

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

CECILIA OJEDA, *Applicant*

vs.

**AMY'S KITCHEN and TRAVELERS PROPERTY CASUALTY COMPANY OF
AMERICA, *Defendants***

Adjudication Number: ADJ14263093

San Jose District Office

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award (F&A) issued by the workers' compensation administrative law judge (WCJ) on January 20, 2023, wherein the WCJ found in pertinent part that applicant sustained a cumulative injury arising out of and occurring in the course of employment (AOE/COE) to her neck, bilateral wrists, bilateral shoulders, and bilateral upper extremities; that the reports of the orthopedic qualified medical examiner (QME), Ronald B. Wolfson, M.D., do not constitute substantial evidence; and that the issue of applicant's permanent and stationary date was deferred pending development of the record.

Defendant contends that Dr. Wolfson's reports and deposition testimony are substantial evidence as to parts of body injured and permanent disability.

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 applicant.

We have considered the allegations in the Petition and the Answer, and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, which we adopt and incorporate by this reference thereto, and for the reasons discussed below, we will deny reconsideration

BACKGROUND

Applicant claimed injury to her neck, bilateral shoulders, bilateral upper extremities, and bilateral wrists, while employed by defendant as a senior manufacturing worker during the period ending April 1, 2019.¹ Defendant accepted the neck injury claim and denied injury as to the other body parts claimed.

Applicant initially received treatment from providers at the Concentra Occupational Medical Center (see Applicant's Exhs. 14 – 16, 20), and she subsequently underwent a course of treatment by John Safanda, M.D. (See Applicant's Exhs. 7, 9 – 12.) Dr. Safanda diagnosed applicant as having left shoulder impingement syndrome, left wrist sprain, right wrist sprain, left carpal tunnel syndrome, and right carpal tunnel syndrome. (App. Exh. 10, Dr. Safanda, June 14, 2019, transcription p. 2 [EAMS p. 5].) As to the cause of applicant's symptoms, Dr. Safanda stated:

In reviewing the patient's history and medical records and examination today, it appears that the patient did sustain an injury to bilateral wrists and bilateral shoulders, arising out of and caused by the industrial exposure. (App. Exh. 10, transcription p. 3 [EAMS p. 6].)

On July 24, 2020, Dr. Safanda released applicant from care, referred her to a physiatrist for further treatment, and the diagnoses at that time were bilateral shoulder impingement syndrome, bilateral rotator cuff tendinosis, bilateral wrist sprain, and bilateral carpal tunnel syndrome. (App. Exh. 11, Dr. Safanda, July 24, 2020, p. 1, transcription pp. 2 – 3 [EAMS pp. 4 – 5].)

On December 1, 2020, applicant was evaluated by orthopedic QME Dr. Wolfson. After examining applicant, taking a history, and reviewing the medical record, Dr. Wolfson concluded that applicant's "objective factors of disability were, "Shoulder pain, lateral neck pain and evidence of non-verifiable radiculopathy to her wrist and hand in spite of negative electrodiagnostic studies early on" and regarding the cause of applicant's injury he stated:

There was industrial causation for the injury and in all medical probability there is industrial causation for the permanent impairment. The problem is coming from her neck and not her shoulder and it is one of non-verifiable radiculopathy. (Joint Exh. 1, Dr. Wolfson, December 1, 2020, p. 16.)

¹ At the December 1, 2022 trial the parties stipulated that they would amend case number ADJ14263093 to claim a cumulative injury ending on April 1, 2019, and that case number ADJ14256921 would be dismissed as being duplicative. Review of the Electronic Adjudication Management System (EAMS) ADJ file indicates there has been no request or Order dismissing case number ADJ14256921; nor has case number ADJ14263093 been amended.

