WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

TINA BORTOLI, ***Applicant***

vs.

IOMLAN CONSTRUCTION SERVICES, INC.;
STATE COMPENSATION INSURANCE FUND, ***Defendants***

Adjudication Number: ADJ8427517
Lodi District Office

OPINION AND DECISION AFTER RECONSIDERATION

We previously granted applicant's Petition for Reconsideration of the "Findings of Fact, Orders, and Opinion on Decision" (F&O) issued on March 3, 2023, 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, in pro per, was not entitled to an additional and/or replacement panel qualified medical evaluator (QME) in the specialty of internal medicine.

Applicant contends that the WCJ erred because the reporting of the agreed medical evaluator (AME) does not constitute substantial evidence and that further development of the record with the current AME is not warranted.

We have received an answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, 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 March 3, 2023 F&O and return this matter to the trial level for further proceedings.

FACTS

Applicant worked as a contract administrator when she sustained an admitted cumulative injury through March 30, 2012, to her neck, right shoulder, and right elbow. (Minutes of Hearing and Summary of Evidence, December 7, 2022, p. 2, lines 9-14.) Applicant claims further injury to her upper extremities, left shoulder, left elbow, fingers, arms, back, and to the adrenal gland in the form of Addison's Disease. (*Ibid*.)

While applicant is presently in pro per, she was initially represented by counsel who agreed to use Dr. Norman Panting as an internal AME. (*Id*. at p. 2, lines 23-25.) Applicant claims to have sustained injury to her adrenal gland as a consequence of epidural injections of glucocorticoid. (Petition for Additional QME in Internal Medicine, August 19, 2022, p. 2.)

Dr. Panting took a history of applicant undergoing epidural steroid injections in 2015 to her shoulder. (Defendant's Exhibit A, Report of Norman Panting, M.D., June 21, 2018, p. 2.) In 2016, applicant consulted with an endocrinologist who diagnosed adrenal insufficiency. (*Ibid*.) According to Dr. Panting, applicant's treating physician did not diagnose applicant as having Addison's disease from use of injected glucocorticoids, but instead applicant suffered from primary adrenal failure as a result of an auto-immune disorder. (*Id*. at pp. 18-19.) Dr. Panting did not find that applicant's internal complaints industrial. (*Id*. at p. 19.)

Applicant provided additional records to Dr. Panting, which included a CT of the adrenal glands, which showed a normal contour. (Defendant's Exhibit B, Report of Norman Panting, M.D., March 27, 2020, p. 2.) Applicant noted that her adrenal autoantibody test result was negative. (*Ibid*.) Applicant further requested her primary treater update her diagnosis to indicate that she suffered from secondary adrenal insufficiency as a result of steroid injections, to which applicant's doctor agreed. (*Ibid*.)

Dr. Panting noted the difference in adrenal gland diagnosis as follows:

> Review of the literature reveals that there are two main categories of adrenal insufficiency: primary adrenal insufficiency and secondary adrenal insufficiency. Primary adrenal insufficiency occurs when adrenal glands are diseased or damaged. Most often this takes the form of a long-term chronic disease called "Addison's disease" that occurs when the body's immune system mistakenly attacks and destroys adrenal gland tissues.
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> With secondary adrenal insufficiency, the pituitary gland located in the brain makes an insufficient amount of the hormone called "adrenocorticotropic hormone." This hormone stimulates the adrenal glands to produce cortisol. If the pituitary gland is

> damaged or altered, it can affect the adrenal glands' cortical secretion, even though the adrenal glands are healthy. Secondary adrenal insufficiency is most commonly caused by medications such as prednisone, intra-articular injections with steroids, or other forms of injections. In this situation, the adrenal gland may take days to a couple of months to recover function and to restore proper cortisol production.

(*Id*. at p. 5.)

