

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

LI QING LIN, *Applicant*

vs.

**HAKKASAN SF LLC;
HARTFORD CASUALTY INSURANCE COMPANY, *Defendants***

**Adjudication Numbers: ADJ9360946, ADJ9360947, ADJ9360948, ADJ9746154
San Francisco District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted applicant's Petition for Reconsideration of the "Joint Findings of Fact and Orders" (F&O) issued on August 22, 2022, by the workers' compensation administrative law judge (WCJ), in order to further study the factual and legal issues. This is our Opinion and Decision After Reconsideration.

The WCJ found, in pertinent part, that applicant sustained industrial injury to the left wrist in ADJ9360948, but not to any additionally claimed body parts, while employed by defendant as a dim sum chef on January 27, 2013. In applicant's three other cases, the WCJ found that applicant did not sustain industrial injury on November 15, 2013 (ADJ9360947); up to March 4, 2014 (ADJ9360946); and on September 19, 2014 (ADJ9746154).

Applicant contends that the WCJ should have ordered development of the record with additional evaluators per the reporting of the Agreed Medical Evaluator (AME).

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration. Applicant requested to file a supplemental petition in response to the WCJ's Report, which we grant. (Cal. Code Regs., tit. 8, § 10964.)

We have considered the allegations of the Petition for Reconsideration, the Answer, the Supplemental Petition, and the contents of the WCJ's Report. Based on our review of the record

and for the reasons discussed below, as our Decision After Reconsideration we will rescind the August 22, 2022 F&O and return this matter to the trial level for further proceedings.

FACTS

Applicant sustained an admitted injury on January 27, 2013, to the left wrist while working as a dim sum chef and claimed further injury to the head, ear, eye, upper extremities, wrists, psyche, and internal body parts. (Transcript of Proceedings, June 14, 2022, p. 5, lines 14-19.)

Applicant alleged three additional injuries, including an injury on November 15, 2013, to the bilateral upper extremities, bilateral wrists, bilateral hand, psyche, and internal body parts. (*Id.* at p. 6, lines 16-23.) Applicant further alleged injury during the cumulative period ending on March 4, 2014, to the head, bilateral upper extremities, bilateral wrists, bilateral hands, bilateral shoulders, and in the form of hemorrhoids. (*Id.* at p. 8, lines 1-8.) Finally, applicant alleged injury on September 19, 2014, to the bilateral upper extremities, bilateral lower extremities, and psych. (*Id.* at p. 8, line 22 through p. 9, line 4.)

The sole issues for trial were industrial injury and body parts injured. (*Ibid.*) Applicant argued that the matter should be taken off calendar for further discovery.

In the WCJ's Opinion on Decision, the WCJ thoroughly details applicant's medical records and testimony at trial. As relevant herein, she stated,

Dr. Sigal provided a detailed review of over 1,500 pages of records spanning the period from 2004 to 2016, the vast majority of which were not offered into evidence. (Defendants' Exhibit C, *supra*, at 11-50.) Dr. Sigal discussed treatment reports immediately following the January 27, 2013 injury, as well as extensive reports documenting treatment received by applicant in the years that followed. (*Id.* at 12-40.) Additionally, Dr. Sigal reviewed an orthopedic QME report by Dr. John Lavorigna (July 16, 2015). (*Id.* at 29-30.)

...

It was Dr. Sigal's opinion that much of the medical reporting in applicant's case was based on inadequate or flatly erroneous history . . .

...

Dr. Sigal diagnosed applicant with malingering, undifferentiated somatization disorder, possible depressive disorder, and status post minor industrial injuries. (*Id.* at 51-52.) He concluded that applicant's complaints are the result of her psychiatric problems, rather than the cause of them. (Defendants' Exhibit C, *supra*, at 56.)

...

