WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

PARIS SIMMONS, *Applicant*

vs.

COSTCO WHOLESALE CORPORATION, permissibly self-insured; administered by HELMSMAN MANAGEMENT, *Defendants*

Adjudication Number: ADJ19233122
San Francisco District Office

OPINION AND ORDER DENYING PETITION FOR RECONSIDERATION

Defendant seeks reconsideration of the July 3, 2025 Findings and Award (F&A) wherein the workers' compensation administrative law judge (WCJ) found, in relevant part, that applicant, while employed by defendant as a cashier during the period from September 21, 2022 through September 21, 2023, sustained injury arising out of and in the course of employment (AOE/COE) to the cervical, thoracic, and lumbar spine, bilateral shoulders, and right upper extremity with a need for continuing medical treatment to cure or relieve from the effects of the injury.

Defendant contends that the F&A should be set aside because there is no evidence of a compensable disability on September 21, 2023 and the WCJ's finding therefore "fails the standards" outlined under Labor Code[1] section 5412 and *State Comp. Ins. Fund v. Workers' Comp. Appeals Bd.* (*Rodarte*) (2004) 119 Cal.App.4th 998 [69 Cal.Comp.Cases 579]. (Petition for Reconsideration (Petition), p. 4.)

We have received an Answer from applicant. The WCJ prepared a Report and Recommendation on Petition for Reconsideration (Report), recommending that the Petition be denied.

[1] All further statutory references will be to the Labor Code unless otherwise indicated.

We have considered the Petition, the Answer, and the contents of the Report, and we have reviewed the record in this matter. For the reasons discussed below, we will deny the Petition.

FACTS

Applicant claimed that while employed by defendant as a cashier during the period from September 21, 2022 through September 21, 2023, she sustained injury AOE/COE to the cervical, thoracic, and lumbar spine, bilateral shoulders, and right upper extremity.

The parties proceeded with discovery and retained Dr. Lorenzo T. Hughes as the pain medicine panel Qualified Medical Evaluator (PQME).

Dr. Hughes evaluated applicant on January 6, 2025, and issued a corresponding report, which was revised on April 23, 2025, wherein he provided preliminary diagnoses of thoracic spondylosis, lumbar severe stenosis, radiculopathy, and spondylosis, cervical radiculopathy and spondylosis, bilateral shoulder tendinopathy, and right upper extremity ulnar neuropathy at the elbow. (Applicant Exhibit 1, p. 26.) Dr. Hughes opined that there was "industrial causation" for the cumulative injury through the "last day of usual and customary employment to the lumbar spine, thoracic spine, cervical spine, right shoulder, left shoulder, and right upper extremity" and "to a degree of reasonable medical probability" applicant's need for continuing medical care stemmed from the injury. (*Id*. at p. 27.)

On April 25, 2025, Dr. Hughes was deposed by the parties and confirmed that as indicated in his report, applicant's "repetitive work activities…caused not only her lumbar injuries, but also the other injuries[.]" (Joint Exhibit 1, p. 11:9-12.) He reiterated that applicant sustained "a single cumulative trauma…throughout her last day of usual and customary employment[,]" which he believed was in 2023. (*Id*. at p. 16:15-20.) He also confirmed that defendant had not "given [him] anything to change his opinions" and that his reporting was "based on reasonable medical probability[.]" (*Id*. at p. 36:17-21.)

On February 28, 2025, applicant filed a Declaration of Readiness to Proceed to a mandatory settlement conference on the issue of injury AOE/COE.

On April 24, 2025, the matter proceeded to hearing. The hearing was continued to a May 19, 2025 trial date on the issues of injury AOE/COE and need for medical treatment.

On May 19, 2025 the matter proceeded to trial. Trial exhibits submitted include the April 23, 2025 report of Dr. Hughes (Applicant Exhibit 1) and a copy of the transcript from his April 25, 2025 deposition (Joint Exhibit 1).

On July 3, 2025, the WCJ issued a F&A which held, in relevant part, that applicant, while employed by defendant as a cashier during the period from September 21, 2022 through September 21, 2023, sustained injury AOE/COE to the cervical, thoracic, and lumbar spine, bilateral shoulders, and right upper extremity with a need for continuing medical treatment to cure or relieve from the effects of the injury. It is from this F&A that defendant now seeks reconsideration.

DISCUSSION

I.

Preliminarily, former section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

> (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
>
> (b)
>
> (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
>
> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected under the Events tab in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase "Sent to Recon" and under Additional Information is the phrase "The case is sent to the Recon board."

