

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

WILLIAM FERRIAN, *Applicant*

vs.

**EMERGENCY MEDICAL SERVICES CORPORATION dba
AMERICAN MEDICAL RESPONSE; ACE AMERICAN INSURANCE
COMPANY, administered by SEDGWICK CMS, INC., *Defendants***

**Adjudication Number: ADJ11171247
Long Beach District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the June 15, 2023 Findings and Award (F&A) regarding the “the effectuation of a second psychiatric evaluation.” (Petition for Reconsideration, p. 3.) 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 as noted below, we will deny reconsideration.

We do not adopt or incorporate sections I or III of the WCJ’s Report and have omitted those sections from the copy of the Report attached to this decision.

Finally, we note that the Petition was timely filed as the 20-day deadline for filing a petition for reconsideration is extended 10 calendar days from the date of service if the place of address and the place of mailing of the party, attorney, or other agent of record being served is outside of California but within the United States. (Lab. Code, § 5903; Cal. Code Regs., tit. 8, § 10605.) The F&A issued and was served on June 15, 2023; the Petition was filed on July 13, 2023, and included service on an out of state recipient in Kentucky. (Petition, p. 5.) Therefore, the Petition was timely filed within 30 days. (Lab. Code, § 5903; Cal. Code Regs., tit. 8, § 10605.)

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration of the June 15, 2023 F&A is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER



/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 11, 2023

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

**WILLIAM FERRIAN
PERONA, LANGER, BECK, SERBIN & HARRISON
PEARLMAN, BROWN, WAX, LLP**

JMR/ara

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

REPORT AND RECOMMENDATION OF WORKERS' COMPENSATION
JUDGE ON PETITION FOR RECONSIDERATION

II.
FACTS

This case was denied AOE-COE by Emergency Medical Services Corporation dba American Medical Response, insured for workers' compensation by Ace American Insurance Company (Defendant, Employer, AMR or Ace) who also raised legal, good faith, non-discriminatory personnel action, as a defense. The focus of the Trial and the Decision was on Applicant's claim that he sustained injury as a result of various actions by the employer, some or all of which, were conditions of employment as well as personnel actions. Applicant's testimony was almost entirely limited to his psychological stressors resulting from actions by the employer.

It was determined that Applicant sustained injury to his psyche, as the result of cumulative trauma during the period of February 3, 1981, to September 26, 2017, while employed as a Paramedic by AMR. In reliance on the PQME/AME report of Ashraf Helmy, M.D., he was awarded 23% permanent disability, after apportionment, based on a stipulation of the parties who agreed to the rating if defendant was unable to prevail on their defenses of injury AOE-COE and legal, good faith, non-discriminatory personnel action. Temporary disability was also awarded for the period found by Dr. Helmy from September 26, 2017, to February 21, 2018.

The case was the subject of a Findings and Order dated January 18, 2022, where it was found that Applicant had sustained injury AOE-COE to the psyche and requiring further development of the Rolda Analysis to determine whether the claim was barred. The parties were ordered to develop the record. Specifically, the parties were ordered to have the PQME address causation regarding a fight with a paramedic from another agency, and to divide the issue between the employer's failure to take action on Applicant's behalf and the stress that Applicant experienced from the violent confrontation.

Initially the PQME/AME had also conflated Applicant's emotional stresses for being written up for eating in the ambulance, working conditions including no scheduled breaks, no time for meals, and difficulties finding available restrooms. The doctor was asked to review the record and address the percentages attributed to the personnel actions and what was attributed to the conditions at work. The supplemental report addressing these issues was admitted at a hearing on March 2, 2023 (Exhibit XX). Petitioner was not in the courtroom at the time of the disposition, so an NOI was issued and served on all parties and the matter was submitted on March 20, 2023. It should be noted that Counsel, who were present at the hearing, were offered an opportunity to present further testimony and/or additional documentary evidence and declined. The matter was then submitted on March 20, 2023, without objection.

IV.
DISCUSSION

Notwithstanding the issue of the late filing, we will address the merits of the petition. Applicant appears to be concerned about the supplemental report obtained at the Court's request and marked as Joint Exhibit XX. It is the report from the PQME where he further addresses the Rolda Analysis based on the record. Not only was the report favorable to Applicant's case, but the doctor, Applicant's counsel and the Court saw no reason for another evaluation of Applicant to allow the doctor to address a specific legal issue.

Without saying so, he is apparently referencing his diagnosis by the PTP Nelson Flores, Ph.D., whose reports were not relied upon. The Court had concerns regarding the history obtained by Dr. Flores and his assessment of whether or not apportionment was an issue to be addressed. He was in no way subjected to the scrutiny addressed in Dr. Helmy's multiple reports and deposition. Finally, Defendant's objections to Exhibit 6 and Exhibit 11, which were reports of Dr. Flores, including his final report, were not properly attested. The court allowed 30 days for the defects to be corrected but they were not. Therefore, two of Dr. Flores' reports were not admitted into evidence including his final report. Even if the opinion of Dr. Flores was found to be substantial, without his final report being in evidence we would have to rely on the report of the PQME/AME.

V.
RECOMMENDATION

We recommend that the Petition for Reconsideration be Denied.

DATE: July 28, 2023

Daniel Nachison
WORKERS' COMPENSATION JUDGE