

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

JENNIFER MENDEZ, *Applicant*

vs.

**WESTERN INN HOTEL;
AMERICAN AUTOMOBILE INSURANCE CO.,
*Defendants***

**Adjudication Number: ADJ12225936
Santa Barbara District Office**

**OPINION AND ORDER GRANTING
PETITION FOR RECONSIDERATION
AND DECISION AFTER 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, specifically the history provided in the reporting of Agreed Medical Evaluator (AME) Dr. David L. Wood, we will amend the findings to include a finding of injury arising out of and in the course of employment (AOE/COE) to coccyx. (Joint Exhibit A1, AME Report of Dr. David L. Wood dated March 29, 2021.)

The history of injury/medical treatment provided in the AME report indicates that x-rays of applicant "showed fractured coccyx". (*Id* at p. 3.) Dr. Wood's review of submitted records also notes the following: the ER Report [dated April 10, 2019] from Northern Inyo Healthcare District "[w]hile working today at Creekside Inn, the patient slipped on a wet tile floor landing hard on buttocks then onto back injuring coccyx and lower T-spine. Assessment: Contusion of coccyx. Injury of lumbar spine. Treatment: X-rays to the lumbar spine and sacrum/coccyx" (*Id* at p. 6); and a record from Bartlett White, PA-C [dated March 3, 2020] record from Bartlett White, PA-C:

[D]iscussed industrial fall injury 04/[2]019. Pain pinpoint when sitting at the coccyx. Right side radicular symptoms worse with long periods of sitting/standing. He reviewed x-ray and diagnosed Fracture of coccyx. His interpretation yields small posterior fragmentation, largely healed. Minimal facet wear of lumbar spine. Sadly there was not much to *do* for her. She had radicular symptoms consistent with foraminal stenosis. (*Id.* at p. 8.)

We find this reporting sufficient to support a finding of industrial injury to applicant's coccyx. Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 303.) However, we also note that Dr. Wood finds no impairment resulting from the injury to the coccyx. (Ex. A1, p. 12.) Thus, for the reasons stated in the WCJ's Report, which we adopt and incorporate in part (as attached), we will grant reconsideration, amend Findings of Fact 1 and 2, and otherwise affirm the findings and award.

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision dated January 12, 2023 is **AMENDED** as follows:

FINDINGS OF FACT

1. The Applicant, Jennifer Mendez, born [...], sustained a specific injury on April 10, 2019 to her lumbar spine and in the form of irritable bowel syndrome and coccyx while working as a housekeeper for the Western Inn Hotel in Bishop, California.
2. The Applicant failed to meet her burden of proving that she sustained industrial injuries to her hips, buttocks, and in the form of a hernia as a result of the April 10, 2019 specific injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 3, 2023

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

**JENNIFER MENDEZ
LEWIS BRISBOIS
PACIFIC ATTORNEY**

LN/pm

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

**REPORT AND RECOMMENDATION ON PETITION
FOR RECONSIDERATION**

**I
INTRODUCTION**

1. Applicant's Occupation: Housekeeper
Applicant's Age: 50
Date of Injury: April 10, 2019
[...]
2. Identity of Petitioner: Applicant has filed the Petition.
Timeliness: The petition is timely.
Verification: A verification is attached to the petition.
3. Date of service of Findings and Award: January 16, 2023

**II
CONTENTIONS**

1. That by the Decision, the Appeals Board acted without or in excess of its powers;
2. That the evidence does not justify the findings of fact;
3. That the findings of fact do not support the order, decision, or award.

**III
FACTS**

The Applicant, Jennifer Mendez (hereinafter "Petitioner"), sustained an injury on April 10, 2019 to her back and in the form of irritable bowel syndrome that arose of and in the course of her employment as a Housekeeper for Western Inn Hotel in Bishop, California. She further alleged injuries to her hips, coccyx, buttocks, and in the form of a hernia.

Defendant admitted liability for this claim and issued temporary disability benefits from April 11, 2019 through May 7, 2019.

The parties agreed to use Dr. David Wood as an Agreed Medical Examiner in Orthopedic Surgery and Dr. Mark Hyman as an Agreed Medical Examiner in Internal Medicine. Based on the opinions from Dr. Wood and Dr. Hyman, the undersigned [...] found that the Applicant did not meet her burden in proving that she was entitled to temporary disability indemnity from May 8, 2019 through March 29, 2021. The Court issued its Findings and Award on January 12, 2023.

Petitioner then filed the instant Petition for Reconsideration on January 31, 2023.

IV DISCUSSION

Under Labor Code section 5900(a), a Petition for Reconsideration may only be taken from a “final” order, decision, or award. A “final” order has been defined as one that either “determines any substantive right or liability of those involved in the case” (*Rymer v. Hagler* (1989) 211 Cal. App. 3d 1171, 1180) or determines a threshold issue that is fundamental to the claim for benefits (*Maranian v. Workers’ Comp. Appeal Bd.* (2000) 81 Cal. App. 4th 1068, 1070.) Pursuant to Labor Code section 5903, any person aggrieved by any final order, decision, or award may petition for reconsideration upon one or more of the following grounds:

- (a) That by the order, decision, or award made and filed by the appeals board or the workers’ compensation judge, the appeals board acted without or in excess of its powers.
- (b) That the order, decision, or award was procured by fraud.
- (c) That the evidence does not justify the findings of fact.
- (d) That the petitioner has discovered new evidence material to him or her, which he or she could not, with reasonable diligence, have discovered and produced at the hearing.
- (e) That the findings of fact do not support the order, decision, or award.

