

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

OSIK KHATCHATRIAN, *Applicant*

vs.

**MACY'S, INC. dba BLOOMINGDALE'S, permissibly self-insured, administered by,
SEDGWICK CLAIMS MANAGEMENT SERVICES, Defendants**

**Adjudication Number: ADJ10795207
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact and Award (F&A), issued by the workers' compensation administrative law judge (WCJ) on December 7, 2020, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her right ankle and left knee, and that she did not sustain injury AOE/COE to her head, left ear, psyche, right knee, left ankle, stomach, and dental system.

Applicant contends that the issues raised by her cumulative injury claim, filed on October 19, 2020 (ADJ13745219), may overlap with the Findings made by the WCJ in this matter, and that the Findings should be set aside pending further discovery and adjudication of the cumulative injury claim.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition), and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to her head, psyche, left ear, dental system, stomach, right knee, right ankle, left knee, and left ankle, while employed by defendant as sales associate on February 17, 2015.

On June 4, 2019, applicant was evaluated by orthopedic agreed medical examiner (AME) Steven B. Silbart, M.D. (Def. Exh. B, Dr. Silbart, June 4, 2019.) Dr. Silbart examined applicant and took a lengthy history (see Def. Exh. B, pp. 2 – 10). He diagnosed:

- 1.) Right foot/ankle and left knee strain 2/17/15, industrial.
- 2.) Normal examination bilateral hips, right knee, left ankle and bilateral foot.
(Def. Exh. B, p. 16.)

Dr. Silbart then stated:

On physical examination of the lower extremities today, I noted the patient's demonstration of intact motor, sensory, and reflex testing; [and] patellofemoral crepitation. ¶ A full supplemental report will be forwarded pending my review of the extremely voluminous medical records in this case.
(Def. Exh. B, p. 17.)

After reviewing 1,088 pages of medical records, Dr. Silbart submitted a supplemental report. (Def. Exh. C, Dr. Silbart, June 14, 2019, p. 1.) Dr. Silbart summarized the medical records (Def. Exh. C, pp. 4 – 24) and concluded that applicant's injury caused 3% whole person impairment (WPI) for her right ankle and 2% WPI for her left knee, and that she would need future medical treatment for her right ankle and left knee. (Def. Exh. C, p. 2.) He further concluded that there was no WPI regarding applicant's hips, right knee, left ankle, and both feet. (Def. Exh. C, p. 2.) Dr. Silbart then stated that the physical demands of applicant's work as a salesperson did not exceed her work capacity and that she could continue performing "... her usual and customary work duties. No work restrictions are indicated." (Def. Exh. C, p. 2.)

At the November 5, 2019 Mandatory Settlement Conference the matter was set for trial on January 30, 2020. (Minutes of Hearing (MOH).) The trial was subsequently continued several times.

On February 27, 2020, applicant was seen by otorhinolaryngology (ear, nose, and throat; ENT) specialist Andrew G. Berman, M.D., for a primary treating physician initial evaluation. (App. Exh. 6, Dr. Berman, March 24, 2020.) Dr. Berman noted that, "The purpose of this visit was to evaluate this woman's hearing loss, tinnitus and dizziness secondary [to] head trauma she sustained on the date of injury." (App. Exh. 6, p. 2.) He reviewed the reports from Dr. Silbart and conducted audio tests. Dr. Berman diagnosed applicant as having bilateral hearing nerve loss, mild

tinnitus, and dizziness, none of which were the result of the February 17, 2015 “head trauma.” (App. Exh. 6, p. 3.)

The MOH from the May 4, 2020 trial stated that “Discovery remains closed” (MOH) and at the June 18, 2020 trial applicant requested a continuance (MOH, June 18, 2020). The parties proceeded to trial on August 24, 2020, and the trial was continued to October 28, 2020, for further testimony. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 24, 2020.)

Applicant filed the cumulative injury claim on October 19, 2020, alleging that she sustained a cumulative injury during the period from June 15, 2019, through June 15, 2020 (ADJ13745219).

The trial was completed on October 28, 2020. (MOH/SOE, October 28, 2020.) The issues submitted for decision were parts of body injured, permanent disability, and attorney’s fees. (see MOH/SOE, August 24, 2020, p. 2.)

DISCUSSION

It has long been established that any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen’s Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen’s Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 635 [35 Cal.Comp.Cases 16].) Also, the AME, Dr. Silbart, was presumably chosen by the parties because of his expertise and neutrality. Therefore, his opinion should ordinarily be followed unless there is a good reason to find that opinion unpersuasive. (*Power v. Workers’ Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114, 117].) Here, Dr. Silbart’s opinions were based on his examination of applicant and his review of the extensive medical record. There is no good cause to find his opinions unpersuasive. Further, applicant submitted the report from ENT Dr. Berman wherein he determined that applicant’s auditory condition was not caused by the February 17, 2015 injury. (App. Exh. 6, p. 3.) It appears that Dr. Berman did a thorough auditory examination of applicant and there is no evidence in the trial record that contradicts or is inconsistent with his opinions. Thus, we conclude that the WCJ’s F&A is based on substantial evidence.

Applicant argues that the WCJ’s Finding that applicant injured her right ankle and left knee and no other body parts as a result of the February 17, 2015 injury, “... is premature at this point in time” because her cumulative injury claim is pending. (Petition, p. 3.) As noted above, Dr.

Silbart examined applicant on June 4, 2019, and his opinions pertain only to the February 17, 2015 specific injury. Dr. Berman's opinions were also stated in regard to the February 17, 2015 specific injury.

Further, as noted by the WCJ, the Application for Adjudication of Claim in case number ADJ13745219, was filed on October 19, 2020, approximately two months after the first day of trial in the present matter, and the date of injury for the cumulative injury claim, is more than five years after the date of the specific injury. Applicant does not explain how the filing of a cumulative injury claim involving the same body parts, causes the doctors' reports, which address only the 2015 specific injury, not to be substantial evidence regarding the issue of injury AOE/COE. Nor does applicant explain how adjudicating the 2015 specific injury claim limits or impairs her ability to proceed with her cumulative injury claim for the period from June 15, 2019, through June 15, 2020. Therefore, we will not disturb the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact and Award issued by the WCJ on December 7, 2020, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

March 1, 2021

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

**OSIK KHATCHATRIAN
ROSE, KLEIN & MARIAS LLP
TESTAN LAW**

TLH/pc

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