

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

MARIA PADILLA, *Applicant*

vs.

**LITTLE CAESARS ENTERPRISES, INC.; STONINGTON INSURANCE COMPANY,
Administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ12322911 (MF), ADJ12322933
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
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, and for the reasons stated in the WCJ's report, which we adopt and incorporate except with regard to the timeliness issue, we will deny reconsideration.

Contrary to the WCJ, we find applicant's petition timely filed. There are 20 days allowed within which to file a petition for reconsideration from a "final" decision. (Lab. Code, §§ 5900(a), 5903.) This time is extended by 10 calendar days if service is made to an address outside of California but within the United States. (Cal. Code Regs., tit. 8, former § 10507(a)(1), now § 10605(a)(1) (eff. Jan. 1, 2020).) While applicant and her attorney received service of the decision within California, defendant was served at an address outside of California. Accordingly, and to observe due process for all parties, we interpret Rule 10605 as extending the time to file for all parties being served.

In this case, the WCJ issued the decision on August 31, 2021. Based on the authority cited above, applicant had until Thursday, September 30, 2021 to seek reconsideration in a timely manner. Therefore, we find the petition filed on September 29, 2021 timely.

Nevertheless, we deny reconsideration on the merits for the reasons stated in the Report. In addition, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*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 determination. (*Id.*)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 29, 2021

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

**MARIA PADILLA
JCR LAW GROUP, INC.
LAW OFFICES OF KARGOZAR & ASSOCIATES**

PAG/ara

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

I.
Introduction

Applicant, Maria Padilla, by and through her attorneys of record, has filed what appears to be an untimely, verified Petition for Reconsideration, dated and served 9/28/2021, filed 9/29/2021, challenging the undersigned workers' compensation administrative law judge's (hereinafter "WCJ") Findings of Fact and Order dated August 25, 2021, served upon applicant and her attorney on 8/31/2021. This is clearly beyond 25 days from service of this Judge's findings even including the Labor Day holiday. That being said, I will address the merits of the Petition as if it was timely.

After a trial on the case in chief and having heard applicant's testimony and reviewed the entire record submitted to me for decision, it was determined applicant did not suffer an injury AOE/COE and was not entitled to benefits. Applicant challenges that decision, asserting that the evidence did not justify this WCJ's Findings of Fact, and that this WCJ acted in excess of her power.

For the reasons set forth within the Opinion on Decision and the Defendant's Answer to Petition for Reconsideration dated 10/12/2021, it is recommended that the Applicant's Petition for Reconsideration be denied.

II.
Facts

The applicant, Maria Padilla, claims two dates of injury while employed by Little Caesar's. The first was 11/29/18 and the second was 6/29/19 to the head, shoulders, back, and legs. Defendant initially accepted liability when it was unaware there was a concurrent injury at Burger King and that applicant misrepresented herself when presenting at the industrial clinic for treatment. Temporary disability was paid to her for a brief period, for which defendant requested and was awarded credit for against any future compensation (there was no compensation awarded though.) The parties went to a PQME, Dr. Amory, who issued a few reports and after reviewing records, ultimately concluded there was no injury AOE/COE. Defendant then denied the claim.

After trial, it was concluded that Applicant provided a false and/or inaccurate history to several doctors in the case and that she did not sustain her burden of proof for a finding of injury AOE/COE. Applicant contends in her Petition for Reconsideration that the report of PQME Dr. Amory is insubstantial medical evidence; however, Defendant pointed out correctly within the Answer that Dr. Amory did in fact review the records which is why he found no injury and was the most substantial and comprehensive medical-legal report, and was the basis (medically) for the conclusion of no injury to be made.

III. Discussion

At the first trial, applicant provided testimony at trial on 4/21/21 and 7/6/21, which the undersigned WCJ found not to be credible and somewhat self-serving in light of the medical reports and records review. Garza v. WCAB (1970) 3 Cal.3d 312. For example, applicant went to treat at US Healthworks about her Burger King (concurrent) claim, but she gave a different history to her current doctors about her prior claims, in relation to the new 2021 injury at a subsequent employer. When she went to US Healthworks, she did not report the car accident of 2/2018 which I also found applicant to be “down playing” at trial. The applicant could identify and locate multiple witnesses, including her supervisor, but no witnesses testified on her behalf.

Applicant’s testimony needs to be found credible, and it is the applicant who must sustain her burden of proof by a preponderance of the evidence. Labor Code §3202.5 provides in pertinent part that all parties, including the applicant, must meet her evidentiary burden of proof on all issues by a preponderance of the evidence in order that all parties are considered equal before the law. A Trier of Fact must weigh all the evidence, including testimony and its credibility, to determine whether there is a sufficient record based upon which a finding of injury could be reached. Garza v. WCAB (1970) 3 Cal.3d 312.

Applicant’s testimony was found to be insufficient and not credible enough so as to form a basis for a finding of her having had an injury at Little Caesar’s, as it appears her injury is and was at Burger King. It is unclear why she would leave this and the car accident and all her prior injuries out of her history when talking to the doctors in her 2021 case as well as the PQME in the pending case now and the doctors at US Healthworks. When she did seek treatment, she did not mention the other injury she was concurrently treating for. Therefore, I, like the PQME, did not find her credible and found no injury.

Lastly, the applicant argues in its Petition that the PQME did not review records or was based on speculation, surmise, guessing, or conjecture, but does not explain how or why exactly. The doctor did review all records and in fact issued a supplemental report dated 1/8/2021, where he did comment on the records reviewed and did not change his opinions that applicant's injuries were unrelated to her employment at Little Caesar’s.

In conclusion, Applicant has not submitted any substantial evidence to support a finding of injury AOE/COE, I did not find applicant credible, the PQME (the only doctor on file to have reviewed all the records) did not find injury, and the Petition appears to be untimely, and therefore it is recommended that the Petition be denied.

III.
CONCLUSION

Therefore, based upon the above and the entire record, it is respectfully recommended that the Applicant's Petition for Reconsideration be denied.

DATE: October 15, 2021

Karinneh Aslanian
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE