

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

JOSEFINA DOMINGUEZ, *Applicant*

vs.

**MV MEDICAL MANAGEMENT; HARTFORD PROPERTY AND CASUALTY
COMPANY, *Defendants***

**Adjudication Number: ADJ13261083
Van Nuys District Office**

**OPINION AND ORDER
DENYING PETITION FOR RECONSIDERATION**

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of August 28, 2023, wherein it was found that while employed during a cumulative period ending April 29, 2020 as a claims auditor, applicant sustained admitted industrial injury to her hands and psyche causing temporary disability from May 1, 2021 through November 2, 2021.

Defendant contends that the WCJ erred in finding retroactive temporary disability corresponding to the period May 1, 2021 through November 2, 2021. We have not received an Answer and the WCJ has filed a Report and Recommendation on Petition for Reconsideration (Report).

We will deny the defendant's Petition for the reasons stated by the WCJ in the Report which we hereby adopt, incorporate, and quote below. Regardless of any lack of clarity regarding the opinions of qualified medical evaluator psychologist Leine Delker, Ph.D. on the issue of temporary disability, the WCJ was entitled to rely upon the opinion of treating psychologist Thomas Fera, Ph.D., who found temporary disability for the dates at issue. (July 16, 2022 report at p. 12.) The relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. (*Le Vesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627, 639 [35 Cal.Comp.Cases 16].) The WCJ is empowered to choose among conflicting medical reports and rely on those deemed most persuasive. (*Jones v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 476, 479 [33 Cal.Comp.Cases 221].) Here, even to the extent

that Dr. Delker found no periods of temporary disability, the WCJ properly found temporary disability based on the opinion of Dr. Fera.

The WCJ's Report is as follows (footnotes omitted):

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

I. INTRODUCTION

The Applicant is a 63 year old insurance claims auditor who sustained cumulative trauma for the period 2/2/2018 through 4/29/2020 to her hands and psyche. Injury is admitted.

The Petitioner is the Defendant who has filed a timely and verified Petition for Reconsideration claiming that the undersigned erred in awarding temporary disability for the period 5/1/21 through 11/1/2021 when she returned to work.

The undersigned will recommend that the Petition be denied.

II. STATEMENT OF FACTS

The Applicant worked as a claims auditor for the Defendant. Due to repetitive use of the hands she developed carpal tunnel syndrome. She has other orthopedic complaints as outlined by the QME, Leine Delker Ph.D (Ex. X, pp.6-8). She also claimed internal injuries. She claimed psychiatric injury.

This matter came on for *expedited hearing* on August 24, 2023. The only evidence proffered were the two PQME reports in psychiatry from Leine Delker Ph.D (Exs. X and Y) and the treatment report from Thomas Fera Ph.D (Ex.1). The deposition from Dr. Delker was also admitted into evidence (Ex. Z).

The Applicant testified briefly indicating that she was on EDD disability ending on or about 4/30/2021. Her treating doctor was Dr. Fera. She returned to work for a different employer on or about 11/1/2021. She was off work due to fear of returning to work. She states that she was seeing Dr. Fera as his patient throughout this period of time.

Unfortunately Dr. Delker's report is not paginated. It appears that the page numbers were obliterated when the report was copied.

Dr. Fera indicates that the Applicant was placed on temporary disability as of 4/29/2020 by her personal physician (Ex. 1, p.3). Dr. Fera then undertook to be her treating physician. He certified her for EDD benefit (Ex. 1, p.7). He continued to see her as his patient in 2020 (p. 9). She was diagnosed with Pain Disorder along with a depressive disorder (p.11). He concludes:

“In consequence of having been degraded, disparaged, harassed, publicly humiliated, etc., along with suffering negative psychological effects from physical injuries as appearing to be industrially associated; in combination found Ms. Dominguez as having developed psychopathology leading into Temporary Total (Work) Disability (TTD) from working at MV Medical Management, Inc. or any other place of employ commencing 4/29/2020 an continuing; that is until having become employed in a similar capacity at UCLA effective in the beginning of November 2021 and continuing. *It is my opinion that Ms. Dominguez remains as TTD from working at MV Medical Management, Inc. ...*” (emphasis added). (p.10).

He agreed with the QME that the diagnosis was Pain Disorder and Depressive Disorder. Dr. Delker found the same diagnoses.

Dr. Delker did not find industrial psychiatric injury in her first report of 3/22/2022.(Ex. X). She changed her mind in her subsequent report of 2/13/2023 (Ex.Y). Hence the psychiatric injury was accepted by the Defendant.

Based on the above evidence the undersigned found that the Applicant was in need of treatment and was temporarily disabled for the period 5/1/2021 to 11/2/2021.

Petition claims: (1) that Applicant was P&S, (2) that the QME found no temporary disability, (3) that there are no medical reports to justify the ttd awarded, and (4) the exhibits did not rise to the level of substantial medical evidence.

III. DISCUSSION

This matter came on for an expedited hearing. Cal. Lab. Code sec. 5502(b) states in part:

“...A hearing *shall be held* and a determination as to the rights of the parties shall be made and filed within 30 days....” (emphasis added). The language of the statute is mandatory.

Under sec. 5502(b)(4) temporary disability is one issue that shall be heard in an expedited hearing.

The primary treating physician for Applicant’s admitted psychiatric injury was Dr. Fera. He indicates that he treated her. She testified that she saw him as a patient with regularity. As stated above, Dr. Fera opined that she was TTD during the period in issue (which includes a preceding year with EDD).

Petitioner is correct that progress reports are not on file. However, Dr. Fera

indicates that he treated her all along. He concluded that she was TTD even though his report (Ex. 1) is drafted later. The fact that his opinion is a reflection of his medical opinion previously does not render the opinion from the primary treating physician as unsubstantial.

Petitioner states that the QME indicated that there was never any period of TTD and cites p.28 of Ex. X. The same page also indicates that there is no permanent disability either. The undersigned interprets these conclusions by Dr. Delker as stemming from her opinion that there is no industrial injury at all. Hence there is no TTD and no PD stemming from an industrial injury.

If one reads the report, Dr. Delker gave the patient a GAF of 63 that equates to an 11% wpi (p.19). So it is quite clear to the undersigned that Dr. Delker's analysis of TTD and PD on p.28 of her report stems solely from her finding of no injury.

Petitioner is also correct that upon changing her opinion and finding a psychiatric injury Dr. Delker did not address the issues of PD or TTD again. The issue of TTD was not brought up in her deposition (Ex.Z).

Consequently, the only evidence produced on the issue of TTD was the Applicant's testimony coupled with the opinion of Dr. Fera. Based thereon the undersigned found that there was adequate evidence to make a finding of TTD for the period 5/1/2021 to 11/2/2021 when she returned to work.

The "opinion" by Dr. Delker that there was no TTD only stems from a report where she found no injury at all. She changed that opinion. Hence the question of whether or not Dr. Delker now finds an TTD or PD is completely unexplored.

Cal. Lab code sec. 5502 requires the trier-of-fact to hold a hearing with the evidence that the parties present. The Petition for Reconsideration basically implies "that there wasn't much to go on." And, indeed there is some truth to that. But the primary treating physician's report found TTD during a time that she was off work, under treatment, and not P&S. No modified work was offered.

Finally, the Petitioner was concerned that the Opinion on Decision indicated that Dr. Delker did not find Applicant to be P&S. Petitioner is correct. Dr. Delker did find Applicant to be P&S on 1/31/2022 (Ex. Y, p.6). However this was not an issue before the Court.

IV. RECOMMENDATION ON PETITION FOR RECONSIDERATION

Based on the arguments above, it is respectfully recommended that the Petition for Reconsideration be DENIED.

For the foregoing reasons,

IT IS ORDERED that Defendant's Petition for Reconsideration of the Findings and Award of August 28, 2023 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

/s/ NATALIE PALUGYAI, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 6, 2023

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

**JOSEFINA DOMINGUEZ
SAAM AHMADINIA
TOBIN LUCKS
EDD**

DW/oo

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