

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

HOSSEIN AMIRANI, *Applicant*

vs.

**DEPARTMENT OF SOCIAL SERVICES/IHHS; YORK RISK SERVICES GROUP,
*Defendants***

**Adjudication Number: ADJ10262809
Van Nuys 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, and for the reasons stated below, we will deny reconsideration.

The burden of proving industrial causation of injury rests with the applicant, and the applicant must carry this burden by a preponderance of the evidence. (Lab. Code, § 5705.) Moreover, all awards, orders and decisions of the Appeals Board must be supported by substantial evidence in light of the entire record. (Lab. Code § 5952(d); *Lamb v. Workers' Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 280 [39 Cal.Comp.Cases 310].) To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 413, 416–17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also 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 conclusions. (*Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.).)

We agree with the WCJ that there is no duty to develop the record here to save applicant from the lack of due diligence to submit admissible evidence in support of the claimed injury. (See Lab. Code, §§ 5502(d)(3) 3202.5; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal. Comp. Cases 138, 141 (Appeals Board en banc); *Lozano v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 970 (writ den.))

Applicant did not object to defendant's Declaration of Readiness to Proceed (DOR). Applicant did not object to the reports of Alan Gross, M.D., or David Sones, M.D., on the basis of their review of surveillance video. Moreover, we agree with the WCJ that the reports of Drs. Gross and Sones are substantial medical evidence upon which the WCJ properly relied to find that applicant did not sustain industrial injury.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

JOSÉ H. RAZO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 8, 2021

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

**HOSSEIN AMIRANI
EQUITABLE LAW FIRM
ALBERT & MACKENZIE, LLP**

PAG/bea

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

REPORT AND RECOMMENDATION ON PETITION FOR RECONSIDERATION

INTRODUCTION

Applicant filed a timely, verified Petition for Reconsideration, dated August 9, 2021, (EAMS Doc ID 37770675) with respect to the Findings and Award and Opinion on Decision, dated July 14, 2021. This matter came on for trial on February 18, 2020, where exhibits were taken into evidence and testimony elicited on behalf of Applicant. On June 1, 2021, the case was submitted on the existing record. The issues included injury arising out of and in the course of employment to the lumbar spine and psyche.

PETITIONER'S CONTENTIONS

1. THE EXCLUDED APPLICANT EXHIBITS WERE EITHER LISTED IN THE PTCS OR SHOULD BE ADMITTED BECAUSE THEY WERE REVIEWED AND INCORPORATED INTO THE PQME REPORTS AND ARE ESSENTIALLY OF RECORD

2. THE DEFENSE EXHIBITS D, F, H, AND I SHOULD BE EXCLUDED FROM THE WORKERS' COMPENSATION JUDGE'S FINDING THAT THE APPLICANT DID NOT SUSTAIN AN INDUSTRIAL INJURY ARISING OUT OF AND IN THE COURSE EMPLOYMENT IS NOT BASED UPON SUBSTANTIAL MEDICAL EVIDENCE

3. BECAUSE SUBSTANTIAL MEDICAL EVIDENCE IS LACKING, THERE IS A NEED TO DEVELOP THE MEDICAL RECORD

DISCUSSION

APPLICANT'S PROPOSED EXHIBITS '2' '3' & '4'

Pursuant to Labor Code Section 5502:

“(3) If the claim is not resolved at the mandatory settlement conference, the parties shall file a pretrial conference statement noting the specific issues in dispute, each party's proposed permanent disability rating, and listing the exhibits, and disclosing witnesses. Discovery shall close on the date of the mandatory settlement conference. Evidence not disclosed or obtained thereafter shall not be admissible unless the proponent of the evidence can demonstrate that it was not available or could not have been

discovered by the exercise of due diligence prior to the settlement conference.” Pursuant to CCR Section 10629:

(a) Proposed exhibits shall be filed in accordance with the provisions of section 10233 and 10603.

