

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

**CATHRYN IRONS, *Applicant***

**vs.**

**CAPRI IN THE DESERT/SORRENTO and  
REPUBLIC UNDERWRITERS INSURANCE administered by  
SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ10630370**

**Van Nuys District Office**

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

Applicant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on September 13, 2023, wherein the WCJ found in pertinent part that applicant did not sustain injury arising out of and occurring in the course of employment (AOE/COE) to her brain, psych, or nervous system in the form of a stroke; and that the Labor Code section 5402 presumption is not applicable under the circumstances of this matter.<sup>1</sup>

Applicant contends that the report from neuropsychology qualified medical examiner (QME) James H. Jennison, Ph.D., is evidence that her neuropsychological impairment was caused by her October 11, 2015 stroke, and that defendant did not issue a timely denial so the section 5402 injury presumption applies to her injury claim.

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

We have considered the allegations in the 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&A, and return the matter to the WCJ for further proceedings

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<sup>1</sup> All further statutory references are to the Labor Code unless otherwise noted.

consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

## **BACKGROUND**

Applicant claimed injury to her to her brain, psych, and nervous system in the form a stroke while employed by defendant as a Licensed Vocational Nurse on October 11, 2015.

Neurovascular agreed medical examiner (AME) Nerses Sanossian, M.D., was provided medical records and was asked to give his opinions concerning the cause of applicant's stroke. In his September 29, 2022 report Dr. Sanossian identified the extensive medical record he was provided. (See Joint Exh. M, Nerses Sanossian, M.D., September 29, 2022, pp. 1 – 2.)<sup>2</sup> Regarding the cause of applicant's stroke, the doctor stated:

In reviewing this particular stroke of October 2015, there is no evidence that acute stress played any meaningful part. Hypertension is the leading etiology of stroke but the presence of advanced atherosclerosis in other vascular beds indicates that this risk factor has been present for decades and has not been well managed. Given the longstanding nature of the hypertension, the fact that it was complicated by severe dyslipidemia, diabetes, morbid obesity and the metabolic syndrome, the stressful events in the year preceding October, 2015 would have contributed less than 1% to the stroke she suffered. Acute stress in the days prior to the stroke had no etiological effect whatsoever.

(Joint Exh. M, Nerses Sanossian, M.D., September 29, 2022, p. 3.)

Dr. Sanossian was asked to submit a supplemental report addressing the issue of whether applicant's complaints of workplace stress "played any part in causation" of her stroke. (See Joint Exh. L, Nerses Sanossian, M.D., December 2, 2022, p. 1.) In his December 2, 2022 supplemental report, Dr. Sanossian stated:

Ms. Irons suffered a stroke in [sic] October, 2015 due to intracranial atherothrombosis. This was in the setting of a long-standing chronic occlusion of the left middle cerebral artery due to the same process of atherothrombosis. Stroke mechanism is very important in determining what risks and exposures contributed to the stroke. Atherothrombosis is a longstanding process that progresses over the span of years if not decades and is a reflection of the overall health of the individual. ¶ ... So when looking at the overall contribution of the stressful environment on her blood pressure, many years of poorly controlled blood pressure contributed to atherothrombosis to a much greater extent than 18 months of having a higher than baseline blood pressure related to stress.

(Joint Exh. L, p. 1.)

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<sup>2</sup> We note that the report does not include a summary of the medical records Dr. Sanossian stated that he had reviewed.

If we broke down the relative contribution of an 18-month period of increased stress due to work environment on her intracranial atherothrombosis, it would be less than 1%.

(Joint Exh. L, p. 2.)

On January 20, 2023, Dr. Sanossian's deposition was taken. (Joint Exh. K, Nerses Sanossian, M.D., January 20, 2023, deposition transcript.) His testimony, relevant to the issues addressed herein, included:

A. So, if there is an elevation in blood pressure it's going to be less than 5 millimeters mercury over the span of that 18 months. ¶ And, that relative contribution when taken over the entire life span of high blood pressure and over the entire milieu of multiple vascular risk factors is going to be well under one percent of the contribution to the atherosclerosis she had which was the underlying mechanism of her stroke.

(Joint Exh. K, pp. 16 – 17.)

Q. Okay. Do we have any medical evidence that you've been provided to show any increase in blood pressure readings during the 18 months prior to October of 2015?

A. No. That's what I said, I took a conservative course. We don't have any such readings. However, I did make the assumption that chronic stress would cause that elevation. And, under that conservative assessment I felt the contribution was less than one percent. Others may have put it at zero percent.

(Joint Exh. K, p. 17.)

Q. And, you mentioned that it was possible that 18 months of workplace stress could have increased blood pressure and played some role in the development of the condition that ultimately caused the stroke; is that correct?

A. Yes. That's the most conservative way of approaching this problem. So, I did make those assumptions. But you're right that would be assumed that the workplace stress led to an elevation in the blood pressure. And, that would assume that that blood pressure elevation was present throughout the 18-month period.

(Joint Exh. K, p. 19.)

