

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

ANN MAZUK, *Applicant*

vs.

**THE AEROSPACE CORPORATION;
ZURICH NORTH AMERICA, *Defendants***

**Adjudication Number: ADJ10202480
Marina del Rey District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted reconsideration in order to allow us time to further study the factual and legal issues in this case. We now issue our Opinion and Decision After 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 as quoted below, we will affirm the February 22, 2021 Findings and Award.

We adopt and incorporate the following quote from the WCJ's report:

Petitioner's Contentions:

(a) Petitioner contends the WCJ erred in finding applicant suffered a work-related hypertension injury because the WCJ relied on the reporting of Dr. Richard Hyman which is purportedly not substantial medical evidence. This reporting is supposedly based on speculation and surmise and purportedly is contrary to applicant's trial testimony, (Petitioner refers to Dr. Mark Hyman in his Petition for Reconsideration, Dr. Hyman is a well-respected internist in Los Angeles, but this appears to be a mistake and it would be unfair in the WCJ's opinion to prejudice the defendant's due process rights over such a trivial error).

(b) Petitioner contends the WCJ erred in finding applicant suffered a work-related hypertension injury because the WCJ relied on the reporting of Dr. Richard Hyman which purportedly made a causation finding based on a temporary increase in the number of hypertensive medications applicant took

after her industrial injury, when this was arguably a mere exacerbation of a pre-existing condition that would not warrant permanent impairment for hypertension.

(c) Petitioner contends the WCJ erred in finding the applicant suffered a work-related hypertension injury even if Dr. Richard Hyman's reporting is substantial evidence, because WCJ Spoeri purportedly violated defendant's due process rights when he ordered development of the record for a medical opinion that was not substantial without allowing defendant to secure a rebuttal medical opinion to the "rehabilitated report."

II. FACTS

This case was filed on 11-24-2015 for a specific slip and fall injury of 10-22-2015 involving a left knee and right hip. It was amended in 2016 to add circulatory system (cardiovascular/hypertension). Defendant filed a DOR in January of 2019, to which applicant's attorney objected. The matter came before WCJ Jackson on 04-02-2019 for an MSC. There was a pretrial conference statement (PTCS) filled out and signed by the parties. The matter was set for trial before WCJ Spoeri on 05-30-2019. The left knee and right hip were admitted body parts and the cardiovascular/hypertension was denied. There was no PQME or any other reporting in internal medicine except for a report from Dr. Richard Hyman dated 12-30-2016.

On 05-30-2019 the parties appeared before WCJ Spoeri, and went on the record for the first day of trial. With some persuasion, the parties were able to agree on almost everything. They agreed to the AWW, the P&S date, the Group Number and all orthopedic exhibits. They agreed the left knee and right hip were injured and agreed to the PD rating for these body parts.

They did NOT agree the hypertension injury was work related; if the WCJ found the hypertension to be work related, they agreed there would be 40% apportionment to work. They agreed on the level of PD for hypertension. The only disagreement on evidence, was defendant objecting to the report of Applicant's Exhibit One, the report of Dr. Richard Hyman dated 12-30-2016, because it contained what was either a typographical error or an ambiguity on page five of the report. Applicant had a minor non-litigated slip and fall left knee injury in 2014 and then her far more serious slip and fall litigated left knee injury from 10-22-2015. Dr. Hyman's report wrote down in the causation paragraph "2014" instead of "2015" and the defense attorney argued that there was no medical reporting supporting a hypertension claim for the date of injury in question. The WCJ wanted to clear up the matter with an interrogatory or some other expeditious method. The defendant disagreed. The matter proceeded to trial where the WCJ decided to develop the record on the issue to clear up the ambiguity in the report of Dr. Hyman of 12-30-2016. Because Dr. Hyman was

preparing a new report, the WCJ asked him to explain causation with a little more detail. Defendant filed a Removal which was denied.

The parties did a direct examination and a cross examination of the applicant. Dr. Hyman later prepared several additional short reports which are set out in Applicant's Exhibits 11-14. Defense attorney deposed Dr. Hyman as is set out in Defendant's Exhibit B. Briefs were done. The WCJ then issued a finding on 02-22-2021 that the hypertension was indeed work related based on the reporting of Dr. Hyman. Defendant filed timely a Petition for Reconsideration.

III. **DISCUSSION OF PETITIONER'S CONTENTIONS**

Petitioner contends the WCJ erred in finding the applicant suffered a work-related hypertension injury because the WCJ relied on the reporting of Dr. Richard* Hyman, which is purportedly not substantial evidence. This reporting is supposedly based on speculation and surmise and purportedly is contrary to applicant's trial testimony. *(Petitioner refers to Dr. Mark Hyman in his Petition for Reconsideration; Dr. Mark Hyman is also a highly respected internist in Los Angeles, but this reference appears to be a typographical mistake. It would be unfair in the WCJ's opinion to prejudice the defendant's due process rights over such a trivial typographical error).

