

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

**RONALD PERKINS, *Applicant***

**vs.**

**ALBERTSONS COMPANIES, INC. permissibly self-insured, administered by  
ALBERTSON'S HOLDINGS, LLC, *Defendants***

**Adjudication Number: ADJ12560810  
Riverside District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on September 9, 2021, wherein the WCJ found that applicant did not sustain a psychiatric injury arising out of and occurring in the course of employment (AOE/COE).

Applicant contends that the reports of psychiatric qualified medical examiner (QME) Edward L. Spencer, M.D., are not substantial evidence and therefore the record should be further developed.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**BACKGROUND**

Applicant claimed injury to his psyche and nervous system while employed by defendant as a warehouse supervisor on February 5, 2019. Applicant was taken to the Corona Regional

Medical Center emergency department on February 5, 2019; he underwent diagnostics and was admitted to the hospital. On February 8, 2019, applicant was transferred to the Kaiser Corona Psychiatry Department and he was discharged from care on February 10, 2019. (See Def. Exhs. B – G; see also, Joint Exh. 1, Edward L. Spencer, M.D., October 23, 2020, pp. 40 – 48, review of medical records.)

QME Dr. Spencer evaluated applicant on September 30, 2020. (Joint Exh. 1, Dr. Spencer, October 23, 2020.) Dr. Spencer took a history, reviewed the medical records from the Corona Regional Medical Center, and administered various psychology tests. The doctor noted that applicant was “... in psychiatric treatment and receiving psychotherapy but limited information was available” (Joint Exh. 1, p. 7) and he later stated:

The applicant refused to complete the MMPI-2. He was agitated in the waiting area and felt that the questions were irrelevant to his condition. The MMPI-2 should be attempted at a subsequent evaluation.  
(Joint Exh. 1, p. 10.)

Dr. Spencer diagnosed Unspecified Psychotic Disorder, and stated:

In order to make a more definitive assessment of his diagnosis, it would be helpful to review the Kaiser mental health treatment records subsequent to his hospitalization to understand what symptoms have been observed by his providers and how these have been managed. It is also not clear whether his present symptoms are continued sequelae of his original illness or whether they represent an adjustment reaction to his prolonged disability. This is another question that may be addressed with reference to his treatment records. ¶ Upon review of the available records, it might be possible to establish a more specific psychiatric diagnosis. (Joint Exh. 1, p. 15.)

As to the cause of applicant’s condition, Dr. Spencer concluded:

I would estimate a causal contribution of ... 33% to the chronic stress, experienced by him as systematic racism and discrimination at the workplace. The contribution of perceived systematic racism to his illness is supported based on the literature as well as the medical evidence that it was part of his psychotic paranoia prior to his hospitalization. ... ¶ Therefore, this does not appear to be an injury where there has been predominant industrial causation.  
(Joint Exh. 1, p. 19.)

Dr. Spencer’s deposition (as discussed below) was taken on January 25, 2021. (Joint Exh. 2, Dr. Spencer, January 25, 2021, deposition transcript.)

The parties proceeded to trial on March 15, 2021. (Minutes of Hearing and Summary of Evidence (MOH/SOE), March 15, 2021.) The trial was continued to June 8, 2021, (MOH/SOE, June 8, 2021) and it was continued to August 16, 2021, for further testimony. (MOH/SOE, August 16, 2021.) The issues submitted for decision were injury AOE/COE, whether the record should be further developed, and whether the injury was self-inflicted pursuant to Labor Code Section 3600(a)(5). (MOH/SOE, March 15, 2021, p. 2; MOH/SOE, June 8, 2021, p. 2.)

## **DISCUSSION**

It is well 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].) To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination and an accurate history, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, as noted above, in his report Dr. Spencer stated that he had limited information as to applicant's psychiatric treatment and psychotherapy. "There were no records of any treatment subsequent to his hospitalization, such as with Dr. Doman or Jerome Scott. ... These records should be reviewed prior to my expressing any final opinions about his present condition." (Joint Exh. 1, p. 14.) He then explained:

In order to make a more definitive assessment of his diagnosis, it would be helpful to review the Kaiser mental health treatment records subsequent to his hospitalization ... Upon review of the available records, it might be possible to establish a more specific psychiatric diagnosis.  
(Joint Exh. 1, p. 15.)