Dr. Panting continued to find that applicant's adrenal insufficiency was non-industrial due to the presence of hyperpigmentation in applicant's skin, which Dr. Panting found to be incontrovertible evidence of primary adrenal insufficiency. (*Ibid*.)

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; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code[1] §§ 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 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).)
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> 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 298 (internal citations and quotations omitted).)

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

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

conclusions." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "When the foundation of an expert's testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions." (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

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 the opinion unpersuasive. (*Ibid*.)

In our en banc decision in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that "[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (citations) [but] [b]efore directing augmentation of the medical record ... the WCJ or the Board must establish as a threshold matter that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete." (*McDuffie*, *supra*, at 141.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*Ibid*.) "Only if the supplemental opinions of the previously reporting physicians do not or cannot cure the need for development of the medical record, should other physicians be considered." (*Id*. at 142.)

It appears that the parties and the court may have incorrectly framed the issue in this matter. The primary issue in this case is whether applicant may be relieved of the AME agreement, which was made while applicant was represented. Per section 4062.1(a): "If an employee is not represented by an attorney, the employer shall not seek agreement with the employee on an agreed medical evaluator, nor shall an agreed medical evaluator prepare the formal medical evaluation on any issues in dispute." All of the reporting obtained from AME Dr. Panting was obtained while applicant was represented, and thus, there does not appear to be any issue raised in the current briefing that would warrant a rejection of the prior AME agreement. However, and out of an abundance of caution, we will rescind the F&O and return this matter to the trial level as the issue raised was not the issue analyzed by the trial judge. If applicant has a legal argument to make as to rescinding the AME agreement, that issue is preserved at the trial level.

The opinion on decision, in essence, is based on whether the current reporting of the AME is substantial evidence; however, this is not an issue raised on the Minutes of Hearing. To be clear,

whether an evaluator's report constitutes substantial evidence may warrant development of the record depending upon the facts of the case. Furthermore, where development to the record with the current evaluator would appear fruitless, the WCJ is empowered to appoint a regular physician. However, a lack of substantial reporting does not ordinarily warrant a replacement panel.

To the extent that the opinion on decision focuses on the issue of substantiality, and to assist the parties further, we would also note that in Dr. Panting's June 14, 2019, supplemental report, Dr. Panting was expressly asked to address whether, notwithstanding his opinion on applicant's diagnosis of primary adrenal insufficiency, whether epidural steroid injections could have contributed to cause either an exacerbation or aggravation of the condition. Dr. Panting replied:

> Mr. Mann is kindly asking for **full discussion** regarding the possibility of the steroid injections and corticosteroid therapy given to applicant to her orthopedic injuries contributed to causing or aggravating her adrenal condition. In that regard, I would say clearly that those injections and therapies did not cause her primary adrenal insufficiency, and paradoxically it may have temporarily improved her basic, as yet undiagnosed, underlying Addison's condition by replacing her lack of adrenal hormones.

(Defendant's Exhibit A, Report of Norman Panting, M.D., June 21, 2018, p. 2, (emphasis added).)

Here, Dr. Panting does not appear to have adequately explained the how or why such injections would not have caused exacerbation or aggravation of the adrenal gland deficiency after any temporary palliative effect wore off. Dr. Panting was directly asked to address aggravation and/or exacerbation, but instead answered that it did not cause primary adrenal insufficiency. That was not the question asked of him, and it would appear that his opinion warrants further development of the record. Furthermore, Dr. Panting found applicant's condition to be the result of an auto-immune disorder, but does not explain why applicant's adrenal autoantibody test result was negative. This would appear to require additional explanation.

Accordingly, as our Decision After Reconsideration we rescind the March 3, 2023 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 Findings of Fact, Orders, and Opinion on Decision issued on March 3, 2023, is **RESCINDED** and that this matter is **RETURNED** to the trial level for further proceedings.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/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.

TINA BORTOLI
BOXER GERSON
STATE COMPENSATION INSURANCE FUND

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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