

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

MARIA ROMERO, *Applicant*

vs.

**BEST WESTERN and NEW HAMPSHIRE INSURANCE COMPANY,
adjusted by BROADSPIRE, *Defendants***

**Adjudication Number: ADJ9458248
San Jose District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration and the contents of the Report and the Opinion on Decision of the workers' compensation administrative law judge (WCJ) with respect thereto.¹ Based on our review of the record, and for the reasons stated in the WCJ's Report and the Opinion on Decision, both of which we adopt and incorporate, we will deny reconsideration.

The issue of unpaid self-procured medical treatment was deferred. Therefore, any dispute as to this issue may be brought back to the WCJ for resolution by the filing of a Declaration of Readiness to Proceed (DOR).

¹ Commissioner Gaffney, who was on the panel that issued a prior decision in this matter is unavailable to participate further in this case. Another panel member has been assigned in his place

For the foregoing reasons,

IT IS ORDERED that the Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ MARGUERITE SWEENEY, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 17, 2021

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

**MARIA ROMERO
SAVAGE LAW FIRM**

PAG/oo

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
ON PETITION FOR RECONSIDERATION**

I.

INTRODUCTION

Applicant, Maria Romero, while employed on 08/16/2012, as a housekeeper, occupational group number 340, in Monterey, California, by Best Western, sustained an injury arising out of and arising in the course of employment to the abdomen, reproductive system and bilateral inguinal area.

The Findings and Award in this case issued on 06/22/2021 and was served by mail on all parties on the Official Address Record on 06/24/2021. The Petitioner is Applicant, who has timely filed the verified Petition for Reconsideration on 07/19/2021. The Petition for Reconsideration is not legally defective although it is in Spanish without translation. Defendant has not filed an Answer as of this writing.

Petitioner contends that the Board acted without or in excess of its powers; that the order, decision or award was procured by fraud; the evidence does not justify the findings of fact; that Petitioner has discovered new evidence material to him which he could not with reasonable diligence have discovered and produced at the hearing; and that the findings of fact do not support the order, decision or award.

It is noted that Petitioner attached a multi-page document to her Petition for Reconsideration, and said document was wholly in Spanish. There was no certified translation provided to the Court or to any party. Upon consultation with my Presiding Judge and after inquiry to the Board, this Judge was instructed to provide a translation of the document as this Judge is fluent in Spanish and is also a certified bilingual (English/Spanish) employee, certified by the State Personnel Board. The following is this Judge's certified translation:

TRANSLATION OF STATEMENT MADE BY

PETITIONER MARIA ROMERO

AS ATTACHMENT TO HER PETITION FOR RECONSIDERATION

Translated by WCJ Adoralida (Dora) Padilla

Certified Bilingual (English/Spanish) by California State Personnel Board

PAGE 1: Forgive me, but on some I did not understand

PAGE 2: [Petitioner's signature on verification]

PAGE 3:

I please request a Petition for Reconsideration from the decision of the Judge Dora Padilla

Case number ADJ9458248 (request the decision be annulled).

On August 16, 2012, I was working at Noble House Monterey Hotel when I slipped and fell, and because I was pregnant I lost my baby. Due to my injury, my life changed completely and was the cause of my divorce, and some parts of my body remained injured.

I had 3 appointments with the State doctor MASSOUD MAHMOUDI. In his reports, he wrote false versions and invented things. I told the attorney Francisco Moreno about this several times but he never said anything.

The interpreters they used for the hearings would tell me one thing in place of another and sometimes they stayed silent only listening.

The Judge Dora Padilla told me to go see a gynecologist who used his version so she could give a decision. The attorney Francisco Moreno told me the insurance would pay for those costs. Then they sent me some falsified doctor reports.

The Judge Dora Padilla would say some things and would then contradict herself and even treated me as a prostitute.

On March 8, 2018, on the day of the trial, I heard when the Judge Dora Padilla, the attorney Joanne Savage, and the attorney Francisco Moreno, amongst them were negotiating my case, and they were speaking of some medical reports that they had requested be made by The Institute. When I wanted to say something they would not let me. They wanted me to speak first to my attorney, and what I would say to my attorney he would ignore it. He didn't take me into consideration. Between themselves they made the case in their own way.

I have not had any help. I have not been reimbursed the costs of the gynecologist. I haven't been paid mileage and I have not signed any document.