(b) At every mandatory settlement conference, regular hearing, expedited hearing, and conference at which any issue will be submitted for decision, each party or lien claimant shall submit, and shall personally serve on each other appearing party or appearing lien claimant, a list of the exhibits that the party or lien claimant proposes to offer in evidence.

Defendant’s objection is based upon exhibit’s 2, 3, & 4 not having been listed in the pre-trial conference statement, dated 9/19/2019. After review of the pre-trial conference statement, dated 09/19/2019, (EAMS Doc ID 71170733), and no listing of the above referenced exhibits, Defendant’s objection is sustained and the exhibits shall be struck from the record.

Pursuant to the subpoenaed records of Valley Care Mid-Valley Comprehensive Health Center, various dates, wrist and thumb pain working on pipe. (2/9/2008) Records did not address body-parts in issue. (Exhibit 1)

DEFENSE PROPOSED EXHIBITS ‘A’ THROUGH ‘I’

There being no legal basis to exclude these exhibits they shall be admitted into evidence over applicant’s objection.

Pursuant to the medical report of PQME Alan Gross, M.D., dated 12/18/2017, (Exhibit G):

I made a final diagnosis of: Lumbosacral strain, without evidence of radiculopathy as described by the AMA Guides, resolved. I did not find a basis for a continuous trauma claim based on a scientific analysis. There was a motor vehicle accident on 12/22/15. I did not see evidence of radiculopathy at the time I saw the patient.

Pursuant to the medical report of PQME David Sones, M.D., dated 2/5/2019, (Exhibit I):

Psychiatric Diagnosis:

DSM IV TR

Axis I

296.30, Major Depressive Disorder, recurrent.

Axis II

V71.09, No diagnosis on Axis II.

Impressions and Recommendations

Based upon the applicant's history and a review of the available records, it is reasonably medically probable that he suffers from a chronic psychiatric disorder. His history of episodes of persistently depressed mood accompanied by neurovegetative symptomatology is consistent with the diagnosis of Major Depressive Disorder, recurrent, as defined by DSM-IV TR criteria.

The issue of causation has been carefully considered. During the examination the applicant denied that he had ever had any psychiatric treatment prior to his employment with In-Home Supportive Services. However, this history is not consistent with information that is documented in the records. (ibid. p. 50)

There is nothing documented in the records that were reviewed that supports the applicant's claim that he found his employment to be stressful. Of the specific stressful factors that are listed in the medical records, all of them are non-industrial.

While the applicant emphasizes how work had a profound adverse effect upon his psychological condition, he was not regarded in any way to be a reliable informant. Under circumstances in which the informant is regarded to be unreliable, information documented in the medical records becomes of greater importance.

Based upon a review of the medical records, there is no evidence to substantiate within reasonable medical probability that his preexisting Major Depressive Disorder was in any way aggravated, exacerbated, or accelerated by his employment with In-Home Supportive Services. Instead, based upon a review of the medical records, it is reasonably medically probable that his employment merely served as a passive stage upon which his pre-existing Major Depressive Disorder was manifested.

Therefore, there is no evidence the applicant ever sustained a work-related psychiatric injury during his employment with In-Home Supportive Services. (Ibid. p. 52)

INJURY AOE/COE

Based upon the medical report(s) of Alan Gross, M.D., dated 12/18/2017, and PQME David Sones, M.D., dated 2/5/2019, which are well-reasoned and persuasive, it is found that applicant did not sustain injury to his back and nervous system/psychiatric arising out of and occurring in the course of employment during the period of 1/1/2000 through 7/2/2015.

RECOMMENDATION

The undersigned WCJ respectfully recommends that applicant's Petition for Reconsideration, dated August 9, 2021 be denied.

DATED: August 17, 2021

Respectfully submitted,

/s/ Robert Sommer

ROBERT SOMMER

Workers' Compensation Administrative Law Judge