Dr. Wolfson was provided additional medical records to review and in his supplemental report he concluded:

Basically, the problem was cervical and not in her shoulders. Any minimum limitation of motion in the shoulders would have been from the cervical radiculopathy. There was an EMG and nerve conduction study which showed mild carpal tunnel on the right, that was a misreading. That was not carpal tunnel. There was never any evidence of carpal tunnel. Ms. Ojeda had cervical radiculopathy. There was an MRI of her left wrist. Basically, she had no complaints involving her left wrist and there were very few complaints involving her left shoulder. The problem was cervical and the cervical impairment subsumed everything else. The MRI of the right shoulder was also irrelevant in my opinion and none of the shoulder issues on the MRI and none of the wrist issues are valid. The problem was cervical radiculopathy and the cervical impairment subsumes all other issues.

(Joint Exh. 2, Dr. Wolfson, June 11, 2021, p. 2.)

On July 15, 2022, Dr. Wolfson's deposition was taken. As noted by the WCJ in the Report, the parts of the deposition summarized in defendant's Petition do not include the testimony that was the basis for the WCJ's conclusion that "Dr. Wolfson's [sic] opinion on injury to the disputed body parts was unreliable..." (Report, p. 2.) For example, the WCJ noted:

At page 19, lines 3-18, the following exchange is seen;

"Q. Essentially, I wanted to ask, you know, why are there different results for these tests? That's what I'm getting at.

A, Well, I think you answered [sic] the question yourself. These things wax and wane, and what one doctor finds one year, another doctor may not find in a subsequent period of time.

Q. So do you still feel that she never had carpal tunnel in the right wrist?

A. Well, I don't know. The doctors that saw her in early '19 thought maybe she did, but when I saw her , she didn't. So it can come and go. Things get better. Things get worse. I don't know what happened. She had previous wrist—she had previous wrist surgery. I never did get any records on that. So I don't know. My answer is I don't know."

(Report, pp. 3 - 4.)

The parties proceeded to trial on December 1, 2022. The issues submitted for decision included parts of body injured and whether applicant's condition had reached permanent and

stationary status. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 1, 2022, p. 3.)

DISCUSSION

We first note that to be substantial evidence, a medical opinion must be well-reasoned and not speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth the reasoning behind the doctor's opinion, not merely his or her conclusions. (*Granado v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Another example of Dr. Wolfson's deposition testimony that the WCJ found to be "unreliable" is the following:

"Q. ...So what did you base your opinion your opinion on that there was no injury to the left wrist?

A. Well, I don't know. She may have had an injury. I don't know anything about it. She didn't complain of it. I don't know if she had an injury or not."
(Report, p. 4; deposition transcript, p. 22.)

Having reviewed the trial record, including the treating physicians' reports and the reports/testimony of Dr. Wolfson, we agree with the WCJ that Dr. Wolfson's opinions do not constitute substantial evidence regarding what body parts were injured as a result of applicant's employment with defendant.

Further, based on our review of the record, we agree with the WCJ that the reports of Dr. Safanda are "consistent, logical, and fully supported by all other treating physicians..." (Report, p. 4.) It is well established that the relevant and considered opinion of one physician, though inconsistent with other medical opinions, may constitute substantial evidence. (See *Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, [35 Cal.Comp.Cases 525].) The WCJ's Finding that applicant "sustained a cumulative injury arising out of and in the course of this employment to her neck, bilateral wrists, bilateral shoulders, and bilateral upper extremities" (F&A, p.1 Finding #1) is supported by the reports of Dr. Safanda, which are substantial evidence. Thus, we see no factual or legal basis for rescinding, amending, or otherwise disturbing the F&A.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on January 20, 2023, is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 12, 2023