Some of the words that Judge Dora Padilla said:

- The nature of your injury happened and it's done. The insurance company has the right to close their cases
- It's been 4 years since the incident and what they are concerned with has terminated
- The type of injury you suffered is very difficult to value, and that is not covered in the books
- It may be that you may have had a baby; there are some women who never have children yet they work and men don't have children yet they also work
- The case could be valued a great amount of money if would say trial late [unintelligible]
- I can't give you anything; it doesn't have any value; you can go forward to trial and win but what you'll get is a piece of paper that says Maria won but you won't receive any money
- Speaking of the Statute of Limitations, we need to have evidence for the claim. Considering the medical report we made, almost always when they speak of the Medical Institute, that is not in the form of a claim
- You can stipulate to that, that a claim was filed on such date; the Defendants guessed the case on such date
- It is good to recognize that the Institute cannot fail
- Those questions and the document is a form of a claim for The Institute
- The injury that happened at work, all the questions, are specially made including this change Mr. Moreno
- Mr. Moreno should reconcile with reality
- Mrs. Savage has the burden of proof
- Ms. Maria they do calculate your good wishes

PAGE 4:

- We will scan them then dispose of them
- The most important thing for me is that there be no interest in the duplicate
- They have to be ready for scanning
- It is not that we have to start over, take into account that the attorneys are making the questions and the answers
- The document speaks for itself; she has no knowledge of that

- To resolve the case we have that amount; the number I found [sierra?] mountain can say how much you'll win
- There is nothing that can be done; injuries get better over time; you with your amount; your system is better
- If the attorneys want to use their experience to give you an estimate then that is up to you; I have many years of experience; there are many [illegible] thousands in the case
- Then you need to give those accounts, those bills, to the attorney so that they can pay you those monies
- What I have understood isn't there; I think I can resolve it; we can terminate this; there are bills within an agreement; the doctor will simply give us an evaluation of your condition
- Tell your attorney what the value of having children is so there can be an agreement
- It would be to have a gift, to the doctor on the account
- But don't give me sentiments anew
- I don't get involved in the settlement discussions for the case Mr. Moreno
- You may have an injury in that body part but it doesn't prevent you from working; that doesn't prevent men from working
- Men can't have children; men don't have that problem and men are able to work;
- The doctor might say that you got hurt, but you are not disabled; and of the doctor says that, your case is worth zero because we are calculating the value of having intimate relations, we are not evaluating that
- If you want to know what a fight is, then go see the doctor and we will see the results
- The gynecologist evaluated you; appears to have evaluated about the stomach; due to him the duty/burden failed; if you had been injured
- The process has to be paid; they will receive all the reports that I tell them so the case can be closed
- He will send a letter that will explain your case; he will make the Defendants to write the letter; they get paid by the hour; the longer it takes to write the letter the more it will be; I will insure a complete letter gets written and I will assure you the doctor has the information from both sides; you have an obligation to tell the doctor everything that happened
- The doctor receives information from 3 sources; you receive the report

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- At the hearing of February 17, 2021, I again heard them speaking amongst themselves and I told them that what they were doing wasn't right because they were prejudicing me and they benefit from that and that when the Judge Dora Padilla told me to totally close my case or accept 11%. They said I had signed a contract. I never signed any contract. Judge Dora Padilla said it didn't matter if I signed or not because she could sign for me. They are not listing the hotel name properly. They put the wrong injury date. They change the name and certification number of the interpreters. The claimed body parts in my case are abdomen, reproduction and psyche. Judge Dora Padilla changed psyche and put 2 inguinal areas. They scheduled my hearings at 8:30 in San Jose, California and we were always the last to leave without resolving anything.

In conversations with attorney Francisco Moreno and while gesticulating rudely he said these words:

- The claims against them have been opened, the workers' compensation one and also the claim against them for the physical has also been opened, those 2 cases
- We have left the door open for filing a civil claim
- You can have a civil case
- But as you know your problems are not important
- Freeing the insurance company of responsibility
- You can maintain a civil case against them
- There are 2 cases in Salinas for the physical and Broadspire has part of one of the 2 cases
- In Salinas is the neck/physical/orthopedic, the hands; here in San Jose it was the [esquech]
- For this that is the [perno] [PD?] for what you have it doesn't give anything because the book was written with 2 men in mind since 2800
- This doctor you can only pay \$100 per hour or if they close a private case or whatever they are paid \$250
- Like many cases in general particularly with you
- Once there was if it hasn't been many times the civil system gives you losses and damages that you suffered much the loss, etc
- It will be like the interrogatories, but just him, much from her, a chunk from you