Also, during his deposition Dr. Spencer repeatedly testified that he was not provided the complete medical record, and that further review of the medical record including re-evaluation of applicant was necessary for him to adequately address the issue of whether applicant sustained a compensable psychiatric injury. For example:

A. ... So I will say that my understanding of his cannabis use is not complete.

Q. So you don't really have an understanding of ... when he was starting? The frequency he was using? If it increased over time or if it got acute towards his psychotic episode? Do you have any of that information?

A. I don't have any more of that information. I think it is certainly something that should be developed. (Joint Exh. 2, pp. 10 – 11.)

Q. Now, would it be better if you had a better history regarding his cannabis use, in order to review this a little bit more on the causation issue? Would you like to talk to him again or maybe talk directly to his wife?

A. Yeah -- well, the answer is yes. It would be better to have a better history from him and also hear what he had to say about it. You know, ideally in an environment when he was less, sort of, becoming kind of agitated in the waiting area and all the factors. (Joint Exh. 2, p. 11.)

A. It's not uncommon for there to be various inconsistencies in getting information, and you just try to make the best clinical hypothesis you can in the clinical setting. So, you know, to the main point, yes, I think more information needs to be developed about this. The question of his agitation and impatience and obvious behavioral symptoms of the interview is something also that I think needs to be -- you know, I would like more information about, as I mentioned, as far as what his current or recent treatment history is. (Joint Exh. 2, p. 12.)

Q. In the Kaiser records in Volume 2, the applicant gives a history of using testosterone injections. Were you aware of that?

A. I don't believe I saw that.

Q. And the reason I bring that up is, Volume 2 of the report dated March 10, 2014, also gives a history of psych, him being anxious and agitated. Were you aware of that?

A. What are you referring to?

Q. The Kaiser records, Volume 2.

A. I don't know that I received those.

Q. Okay.

A. The only records I have looked at are from 2019.

Q. ... Now hypothetically speaking, Doctor, if Mr. Perkins was using testosterone close in time to his psychotic event, would that be relevant to a causal factor for his psychotic event occurring? ...

THE WITNESS: If that were something that was -- if that was the medication he was using, I would want [sic] to know was that under medical prescription; how long had he been using that -- was the indication for that. So it could be something that I would assess, yes. (Joint Exh. 2, pp. 18 – 19.)

Q. Did you review any battery of psychological testing that was done?

A. We -- he was not able to complete the psychological testing.

Q. And why was that?

A. He was -- he refused to do it. We offered him the MMPI administration, but he became impatient and more agitated. So we decided to stop.

Q Would that assist in your evaluation if he was able to complete it?

A Yes. It would provide additional information.

(Joint Exh. 2, p. 20.)

Dr. Spencer clearly explained that he was unable to perform an adequate examination of applicant and that the medical record he reviewed did not constitute an accurate history. Therefore, his report and testimony are not substantial evidence. (*Escobedo v. Marshalls, supra.*) The Appeals Board has the discretionary authority to develop the record when the medical record is not substantial evidence or where there is insufficient evidence to determine an issue. (Lab. Code, §5701, 5906; *Tyler v. Workers' Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].)

Defendant argues that applicant should not benefit from his uncooperative behavior to secure additional evaluation from the QME. However, it may well be that applicant's behavior on examination was a result of the alleged psyche injury. More importantly, as discussed above, Dr. Spencer repeatedly indicated that in order to be fully informed, and to be able to provide an appropriate analysis as to the issue of injury AOE/COE, he needs to review the complete medical record, and he may need to re-evaluate applicant. Under these circumstances it is necessary that the record be further developed. (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264]; *McClune v. Workers' Comp. Appeals Bd., supra.*)

When the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) In this matter it is necessary for the parties to provide Dr. Spencer the complete medical record for his review, and request that he submit a supplemental report addressing the issue of injury AOE/COE. It should be left to Dr. Spencer to determine if a re-examination of applicant is necessary for him to prepare the supplemental report as requested by the parties.

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Order issued by the WCJ on September 9, 2021, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 9, 2021 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSÉ H. RAZO, COMMISSIONER**

**/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**November 22, 2021**

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

**RONALD PERKINS  
NIZINSKI & ASSOCIATES  
GODFREY, GODFREY, LAMB & ORTEGA**

**TLH/pc**

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