

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

EVA CACH, Applicant

vs.

**TRAINING AND RESEARCH FOUNDATION and CYPRESS INSURANCE CO.,
administered by BERKSHIRE HATHAWAY HOMESTATE COMPANIES, *Defendants***

**Adjudication Number: ADJ11812498
Anaheim District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Applicant seeks reconsideration of the Findings of Fact, (Findings) issued by the workers' compensation administrative law judge (WCJ) on February 18, 2021, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to her left shoulder, and that applicant was not entitled to temporary disability benefits for the period from November 2, 2020, "to present." (Findings.)

Applicant contends that the trial record contains substantial evidence that she has been temporarily totally disabled since November 2, 2020.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We did not receive an Answer from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition), and the contents of the Report. Based on our review of the record, for the reasons stated by the WCJ in the Report, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to her face, eye, left shoulder, and chest while employed by defendant as a teacher on September 29, 2017. Applicant's condition was deemed permanent and stationary (P&S) on July 31, 2018, by the treating physician Shelley Anais Arredondo, M.D. (Def. Exh. A, Dr. Arredondo, July 31, 2018.) Dr. Arredondo stated that applicant's work restrictions, as a result of her injury were, "No lifting/pushing/pulling/carrying greater than 10 lbs." and she

said applicant could not “return to regular duty.” (Def. Exh. A, p. 7.) The doctor estimated that applicant would need further medical treatment for the next five years. (Def. Exh. A, p. 6.) The injury claim was settled by Stipulations with Request for Award, filed January 2, 2019, which included an award of 1% permanent disability and future medical treatment.¹

Subsequently, applicant received treatment from William Mealer, M.D. Dr. Mealer’s November 2, 2020 progress report (PR-2) includes the following:

DISABILITY STATUS: DISABILITY

CURRENT WORK STATUS: OFF WORK

Work Status: Remain off-work until (x)

(App. Exh. 1, Dr. Mealer, November 2, 2020, pp. 1 and 2.)

On December 3, 2020, applicant filed a Petition to Reopen for New and Further Disability. The parties proceeded to an Expedited Hearing on January 20, 2021. Applicant testified that her left shoulder pain has worsened since the time of the settlement and that she is receiving treatment from Dr. Mealer. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 3, 2020, pp. 3 – 4.) She also testified that, “The last time she earned income from a job was May 30, 2018.” (MOH/SOE, p. 4.) The issues submitted for decision included temporary disability, with applicant claiming she was temporarily totally disabled for the period from November 2, 2020, to the date of the trial and ongoing. (MOH/SOE, p. 2.)

DISCUSSION

Any award, of benefits by the Appeals Board, including an award of temporary disability indemnity, 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].)

We first note, the fact that an injured worker is receiving medical treatment is not in and of itself substantial evidence that the injured worker is temporarily totally disabled. It is quite common for an injured worker to be awarded lifetime medical treatment after the injury condition became permanent and stationary, as was done in this matter. (see e.g. DWC-WCAB form 10214(a) - Stipulations with Request for Award.) Applicant testified that she last worked on May 30, 2018. (MOH/SOE, p. 4.) Applicant’s condition was deemed P&S on July 31, 2018. (Def. Exh.

¹ We note there is no Order Approving the Stipulations with Request for Award in the Electronic Adjudication Management System (EAMS) ADJ file.

A, p. 2.) The January 2, 2019 settlement of applicant's injury claim included an award of future medical treatment. Therefore, the fact that applicant was receiving treatment from Dr. Mealer is not evidence that she was temporarily totally disabled from November 2, 2020, and ongoing.

Regarding the reports from Dr. Mealer, 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 the reasoning behind the physician's opinion, not merely his or her conclusions.. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) The November 12, 2020 report from Dr. Mealer is a Request for Authorization and does not address the issue of temporary disability. (App. Exh. 1, November 12, 2020.) Further, as quoted above, Dr. Mealer's November 2, 2020 PR-2 states that applicant's disability status was "disability," that her current work status was "off work," and that her work status was, "remain off-work until (x)." (App. Exh. 1, November 2, 2020, pp. 1 and 2.) Clearly, the reports from Dr. Mealer do not comply with the substantial evidence criteria explained in *Escobedo v. Marshalls, ibid*.

Based on our review of the trial record, for the reasons discussed herein, we agree with the WCJ that, "[T]here was no substantial medical evidence presented to base an award of temporary disability." (Report, p. 3.)

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings of Fact issued by the WCJ on February 18, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 11, 2021

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

**EVA CACH
OZUROVICH & SCHWARTZ
SIEGEL, MORENO & STETTLER, APC**

TLH/pc

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