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

**CECILIA OJEDA
LAW OFFICES OF NOEL HIBBARD
MULLEN & FILIPPI, LLP**

TLH/mc

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

**REPORT AND RECOMMENDATION ON
PETITION FOR REMOVAL**

I

INTRODUCTION

1. Applicant, Cecilia Ojeda, while employed during the period ending 4/1/2019 as a senior manufacturing worker (Occupational Group No. 221), at Santa Rosa, California, by Amy's Kitchen, insured for worker's compensation liability by Traveler's Insurance Co., sustained a cumulative injury arising out of and in the course of this employment to her neck, bilateral wrists, bilateral shoulders, and bilateral upper extremities.
2. A Petition for Reconsideration has been filed by the Defendant. The Petition was timely filed, and was verified in accordance with law. Applicant has not yet filed an Answer.
3. Defendant seeks Reconsideration from a Findings and Award dated 1/20/2023, which found injury to disputed body parts and deferred finding of a P&S date pending development of the record.
4. Defendant seeks Reconsideration based upon the following contentions; (1) The PQME, Dr. Woolfson, correctly determined that no injury occurred to the disputed body parts and fully discharged his duty as PQME; and (2) Dr. Woolfson's conclusions are based upon reasonable medical probability; and (3) Dr. Woolfson is experienced and well qualified.

II

SUMMARY of FACT

The Applicant, Ms. Ojeda, suffered an admitted cumulative injury during the period ending 4/1/2019. Injury was not in dispute initially, and treatment to all alleged body parts was provided by Muhammad Ghoury, DC, Rakesh Dixit, MD, and John Safanda, MD, at various times. All three physicians found cumulative injury to Applicant's neck, bilateral wrists, bilateral shoulders, and upper extremities. (see, for example, Dr.Safanda's reports at Exhibits 7-12.)

The parties sought a PQME opinion from Ronald Woolfson, MD, an orthopedic surgeon.

Dr. Woolfson produced a report dated 12/1/20, admitted into evidence as Exhibit 1. Dr. Woolfson stated that on the date of his examination, the Applicant had no wrist or upper extremity complaints. He concluded that all of the Applicant's symptoms and need for treatment were due solely to a cumulative injury to her neck, and that no other body parts were implicated at that time. Dr. Woolfson's report is extensively and accurately summarized in the Petition for Reconsideration pages 3-6, and this discussion will not be repeated here.

Dr. Woolfson's deposition was taken on 7/15/2022, and a transcript of this deposition was admitted into evidence as Exhibit 3. Portions of this deposition were summarized in the Petition, but the portions which underlay the finding that Dr. Woolfson's opinion on injury to the disputed body parts was unreliable were omitted. Therefore, the peccant portions are set forth here.

At page 17, lines 3-15 of Exhibit 3, the following exchange takes place;

“Q. Those tests you mentioned, the Phalen’s, Tinel’s, do those wax and wane in terms of results over time, or should they produce consistent results?

A. Well, they may wax and wane. Some people have complaints. Then they rest their wrist. Maybe they use a wrist brace, they get a little better. Maybe they stop the repetitive activity, it improves. Sometimes it stays improved. Sometimes it reoccurs. It’s not always black and white.

Q. is it your opinion that the applicant in this case never had right carpal tunnel syndrome?

A. I don’t know that she never had that, but she didn’t have it when I saw her.”

At page 19, lines 3-18, the following exchange is seen;

“Q. Essentially, I wanted to ask, you know, why are there different results for these tests? Tha[n]t’s what I’m getting at.

A. Well, I think you answer[es]ed the question yourself. These things wax and wane, and what one doctor finds one year, another doctor may not find in a subsequent period of time.

Q. So do you still feel that she never had carpal tunnel in the right wrist?

A. Well, I don’t know. The doctors that saw her in early ’19 thought maybe she did, but when I saw her , she didn’t. So it can come and go. Things get better. Things get worse. I don’t know what happened. She had previous wrist—she had previous wrist surgery. I never did get any records on that. So I don’t know. My answer is I don’t know.”

Further along on page 19, at line 25 and continuing to page 20, line 11, this exchange appears;

“Q. ...let’s move on t[h]o the left wrist. Did you see any objective findings as to whether there was an injury to the left wrist?