A. ... The workplace is always stressful. We try to focus on healthy activities because we know that individuals when exposed to stress choose in many cases less healthy activities. So, the question the way you ask it is there any contribution, I would say yes. But that contribution is less than one percent, maybe even far less than one percent. But when individuals are under workplace stress they do tend to [sic] exercise less, eat less healthy, and there is at least theoretically a potential of higher blood pressure even if it's one or two millimeters Mercury. And, that could have an infinitesimal small effect on one's stroke risk. But, that effect is far less than one percent.

(Joint Exh. K, p. 21.)

A. That's correct. In my report I made the assumption of workplace stress and the assumption of an elevated blood pressure secondary to that. But, there is no

objective evidence whatsoever of that. And, so I did approach the report, again, not having done this very frequently, in a very conservative manner saying -- again, less than one percent does include zero percent. So I wrote in a very conservative way. But, you're correct I made some assumptions. The assumption was that she was under a lot of workplace stress and that led to elevations in blood pressure. But, there are no objective measures of either of those two that I reviewed.

(Joint Exh. K, p. 25.)

The parties proceeded to trial on December 14, 2020, and the trial was continued. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 14, 2020.) At the March 25, 2021 trial the matter was submitted for decision. On June 10, 2021, the WCJ issued an Order Vacating Submission for further development of the record. At the August 23, 2023 trial the issues submitted for decision were injury AOE/COE and whether the section 5402 presumption was applicable to applicant's injury claim. (MOH/SOE, August 23, 2023; December 14, 2020, p. 2.)

## DISCUSSION

We first note, it has long been the law that once reconsideration has been granted, the Appeals Board has the authority to address issues all issues, including those not specifically raised by the Petition. (Lab. Code, § 5906; (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]); (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98]; *Pasquotto v. Hayward Lumber* (2006) 71 Cal.Comp.Cases 223, 229 - 230, fn. 7 (Appeals Board en banc).)

In this matter, the Finding that applicant did not sustain injury AOE/COE was based on the reporting and deposition testimony of AME Dr. Sanossian. (See Opinion on Decision, p. 6.) 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]; *Universal City Studios, Inc. v. Workers' Compensation Appeals Bd. (Lewis)* (1979) 99 Cal.App.3d 647 [44 Cal.Comp.Cases 1133].)

As noted above, AME Dr. Sanossian repeatedly stated that applicant's 18 months of employment with defendant was a less than 1% cause for her stroke. It is well established that for the purpose of meeting the causation requirement in a workers' compensation injury claim, it is

sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291 [80 Cal.Comp.Cases 489]; *Nash v. Workers' Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324].) Clearly, if an injured worker's employment was a contributing factor to the cause of the injury (whether less than 1% , or more than 1%) the causation requirement in a workers' compensation injury claim is satisfied. . (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.*, *supra.*) However, to be substantial evidence a medical opinion must 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. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Escobedo v. Marshalls*, *supra.*)

Here, Dr. Sanossian explained that he “made the assumption of workplace stress and the assumption of an elevated blood pressure secondary to that. But, there is no objective evidence whatsoever of that.” (Joint Exh. K, p. 25.) He had previously stated, “We don't have any such readings. However, I did make the assumption that chronic stress would cause that elevation.” (Joint Exh. K, p.17; see also p. 19.) Thus, there is no factual basis for disputing our conclusion that Dr. Sanossian's opinions are based on surmise, speculation, conjecture, or guess. Based thereon, his opinions are not substantial evidenced and cannot be the basis for determining the issue of injury AOE/COE.

The Appeals Board has the discretionary authority to further develop the record where there is insufficient evidence to determine an issue that was submitted for decision. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) Normally, 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).) Under the circumstances of this matter, the parties must request that Dr. Sanossian submit a report clarifying whether applicant's employment with defendant was or was not a causative factor regarding her stroke. Also, it is the WCJ's and/or the parties' responsibility to ensure that Dr.

Sanossian understands that his opinions cannot be based on any “assumptions.” We recommend that upon return of this matter to the WCJ, a status conference be scheduled so the WCJ can assist the parties in determining the nature of the information to be sent to Dr. Sanossian, and how best to further develop the record, as appropriate.

Regarding applicant’s arguments, the fact that Dr. Jennison stated that applicant’s neuropsychological impairment was caused by her October 11, 2015 stroke is not relevant until it is determined whether her stroke was or was not an injury AOE/COE. Finally, as noted by the WCJ, there is no evidence in the record to support applicant’s argument that the section 5402 presumption is applicable. (See Report, p. 5; Opinion on Decision, p. 9.)

Accordingly, we grant reconsideration, rescind the F&A 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 Award issued by the WCJ on September 13, 2023 is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the September 13, 2023 Findings and Award 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

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

**/s/ CRAIG SNELLINGS, COMMISSIONER**



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

**December 7, 2023**

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

**CATHRYN IRONS  
BRIAN VOGEL, ESQ.  
D'ANDRE LAW LLP**

**TLH/mc**

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