several years prior to his cerebrovascular accident. "Regrettably though, two years' worth of very important medical records prior to, everything up to the cerebrovascular accident were missing, from June 2004 to June 2006, which, of course, means that the level of blood pressure control during that timeframe is unknown. Apparently, these vital records were never reviewed. Interestingly, Mrs. Martinez testified when asked what the doctor in the emergency

room on the day of the stroke told her about his (Mr. Martinez') medical condition, she stated, he just asked me if *Carlos had had an argument or anything* to elevate his blood pressure because he had had a stroke, massive stroke. This brings into the mix whether Mr. Martinez may have been robbed while at the bookstore, as mentioned in the police reports. (Emphasis added.)

Mrs. Martinez further testified that she knew her husband suffered hypertension and diabetes prior to his stroke. She admitted that her husband never told her what the doctors told him. He just got his medication and took it. I didn't know the extent of his condition. However, Dr. Kramer notes: "According to Mrs. Martinez, her husband's pre-existing diabetes was also under good control when he began working for Moog, Inc., but subsequently required more medication to control." This, of course, is difficult to reconcile.

Mr. Martinez' supervisor, Orlando Pablo testified when asked if Mr. Martinez' job was stressful, he stated no. Similarly, when asked if Mr. Martinez ever complained that he felt that he was under a lot of stress or he was working too many hours, he said no. Nor did he ever ask for additional assistance.

HR manager, Linda Ramos testified Mr. Martinez would be able to leave for extended periods of time without his supervisor being aware. She explained Moog has a policy of honesty where the person would write down whatever time they came in in the morning, whatever time they left, without anyone questioning whether that was a correct time, supervisors are trained not to be following their employees around and eyeballing them.

When asked, would the fact that he (Mr. Martinez) was gone on the day of his stroke for hours until he was finally found over five hours later at an adult bookstore in one of the booths, would that, at least, make you question whether he had done it in the past? She replied, no matter where he was found, whatever store he was found in, if he was found somewhere in Ventura, miles away, it would, of course, raise questions.

The deposition testimony of Leonard Lee, Applicant s co-worker and best friend is questionable. He stated that Mr. Martinez was under substantial work-stress, that he was he was working 60-plus, sometimes seventy, eighty hours at a stretch per week. The summary of hours worked shows otherwise. When asked how he knew about Mr. Martinez' workers' compensation claim, stated he spoke to Mr. Malter (applicant counsel) about the case when he went to Mr. Malter's office and spoke for an hour and a half. Mr. Lee and Mr. Martinez had been in business together in the mid-nineties.

The employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (South Coast Framing v. Workers' Comp. Appeals Bd. (Clark) (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.) The Supreme Court of California has long held that an employee need only show that the "proof of industrial causation is reasonably probable." (McAllister v. Workmen's Comp. Appeals Bd. (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]) Applicant must only show that industrial causation was "not zero" to show sufficient contribution from work exposure. (Clark, supra, 61 Cal.4th at p. 303.) Decisions of the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); Lamb v. Workmen's Comp. Appeals Bd. (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; Garza v. Workmen's Comp. Appeals Bd. (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; LeVesque v.



Workmen’s Comp. Appeals Bd. (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) To constitute substantial evidence ‘...a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions.’ (Escobedo v. Marshalls (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) “Medical reports and opinions are not substantial evidence if they are known to be erroneous, or if they are based on facts no longer germane, on inadequate medical histories and examinations, or on incorrect legal theories. Medical opinion also fails to support Board’s findings if it is based on surmise, speculation, conjecture or guess.” (Hegglin v. Workmen’s Comp. Appeals Bd. (1971) 4 Cal.3d, 162, 169 [36 Cal.Comp.Cases 93].)

### **INJURY AOE/COE**

Based upon applicant’s credible testimony and the medical report(s) of PQME Michael Levey, M.D., dated 6/24/2020, which are the better reasoned and more persuasive, it is found that applicant did not sustain injury to his head, heart, cardiovascular system, neurological, aggravation of diabetes and hypertension, and psyche arising out of and occurring in the course of employment during the period 8/11/1997 to and including 6/2/2006.

All other issues were found to be moot.

### **RECOMMENDATION**

The undersigned WCJ respectfully recommends that applicant’ Petition for Reconsideration, dated April 17 and April 20, 2023 be denied.

Respectfully submitted,

DATED: April 28, 2023

**ROBERT SOMMER**  
Workers’ Compensation Administrative Law Judge