There is only one set of medical reports on the hypertension issue in this case and they are from Dr. Richard Hyman. Defendant chose not to obtain any internal medical reporting in this case. Defendant has characterized the WCJ as having "supported" defendant's position that the reporting of Dr. Richard Hyman was not substantial medical evidence. This involves an unorthodox approach to the accuracy of the events in this case. There was a typographical error in the report of Dr. Richard Hyman in Applicant's Exhibit 1, the report of Dr. Richard Hyman dated 12-30-2016. Page one of the report said "10-22-2015 she injured her knees and hips." There had been a minor non-litigated 2014 slip and fall event. Page five of this same report said there was a probability that there was "sufficient stress arising from the injury to have aggravated her hypertension." Dr. Richard Hyman went on to say "[t]he patient had ... orthopedic injury in 2014 with ongoing problems." The feeling was that by writing "2014" instead of "2015" Dr. Hyman had made a typographical mistake of one keystroke. There was an effort to send an interrogatory to correct the likely typographical mistake. Defense attorney would not agree to do this.

The defense attorney argued strenuously on the first day of trial, that as the 12-30-2016 report of Dr. Hyman stood, its literal meaning did not refer to the 10-22-2015 date of injury, or the report had some ambiguity. Therefore, defense attorney argued, the WCJ needed to develop the record. The only way to develop the record in this circumstance where the defense attorney would not allow a correction of what certainly looked like a typographical error, was to indicate

that the report was ambiguous and therefore not substantial and the WCJ needed Dr. Hyman to clear up the ambiguity. The WCJ also wanted a little more clarity in the causation section as long as the doctor was issuing a new report.

....

Defense attorney also seems to argue that there is a chasm between the applicant's trial testimony and the reporting of Dr. Hyman. We seem to have a difference of emphasis here. Before the injury date of 10-22-2015, the applicant took two hypertension medications called Atenolol and HCTZ. Please see the Summary of Evidence (SOE) dated 05-30-19 page 6, lines 14-16. There was no medical or witness rebuttal to this testimony. In some medical reports, Dr. Hyman thought applicant may have been taking only one medication before the 10-22-2015 work injury, while in other of his reports, he seems to suggest she may have been on two hypertensive medications just before the work injury on 10-22-2015. It seems clear that within three months of 10-22-2015 applicant was also taking a third hypertension medicine called Benazepril. See SOE 05-30-2019, page 5, lines 19-22. In his report of 08-03-2020 in Applicant's Exhibit 13, on page two, Dr. Richard Hyman noted the applicant "was having to use extra benazepril and hydrochlorothiazide [HCTZ] when her blood pressure was elevated. However, at one point the benazepril was discontinued in 10-16 and she was just taking atenolol and hydrochlorothiazide."

Applicant provided very credible testimony. She made a very believable witness for her case. She said she slipped and fell on 10-22-2015, and could not get up for five or ten minutes. She injured and had extreme pain in her left knee. See Summary of Evidence (SOE) of 05-30-2019, page 5, lines 10-12.

In the his report of 08-03-2020 in Applicant's Exhibit 13, Dr. Hyman noted that in March of 2017 "her blood pressure had been elevated and she restarted the benazepril." He also stated in that report "[t]he records again confirm that there was an increase or change in her medication after the on the job injuries and she was advanced to three medications." Dr. Hyman summarized his opinion, "[s]o again these records indicate an aggravation and acceleration of a preexisting condition." Please note the doctor used the word aggravation and not the word exacerbation. The applicant testified that after the 10-22-2015 date of injury, when she had added the new hypertension medication, she began to feel different and to have a rapid heartbeat after she began this new medication. Please see SOE of 05-30-2019, page 6, lines 15-19. This testimony was credible and un rebutted. The WCJ feels it would be appropriate for Dr. Richard Hyman to rely on this testimony if it would help make a medical diagnosis.

Applicant testified that after the date of injury of 10-22-2015 her blood pressure range went above the pre-10-22-2015 range. This testimony was credible and un rebutted. See SOE 05-30-2019 page 8, lines 21-23. It would be reasonable for

Dr. Richard Hyman to rely on this statement in considering an opinion on a diagnosis and causation.

The applicant testified at trial that she was having daily panic attacks for a period of between six and eight weeks. See SOE of 05-30-2019, page 5, lines 23-25. She had increased pain symptoms in her knee for a period of six months. See SOE of 05-30-2019, page 6, lines 6-7. Ongoing pain is known to aggravate high blood pressure and hypertension. The applicant later testified that she became so emotionally stressed about her left knee pain that she had further panic attacks. See SOE of 06-17-2019 page 2, lines 6-7. She had to use more Xanax. Please see SOE 06-17-2019, page 3, lines 5-6. There was absolutely no medical or witness rebuttal to this highly credible testimony by the applicant. Please keep in mind the applicant is someone who has worked for nearly 38 years for the employer and who has been back at work at the employer for over five years since the date of the injury.