Here, according to Events, the case was transmitted to the Appeals Board on August 7, 2025, and 60 days from the date of transmission is October 6, 2025. This decision was issued by or on October 6, 2025, so that we have timely acted on the petition as required by section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall constitute notice of transmission.

Here, according to the proof of service for the Report, it was served on August 7, 2025, and the case was transmitted to the Appeals Board on August 7, 2025. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 7, 2025.

II.

Turning now to the merits of the Petition, section 3208.1 provides that: "An injury may be either: (a) 'specific,' occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) 'cumulative,' occurring as repetitive mentally or physically traumatic activities extending over a period of time, the combined effect of which causes any disability or need for medical treatment. The date of a cumulative injury shall be the date determined under Section 5412."

Section 5412 provides that: "The date of injury in cases of occupational diseases or cumulative injuries is that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment."

Section 5500.5(a) provides that: "Except as otherwise provided in Section 5500.6, liability for occupational disease or cumulative injury claims filed or asserted on or after [January 1, 1981] shall be limited to those employers who employed the employee during a period of [one year] immediately preceding either the date of injury, as determined pursuant to Section 5412, or the last date on which the employee was employed in an occupation exposing him or her to the hazards of the occupational disease or cumulative injury, whichever occurs first."

As stated above, section 5412 sets the date of injury for cumulative injury cases as "that date upon which the employee first suffered disability therefrom and either knew, or in the exercise of reasonable diligence should have known, that such disability was caused by his present or prior employment." Thus, to determine the date of applicant's cumulative injury, there must exist a concurrence of disability and knowledge that it was caused by employment. The term "disability" means either compensable temporary disability or permanent disability. (*Chavira v. Workers' Comp. Appeals Bd.* (1991) 235 Cal.App.3d 463 [56 Cal.Comp.Cases 631]; *Rodarte*, *supra*, at p. 1003.)

We note, however, that the date of injurious exposure under section 5500.5 and the date of injury under section 5412 are separate analyses. While the two dates may coincide, they are not synonymous. It appears that defendant is conflating these two dates as defendant contends that the WCJ's AOE/COE finding should be reversed as there no evidence of a compensable disability occurring on September 21, 2023, and the WCJ's finding therefore "fails the standards" outlined under section 5412 and *Rodarte*. (Petition, p. 4.) We find it important to clarify that whereas section 5500.5(a) speaks to the issue of determining liability for a cumulative injury, section 5412 speaks to the issue of the date of cumulative injury for statute of limitations purposes.

In the instant case, there has not yet been a finding of a section 5412 date. As such, defendant may still litigate the issue of when applicant "first suffered disability" and "either knew, or in the exercise of reasonable diligence should have known" that said disability was caused by her employment. With respect to the issue of industrial injury, however, we find that there is substantial medical evidence of injury AOE/COE to the cervical, thoracic, and lumbar spine, bilateral shoulders, and right upper extremity.

As parties are well aware, a decision "must be based on admitted evidence in the record" and supported by substantial evidence. (Lab. Code, §§ 5903, 5952, subd. (d); *Hamilton v. Lockheed Corporation* (*Hamilton*) (2001) 66 Cal.Comp.Cases 473, 476, 478 (Appeals Bd. en banc); *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. Workers' Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) Pursuant to *E.L. Yeager v. Workers' Comp. Appeals Bd.* (*Gatten*) (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687], "[a] medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or

on surmise, speculation, conjecture, or guess. (citations.) Further, a medical report is not substantial evidence unless it sets forth the reasoning behind the physician's opinion, not merely his or her conclusions. (citation.)" "A medical report which lacks a relevant factual basis cannot rise to a higher level than its own inadequate premises. Such reports do not constitute substantial evidence to support a denial of benefits. (citation.)" (*Kyle v. Workers' Comp. Appeals Bd* (*City and County of San Francisco*) (1987) 195 Cal.App.3d 614, 621.)

Here, based upon our review of the evidentiary record, including the April 23, 2025 report of Dr. Hughes (Applicant Exhibit 1) and the transcript from the April 25, 2025 deposition of Dr. Hughes (Joint Exhibit 1), we find that Dr. Hughes provided adequate reasoning in reaching his opinions and relied upon relevant facts and history, including a thorough examination of the applicant and a detailed analysis of various medical records. As such, we conclude that there is substantial medical evidence of injury AOE/COE to cervical, thoracic, and lumbar spine, bilateral shoulders, and right upper extremity, and a need for continuing medical treatment.

Accordingly, we deny defendant's Petition.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the July 3, 2025 Findings and Award is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

OCTOBER 6, 2025

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

PARIS SIMMONS
GIMBEL LAW FIRM
GILSON DAUB

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