On November 9, 2018, orthopedic AME Dr. Mandell saw applicant a second time. (Defendants' Exhibit E, report of Dr. Mandell dated November 9, 2018.) . . . Dr. Mandell concluded that applicant sustained a major psychological event which caused a near catatonic state in which she remained. (Defendants' Exhibit E, *supra*, at 4.) Because applicant was wheelchair bound, he rated her at 80% whole person

impairment (“WPI”) based on Table 17-5 on page 529 of the AMA Guides. (*Ibid.*) Dr. Mandell opined that 100% of applicant’s impairment resulted from a severe psychological reaction to the injury of November 15, 2013. (*Ibid.*) He deferred to a general surgeon regarding the hemorrhoid problems. (*Ibid.*)

Dr. Jonathan Rutchik issued a neurology supplemental treatment report in September 2021, indicating that he last saw the applicant in October 2015. (Applicant’s Exhibit 8, report of Dr. Rutchik dated September 17, 2021, p. 2.) He noted that at the time of her previous visit, applicant was taking Norco “many times per day” and requested more, and that he refused to endorse the requested treatment and applicant was directed to seek another doctor. (*Id.* at 2-3.) Dr. Rutchik wrote, “I think the issue is anxiety, depression and frustration that she cannot work.” (*Id.* at 3.)

Dr. Rutchik did not reevaluate the applicant before issuing his September 2021 report, but indicated he had been requested to comment on whether her symptoms were a result of a non-fatal opioids overdose from her industrial injuries. (*Id.* at 4.) He reviewed a letter from applicant’s counsel and what appears to be the initial AME report by Dr. Mandell. (*Id.* at 5-6.) Dr. Rutchik wrote that it was likely the medication applicant had been using for years contributed significantly to her present medical complaints. (*Id.* at 7.) He deferred other findings and recommended a comprehensive neuropsychological evaluation and psychiatric care, as well as a brain MRI. (*Id.* at 7-9.)

Testimony at Trial

Applicant testified on all three days of trial. (Minutes of Hearing and Summary of Evidence for Day 1 of Trial on June 14, 2022, pp. 9-11; Minutes of Hearing and Summary of Evidence for Day 2 of Trial on June 15, 2022, pp. 3-10; Minutes of Hearing and Summary of Evidence for Day 3 of Trial on June 16, 2022, pp. 2-5.) No other witnesses testified at trial.

Applicant testified that on January 27, 2013, items consisting of steaming baskets, knives, big rollers, flour, and food containers, fell from a shelf and struck her, and that she lost consciousness. She reported feeling pain all over her body, particularly the neck, head, back, and shoulders. (Minutes of Hearing and Summary of Evidence for Day 1 of Trial on June 14, 2022, p. 9, lines 25-39.) She testified that the employer took her to the ER, where she was treated only for her left arm despite telling a nurse and a doctor through an interpreter about all of the affected body parts. (*Id.* at p. 10, lines 15-22.) She also testified that Chef Lim followed up with her and urged her to get the doctor to release her to return to work. (*Id.* at p. 10, lines 33-45.)

Applicant also testified that Chef Lim forced her to have sex with him on multiple occasions and tried to force her to help him with his immigration status. She testified that he threatened her and her son, and that he made her visit him in New

York, Las Vegas, and Los Angeles, forcing her to have sex with him during each visit. (Minutes of Hearing and Summary of Evidence for Day 2 of Trial on June 15, 2022, pp. 3-5.) She testified that the sexual assaults by Chef Lim began about a month after she returned to work a week following the January 27, 2013 injury and continuing into 2015, when she last saw him. (Minutes of Hearing and Summary of Evidence for Day 2 of Trial on June 15, 2022, p. 3, lines 12-20; p. 10, lines 5-9.) Applicant testified that she had pain throughout her body, particularly her neck, head, back, and shoulders, but only received treatment for the left hand. She stated she had difficulty and pain with lifting at work, and also experienced harassment from Chef Lim, Chef Ma, and Chef Ho. (*Id.* at p. 6, lines 12-47.)

Applicant testified regarding her use of pain medication for many years, and said she developed problems with bowel movements including stool, and also numbness, dizziness, and twitching. (*Id.* at p. 7, lines 9-36.) She additionally described fear of the restaurant and of Chef Lin, stating they had gang connections. (*Id.* at p. 8, line 34 – p. 9, line 3.) She testified that while working at Hakkasan, she never reported the alleged rape by Chef Lin or harassment by Chef Ho. (*Id.* at p. 9, lines 43-46.) . . .

On the third day of trial, under cross-examination, applicant testified that despite her testimony to the contrary on deposition, she had always responded in the affirmative when asked if she had ever been sexually assaulted. (Minutes of Hearing and Summary of Evidence for Day 3 of Trial on June 16, 2022, p. 3, lines 37-43. See Defendants’ Exhibit I, transcript of applicant’s deposition taken March 28, 2017, at p. 63, lines 4-6.) She also testified that she had likewise told any doctors who asked her about sexual assault. (Minutes of Hearing and Summary of Evidence for Day 3 of Trial on June 16, 2022, p. 3, line 46 – p. 4, line 1.)

(Opinion on Decision, August 22, 2022, pp. 4 – 13.)

DISCUSSION

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a contributing cause. (*South Coast Framing v. Workers’ Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; Lab. Code¹, § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (§§ 3202.5; 3600(a).)

The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason

¹ All future references are to the Labor Code unless noted.

of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)

* * *

The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark, supra* at p. 298 (internal citations and quotations omitted).)

All parties to a workers' compensation proceeding retain the fundamental right to due process and a fair hearing under both the California and United States Constitutions. (*Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157-158 [65 Cal.Comp.Cases 805].) A fair hearing is "... one of 'the rudiments of fair play' assured to every litigant" (*Id.* at 158.) As stated by the California Supreme Court in *Carstens v. Pillsbury* (1916) 172 Cal. 572, "[The] commission, ... must find facts and declare and enforce rights and liabilities, -- in short, it acts as a court, and it must observe the mandate of the constitution of the United States that this cannot be done except after due process of law." (*Id.* at 577.)

Decisions of the Appeals Board "must be based on admitted evidence in the record." (*Hamilton v. Lockheed Corporation (Hamilton)* (2001) 66 Cal.Comp.Cases 473, 476-478 (Appeals Board en banc).) As required by section 5313 and explained in *Hamilton*, "... the WCJ is charged with the responsibility of referring to the evidence in the opinion on decision, and of clearly designating the evidence that forms the basis of the decision." (*Hamilton, supra*, at p. 475.)

The WCJ found that applicant had not acted diligently in obtaining an additional panel; however, the record shows otherwise. Applicant filed a declaration of readiness in 2018 solely on the issue of additional panels. On May 3, 2019, the parties then completed a pre-trial conference statement where defendant raised the issue of industrial injury and applicant raised the issues of additional qualified medical evaluator (QME) panels and the presumption of compensability. Applicant continued to argue during these proceedings that additional panels were needed. We do not see that applicant waived the issue.

AME Peter Mandell expressly deferred issues to a general surgeon. (Defendant's Exhibit E, Report of AME Peter Mandell, M.D., November 9, 2018, p. 4.) The parties presumably choose an AME because of the AME's expertise and neutrality. (*Power v. Workers' Comp. Appeals Bd.*

(1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) The Appeals Board will follow the opinions of the AME unless good cause exists to find his opinion unpersuasive. (*Ibid.*)

While we recognize that the present record notes significant issues with applicant's credibility, that issue alone cannot preclude applicant from completing discovery on her case prior to proceeding to trial, including additional discovery which could impact the determination of applicant's credibility. Doing so violates a party's right to due process. However, and notwithstanding the above, we would encourage the parties to meet and confer on the issue of settlement prior to proceeding with further discovery.

Accordingly, as our Decision After Reconsideration we rescind the August 22, 2022 F&O and return this matter to the trial level for further proceedings.

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Joint Findings of Fact and Orders issued on August 22, 2022, is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG L. SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JULY 15, 2026

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

**LI QING LIN
HANNA LEUNG
LAKEESHA JAMERSON**

EDL/mt

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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