Applicant Petitioner asserts under Labor Code section 5903 that the undersigned acted without or in excess of his powers, that the evidence does not justify the findings of fact, and that the findings of fact do not support the order, decision, or award.

Parts of Body

Workers’ compensation law favors agreed medical examiners in resolving medical disputes fairly and expeditiously. (*Green v. Workers’ Comp. Appeals Bd.* (2005) 127 Cal.App.4th 1426, 1444.) Therefore, opinions from agreed medical examiners should ordinarily be followed unless there is good reason to find that opinion unpersuasive. (*Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775.)

Here, the parties relied upon the reporting from Orthopedic Jason AME Dr. David Wood and Internal AME Dr. Mark Hyman. Based on the opinions from these medical-legal providers. [...]

Temporary Disability

Whether an applicant is permanent and stationary or temporarily disabled is an issue that typically requires medical evidence. (Huston v. Workers' Comp. Appeals Bd. (1979) 95 Cal.App.3d 856.)

In this case, the Petitioner sought temporary disability during the period from May 8, 2019 through March 29, 2021. However, the Petitioner did not offer any medical evidence that would have substantiated her entitlement to temporary disability, whether total or partial, during the sought- after period. Accordingly, the undersigned did not award the Petitioner temporary disability during the periods sought. However, Petitioner asserts that her unrebutted trial testimony is sufficient to support an award for temporary disability.

The Court maintains that medical evidence is necessary to support an award for temporary disability, and that the Applicant's testimony is insufficient to support such award. However, even if lay testimony was sufficient to support an award for temporary disability, arguendo, the Court did not find the Applicant's testimony to be credible to support Petitioner's claim as she presented to be a poor historian and provided inconsistent and/or uncorroborated accounts.

First, Petitioner claimed to have been released to light duties. (Petition for Reconsideration, pg. 3, lines 17-18.) A review of her trial testimony indicates that she believed to have been released to light duties sometime in 2020 by the medical personnel at Bishop Orthopedic. (MOE/SOE Nov 3, 2022, pg. 5, lines 20-21.) However, the Applicant did not identify specifically when she was released to light duties and did not offer any medical evidence to corroborate the same. And none of the records reviews conducted by the AMEs that participated in this case provide any guidance. Without any evidence of when the Applicant was placed on light duties, any award by the Court for temporary disability would be entirely speculative.

Petitioner further claimed that she advised her supervisors at Western Inn Hotel of these purported work restrictions, and that such supervisors advised her that light duties were unavailable. (Petition for Reconsideration, pg. 3, lines 19-20.) However, this is inconsistent with her very own trial testimony. The Applicant testified that she dropped off a work disability slip at Western Inn Hotel sometime in 2020, and that she did not hear back. (MOE/SOE Nov 3, 2022, pg. 5, lines 20- 22.) According to her trial testimony, a manager, the name of which she could not recall, was supposed to get back to her regarding her work restrictions. (*Ibid.*) Again, her trial testimony is that she did not hear anything and she felt ignored. (*Id.*, line 23.) The inconsistencies within her trial testimony and subsequently filed verified Petition for Reconsideration in addition to the

lack of medical evidence corroborating these purported work restrictions further raise questions as to Applicant's credibility.

Finally, Petitioner indicated that medical staff at Rural Health Clinic told her that she needed to find another healthcare provider to treat her, and that she was unable to find a primary treating physician. (Petition for Reconsideration, pg. 3, lines 22-24, 26-27.) However, the records review conducted by Orthopedic AME Dr. Wood suggests otherwise. Based on Dr. Wood's records review, the Applicant's final evaluation at the Rural Health Clinic facility appears to have been a June 25, 2019 visit with Tracy Drew, FNP. Dr. Wood's summary of this June 25, 2019 visit provides no evidence of Rural Health Clinic medical personnel instructing Petitioner to find a new provider. Instead, the medical personnel had transferred the Petitioner's care to a back specialist, which the petitioner was unable to see due to apparent transportation and financial constraints. (Joint Exhibit A-1, pg. 5.) She further indicated during trial that Defendant refused to provide her with a new doctor. (MOE/SOE Nov 3, 2022, pg. 6, lines 12-13.) Petitioner is seemingly creating a narrative that her medical providers and the Defendant insurance carrier had left her to fend for herself. However, it is clear that medical personnel had referred her to another medical provider, specifically a back specialist. And if there in fact had been some constraints with her ability to see this back specialist, the Petitioner could have requested a new physician. However, there is no timely evidence that she requested a new physician with any sense of urgency and that Defendant refused or denied such request. In fact, she testified that neither she nor her attorney had requested a new doctor until finally electing Dr. White at Bishop Orthopedic in 2020, more than a year removed from her injury. (Id., lines 13-14, 19-20.)

As such, the undersigned maintains that the Petitioner has failed to meet her burden in proving her entitlement to temporary disability from May 8, 2019 through March 29, 2021.

DATED: February 13, 2023

JASON L. BUSCIANO
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE