

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

JOSE CASTILLO, *Applicant*

vs.

**ASTRO ALUMINUM TREATING COMPANY and ZURICH AMERICAN INSURANCE
COMPANY, *Defendants***

**Adjudication Number: ADJ11624477
Santa Ana District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

We previously granted defendant's Petition for Reconsideration (Petition) to further study the factual and legal issues in this case. This is our Opinion and Decision After Reconsideration.

Defendant seeks reconsideration of the Findings and Award, (F&A) issued by the workers' compensation administrative law judge (WCJ) on November 9, 2020, wherein the WCJ found in pertinent part that applicant sustained injury arising out of and occurring in the course of employment (AOE/COE) to his lungs and to his respiratory system, and that applicant was not temporarily totally disabled as a result of the injury.

Defendant contends that the reports from internal medicine qualified medical examiner (QME) James F. Lineback, M.D., are not substantial evidence as to the issue of injury AOE/COE, and that the trial record should be further developed.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the 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 incorporate herein, and for the reasons discussed below, we will affirm the F&A.

BACKGROUND

Applicant claimed injury to his lungs and respiratory system, due to exposure to aluminum/metallic dust, while employed by defendant as a shipping and receiving supervisor during the period from July 28, 2017, through July 28, 2018.

On April 5, 2019, applicant was evaluated by QME Dr. Lineback. (Joint Exh. 1, Dr. Lineback, April 5, 2019.) Dr. Lineback examined applicant, took a history, and reviewed the medical record pertaining to applicant's course of treatment between May 17, 2011, and December 11, 2018. (Joint Exh. 1, pp. 6 – 22.) He found applicant to be permanent and stationary on the date of the evaluation. In order to address the issue of causation, Dr. Lineback requested that he be provided material safety data sheets pertaining to the substances that applicant was exposed to during his employment with defendant.

Dr. Lineback was provided additional medical records including a June 22, 2019 report from the LA County/USC Medical Center Pulmonary Clinic by Dr. Kafi, indicating applicant's lung disease was related to the aluminum dust exposure from his work as well as his chronic hypersensitivity pneumonitis and interstitial lung disease. (Joint Exh. 2, Dr. Lineback, July 12, 2019, p. 2.) In his supplemental report, Dr. Lineback stated:

The comments by both Dr. Kafi at USC Pulmonary Clinic and by several of the patient's treating physicians are certainly very relevant in this case. Dr. Antonio Reyes stated in a letter dated October 19, 2018, that "the etiology of his pulmonary fibrosis is considered secondary to constant exposure to metallic dust at work". Dr. Reyes noted the patient was permanently disabled. As stated previously, Dr. Kafi stated that this patient's interstitial lung disease should be covered by workers' compensation, given his long history of aluminum exposure and its well-known association with chronic hypersensitivity pneumonitis and interstitial lung disease.
(Joint Exh. 2, pp. 2 – 3.)

In Dr. Lineback's November 12, 2019 supplemental report, he stated that he had reviewed a job description and several material safety data sheets. (Joint Exh. 3, Dr. Lineback, November 12, 2019, p. 2.) Based on his review of those documents, Dr. Lineback stated:

There is no information in either the patient's job description or the material safety data sheets that I reviewed that would change the opinions I reached in my P&S report dated July 12, 2019. As I stated in that report, the patient had been seen by an academic pulmonologist, Dr. Kafi, in the pulmonary clinic at USC Medical Center, who felt that this patient's interstitial lung disease should be covered by workers' compensation "given his long history of aluminum exposure". Dr. Kafi also noted a well-known association between chronic hypersensitivity pneumonitis and interstitial lung disease. ¶ There is no information in these additional documents that would prevent me from agreeing with Dr. Kafi's opinions expressed in his report of June 22, 2019. It, therefore,

remains my opinion that this patient's interstitial lung disease should be considered job related and should be treated on an industrial basis. (Joint Exh. 3, p. 3.)

On December 3, 2019, Dr. Lineback's deposition was taken. His testimony included the following:

But if you look at it from a causation standpoint, we know that he's got pulmonary fibrosis. We know that by definition it's been going on for a long time. We know that the academics now are saying that the majority of these cases are probably related to long-term low-grade exposure that occur over a period of several years. ¶ Now, in terms of the aluminum, we know that that's an element that he's been exposed to for several years ... ¶ Though that data is controversial, we're still looking at more probable than not, so we're looking at a reasonable medical probability. Because if it wasn't aluminum, then we know it's related to something else, either at work or outside of work. ¶ ... None of those nonoccupational etiologies have been identified in this type of case. ¶ In the absence of identifying some other nonoccupational etiology, you're left with reasonable medical probability with industrial causation related to an element that's been reported to cause pulmonary fibrosis. ... (Joint Exh. 5, Dr. Lineback, December 3, 2019, deposition transcript, pp. 23 – 24.)

The parties proceeded to trial on August 31, 2020. Applicant testified that he worked for defendant for the period from 1985 through July 28, 2018. He stated that while employed by defendant he sanded aluminum aircraft parts for five to eight years, and during that time he had heavy exposure to metallic dust. (Minutes of Hearing and Summary of Evidence (MOH/SOE), August 31, 2020, pp, 4 – 5.) The matter was continued to September 9, 2020, for additional testimony. (MOH/SOE, September 9, 2020, pp. 2 – 4.)

DISCUSSION

It is well known that the employee bears the burden of proving injury AOE/COE by a preponderance of the evidence. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297–298 (80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) “Preponderance of the evidence” is defined by section 3202.5 as the “evidence that, when weighed with that opposed to it, has more convincing force and the greater probability of truth. When weighing the evidence, the test is not the relative number of witnesses, but the relative convincing force of the evidence.” (Lab. Code, § 3202.5.) 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, supra*, at 298-299.)

“The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a ‘reasonable probability.’ (citation) That burden manifestly does not require the applicant to prove causation by scientific certainty.” (*Rosas v. Worker’s Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700 – 1701 [58 Cal.Comp.Cases 313].) Medical evidence that industrial evidence was reasonably probable, although not certain, constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen’s Comp. Appeals Bd.* (1968) 69 Cal.2d 408, [33 Cal.Comp.Cases 660].)

Here, the reports from Dr. Lineback, and his deposition testimony are the only medical evidence in the trial record. As noted above, having examined applicant and reviewed the extensive medical record Dr. Lineback agreed with the opinions of treating physician Dr. Reyes, and academic pulmonologist, Dr. Kafi, that applicant’s lung/respiratory system condition was the result of his exposure to aluminum dust while employed by defendant. (Joint Exh. 2, pp. 2 – 3; Joint Exh. 3, p. 3.) Dr. Lineback explained in detail his analysis and the reasoning for his conclusion that applicant sustained a lung/respiratory injury AOE/COE. (see e.g. Joint Exh. 5, deposition transcript, pp. 23 – 24; Joint Exh. 3, pp. 2 – 3.) Dr. Lineback’s opinion regarding the cause of applicant’s condition is based on pertinent facts, an appropriate examination of applicant, and an accurate history. Thus his opinions, as stated in his reports and deposition testimony, constitute substantial evidence. (*Granado v. Workmen’s Comp. Appeals Bd.* (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *McAllister v. Workmen’s Comp. Appeals Bd. supra*; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

The WCJ found that applicant’s testimony regarding his work for defendant, including his exposure to aluminum dust, was credible and he stated that the finding of injury AOE/COE was, “Based upon applicant’s credible testimony and the medical report(s) of QME James F. Lineback, M.D.” (F&A, p. 5, Opinion on Decision.) It has long been well established that a WCJ’s opinions regarding witness credibility are entitled to great weight. (*Garza v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 319 [35 Cal.Comp.Cases 500, 505]; *Sheffield Medical Group v. Workers’ Comp. Appeals Bd. (Perez)* (1999) 70 Cal.App.4th 868 [64 Cal.Comp.Cases 358]; *Nash v. Workers’ Comp. Appeals Bd.* (1994) 24 Cal.App.4th 1793 [59 Cal.Comp.Cases 324]; *Greenberg v. Workmen’s Comp. Appeals Bd.* (1974) 37 Cal.App.3d 792 [39 Cal.Comp.Cases 242].) The WCJ

explained his decision, with his reasoning thereon. We accept his determination regarding applicant's credibility and we agree that applicant met his burden of proof.

Finally, as to whether the record should be further developed, as stated above, Dr. Lineback agreed with Dr. Kafi's and Dr. Reyes' opinions that applicant's lung condition was work related. Obviously, defendant was aware of Dr. Lineback's opinions and his reasoning, before it filed the Declaration of Readiness to Proceed. Also, defendant "objected that Dr. Lineback's reports are not substantial medical evidence." (MOH/SOE, August 31, 2020, p. 3.) However, defendant submitted no evidence that contradicted or was inconsistent with the reports from Dr. Lineback or applicant's testimony.

Although the Appeals Board has the discretionary authority to develop the record (Lab. Code §§ 5701, 5906), if a party fails to meet its burden of proof by obtaining and introducing competent evidence, it is not the job of the Appeal Board to rescue the party by ordering the record to be developed. (Lab. Code, § 5502; *San Bernardino Community Hospital v. Workers' Comp. Appeals Bd. (McKernan)* (1999) 74 Cal.App.4th 928 [64 Cal.Comp.Cases 986]; *Telles Transport Inc. v. Workers' Comp. Appeals Bd.* (2001) 92 Cal.App.4th 1159 [66 Cal.Comp.Cases 1290].)

As the WCJ stated in his Report:

[D]efendant had the opportunity to develop the record before filing the DOR based on the record provided. Thus, the court is of the opinion that defendant carries the burden to provide the doctor and the court evidence of non-industrial causes to dispute the findings. Here, defendant failed its burden to show non-industrial causation.

(Report, p. 7.)

Again, we agree with the WCJ's analysis of the trial record and the applicable case law. Based thereon, we will not disturb his decision.

Accordingly, we affirm the F&A.

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Award issued by the WCJ on November 9, 2020, is **AFFIRMED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ DEIDRA E. LOWE, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MARCH 16, 2021

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

**JOSE CASTILLO
LAW OFFICES OF STEPHEN LAMB
LAW OFFICES OF TRACEY LAZARUS**

TLH/pc

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