Defense attorney wants Dr. Hyman to approach his diagnostic method for hypertension by looking at blood pressure readings and determining when they go up and down, and if they are up during the period after the 10-22-2015 date of injury, then and only then can the applicant have a work-related hypertension injury. Instead, Dr. Hyman is more focused on the stresses the applicant has had to endure, and the varieties of hypertension medications she was taking and the level of the dosages she was taking.

Applicant has provided highly credible un rebutted testimony that she was under very considerable emotional stress, severe physical pain which induced stress, and she began to take benazepril. She also increased her dosages of her other hypertension medications. She had to do these things to keep her blood pressure readings more or less at the same levels as before. Dr. Hyman quite reasonably felt these things were evidence of an “aggravation and acceleration” of her preexisting hypertension. He apportioned 40% to the work injury of 10-22-2015 and 60% to non-industrial factors.

When we look at what counts in the applicant’s testimony, and what counts in the reporting of Dr. Hyman, there is a match. It is not a perfect match as the defense attorney has ably pointed out, but there is an increase in the medication, based on credible un rebutted testimony about an increase in symptoms. The exact blood pressure readings that defense attorney wants to rely upon do not seem to be very important. There is no evidence in the record to suggest blood pressure readings are of critical importance when hypertension medication is increased based on symptom increases. Dr. Richard Hyman’s reporting is based on credible and reliable evidence; it is NOT based on speculation and surmise. It is indeed substantial evidence.

Petitioner contends the WCJ erred in finding applicant suffered a work-related hypertension injury because the WCJ relied on the reporting of Dr.

Richard Hyman which purportedly made a causation finding based on a temporary increase in the number of hypertensive medications applicant took after her industrial injury, when this was arguably a mere exacerbation of a preexisting condition that would not warrant permanent impairment for hypertension.

When does a man stop needing a shave and start having a beard? At what point does an exacerbation cross the borderline and become an aggravation that is worthy of being a full-blown work injury? According to Applicant's Exhibit 13, page two, in this case the applicant needed to use a third hypertension medication (Benazepril) until October of 2016. This was a year after the date of the 10-22-2015 date of injury. The applicant had work-related panic attacks and took elevated levels of Xanax for six months. These are significant periods of time. They are not fleeting "exacerbations." While applicant eventually returned to baseline levels for hypertension medication, this should not mean that there is no hypertension injury. A respected internist has written a solid medical report indicating applicant had an "aggravation and acceleration" of her preexisting hypertension. There is no medical evidence which disputes this opinion. Please note that Applicant's Exhibit 13 also indicates that applicant began to take Benazepril again in March of 2017.

Every analogy limps, but a comparison may be in order. Imagine a worker with an old scar on his or her forearm from a laceration from two years earlier. He or she suffers a subsequent cut to the forearm in the exact same place on the forearm. After six months or a year, the subsequent cut heals to the baseline of the original injury. Would anyone argue that he or she has suffered no injury because the second injury has returned to the baseline? By the way, Dr. Hyman is not saying the applicant's hypertension injury has returned to the baseline because he has apportioned 40% to industrial factors.

Most importantly, such an argument would require a medical opinion and the defendant made a strategic choice in this case to forego a PQME. There is no countervailing medical opinion and a WCJ should not substitute a lay opinion on this issue.

Petitioner contends the WCJ erred in finding the applicant suffered a work-related hypertension injury, even if Dr. Richard Hyman's reporting is substantial medical evidence, because WCJ Spoeri violated the defendant's due process rights when he ordered a development of the record for a medical opinion that was supposedly not substantial without allowing the defendant to secure a rebuttal medical opinion to the "rehabilitated report."

....

The defense attorney filed a Petition for Removal in mid-2019 shortly after 05-30-2019. He did not ask for a PQME panel at that time claiming that his due process rights were violated. The defense attorney received periodic medical reports from Dr. Hyman in 2019 and 2020 and yet did not ask for a panel QME in internal medicine at that time saying his due process rights were violated. He only claimed for the first time on 01-28-2021 that his due process rights were violated.

The defense attorney had entered into a stipulation at trial that the apportionment for the hypertension injury is 40% apportionable to work if the injury is work related, and he has stipulated to the level of PD for the hypertension injury if it is work related. How are these stipulations going to work with a PQME in internal medicine? He is asking to close the barn door on the PQME panel after most of the PQME horses have left the barn.

There is no due process argument that will fly here. Defense attorney was allowed to depose Dr. Hyman. He had many chances to obtain a PQME in internal and chose not to do so. He did not even ask for a PQME after receiving the last report of Dr. Hyman or after Dr. Hyman's deposition.

IV. RECOMMENDATIONS

For the reasons stated above, it is recommended the Petition for Reconsideration be denied.

In addition, we have given the WCJ's credibility determinations great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

For the foregoing reasons,

IT IS ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 22, 2021 Findings and Award is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 7, 2021

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

**ANN MAZUK
LAW OFFICE OF BRUCE D. KORDIC
FLOYD SKEREN MANUKIAN LANGEVIN**

PAG/abs

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