A. No[.]

Q. And I did see there was an MRI on the left wrist. Di[s]d you review that?

A. Let’s see. There was an MRI dated 7/9/19 of the left wrist without contrast. Yeah, I have that report here.

- Q. And I see it notes partial tearing of the abductor pollicis longus tendon at the first metacarpal base. Did you disagree with that assessment?
- A. No. I don't know. That was radiologist Gina Midmore's interpretation. I did not look at the films. I only looked at the report. The films weren't given to me. So I don't know. It is what it is."

At page 21, lines 2-13, the following appears;

- "Q. Did you examine the left wrist?
- A. Yes. I examine where people have complaints. She did not have any complaints of the left wrist when I saw her for the first time in December of '20.
- Q. Did you record the range of motion measurements for her left wrist?
- A. No[.]
- Q. Why is that?
- A. Well because she had no complaints, number one. Number two, I felt the problem was cervical radiculopathy and it fairly completely explained the process to me, and I just didn't think it was indicated."

Finally, at page 22, lines 15-22, we find;

- "Q. ...So what did you base your opinion your opinion on that there was no injury to the left wrist? ...
- A. Well, I don't know. She may have had an injury. I don't know anything about it. She didn't complain of it. I don't know if she had an injury or not."

Based upon Dr. Woolfson's opinion, Defendant continued to deny injury to any body part other than the neck. Attempts at informal resolution failed, so the matter came before me for trial. The presently relevant issues for determination were injury to the disputed body parts and the P&S date. Because Dr. Woolfson was unable to express an opinion as to the additional body parts during his deposition, and because I found the reports of Dr. Safanda consistent, logical, and fully supported by all other treating physicians, I chose to rely on the reports of Dr. Safanda to resolve the body parts issue. The PD and P&S date issues could not be resolved based upon reports of treating physicians, who did not address those issues. Dr. Woolfson was unable to express an opinion on injury to the disputed body parts, and thus could not reliably state an opinion on disputed body parts and MMI, I ordered development of the record on those points. From this decision, Defendant sought Reconsideration.

II

DISCUSSION

In the Opinion on Decision, I explicitly based my finding of injury to the disputed body parts on the reports of Dr. Safanda, Exhibits 7-12. If the Petition claims that this reliance was in any way improper, or that the reports of Dr. Safanda and the other treating physicians were less than substantial, I failed in my attempts to find such an argument. If the WCAB agrees that these reports were of a sort that a person of ordinary prudence would be willing to place reliance on them, then the decision should be upheld.

Defendant contends that Dr. Woolfson is an experienced, qualified, and skilled physician. I agree. Defendant contends that Dr. Woolfson had a reasonable medical basis for his conclusion that all of Applicant's complaints as of the date of Dr. Woolfson's first examination stem from a cumulative neck injury, and are not attributable to pathology in the wrists or shoulders. I agree with that as well.

The dispute rises from Defendant's attempt to exclude the shoulders and wrists from the case based upon Dr. Woolfson's opinion that, since the disputed body parts were not symptomatic at the time of his evaluation, it is doubtful that they were ever injured in the first place. This position cannot be defended on this record. As set forth in the quotations from Dr. Woolfson's deposition set forth above, Dr. Woolfson states repeatedly that he does not know if injury to the disputed body parts ever occurred. What he does state is that Applicant had recovered from such an injury by the time of his

evaluation, if it did occur as found by every treating physician to write a report on this case. Had Defendant taken the position at trial that the disputed body parts had been injured, but were not presently causing disability o[f]r a need for treatment, it might have been possible to use Dr. Woolfson's reports to resolve the remaining issues. Since this issue was raised at trial, it had to be decided, and Dr. Woolfson's evidence could not be relied upon because Dr. Woolfson explicitly stated that he did not know the answer to the questions posed.

IV

RECOMMENDATIONS

DENY Reconsideration[.]

David L. Lauerma,
Workers' Compensation Judge

Filed and served by Mail on 02/23/2023 All
parties on the Official Address Record
By: OMartinez