- It is just that the doctor, Dr. Berman, the doctor is in charge of the case for the State and he put you at maximum because if it weren't for him we wouldn't
- What I can tell you is that I'm in agreement with the Judge; it is that there is a possibility and a very large risk that when the final evaluation comes out that it will say your case is worth zero
- These cases are decided on how the doctor writes in black and white, and then he gives a report and he announces what he read, and then all of that is sent to the doctor for the State when you go in October together with the rest of the record so that he can then write a final report where he says what he thinks the case is worth, and if he believes you need more consultations or not, of if the case is ready to be evaluated
- I can't give you a remedy for that wrong
- In effect, that is what they pay attorneys for, to look for things they can declare to be lies
- I am here to also inform the evidence; it is not exactly as clear as water
- Do the entire case and accept the recommendation
- This is the amount to close may case for labor indemnification against Best Western

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- There is a possibility of a finding at trial that you were not injured
- We arrived at trial, a bit before trial, in December of last year, the report was 28 centimeters
- There was a house, there was work, a plan, and then the report was entered into trial as part of the evidence because the Judge so said
- It said I am not changing my opinion, then the doctor said yes, yes I am changing but I'm changing because of the reason that this is the first time I see the report
- In the end it helped us for the physical case but for the civil case
- It is spoken about how much the amounts are, the lie, we know each other
- I have never seen the unemployment come here; the ones that put in claims always are
- They want assurances that one won't make any claim that which you didn't open that you know of
- This case has already been opened here in San Jose that happened in August, 2012, and also apart from the physical claim against them, there have been 2 cases opened

- They paid you temporary disability when they had to and it has been compensated adequately
- It says that you have not had any illness/injury at work for which you have not filed a claim
- A civil claim will not be presented nor for the work district; it is a promise not to demand that; it is to be resolved and would remain resolved
- Agreement in which they are recognizing nor admitting any responsibility
- No, I understand you say it has been 2 years during which I have several checks to sign as to the language of the contract; all the time for me there is nothing extra
- A civil case against them I obtain
- And then the doctor says that you reported the injury [unintelligible]
- It is that the case is denied, you have to see where you're coming from, and what ground you're walking on, in other words, you have to understand how you started the case, and then you can lose the case
- Yes it is [unintelligible] of the civil, plus what is civil, of salary, discrimination, it wants all the claims
- The original contracts arrived after, it is known it was changed to another office; that happens to contracts all the time
- I put here in yellow the other 2 cases from Salinas; I put here clearly that it is dismissing that Portola contract and the 2 cases, 2 points the civil language, the property

More than 7 years and I haven't received any kind of help, and I have even made expenses from my own pocket, rather than help me it has prejudiced me. They have done a FRAUD with EDD.

Maybe my case will be in a civil court.

Question of superior agencies of more power.

Thank you.

[END OF TRANSLATION]

II.

FACTS

The facts of this case are that Applicant was employed as a housekeeper for Best Western in Monterey. She was approximately two (2) months pregnant when on 08/16/2012 she suffered a fall in a bathroom, hitting her abdomen against a bathtub. She began bleeding and declined the medical care offered by her employer on that date. She then sought medical care the following day at Planned Parenthood where was told she was no longer pregnant. She continued to work, and eventually left that employer and took on other employment, where she suffered a second industrial injury in 2013.

Applicant has complained of chronic pain in the pelvic area, pain with lifting, and painful intercourse as a result of the 08/16/2012 industrial injury.

The claim was originally denied, but liability was found following a trial on 03/08/2018, with a Findings and Order having issued on 07/20/2018. Whether or not the psyche was also injured as a result of the 08/16/2012 injury, and the level of permanent disability, remained at issue.

Applicant filed a Dismissal of Attorney (not a Substitution of Attorney) following the trial. It is unclear if Mr. Moreno still considers himself attorney of record. This Judge goes forward under the assumption that Petitioner is in pro per.

III.

LEGAL ARGUMENTS

1. THE PETITIO FOR RECONSIDERATION SETS FORTH NO BASIS TO ESTABLISH ERROR OR ANY BASIS TO ANNUL THE DECISION

Petitioner's declaration does not cite to the record. The declaration sets forth no basis to establish error in the Findings of Fact. The declaration does not provide any new evidence that could result in any different determinations.

Petitioner asserts that PQME Dr. Mahmoudi issued false reports and invented things. However, Petitioner never complained about the evaluation with Dr. Mahmoudi, never sought to have Dr. Mahmoudi replaced, never reported Dr. Mahmoudi to the Medical Unit, never raised the issue of the reports of Dr. Mahmoudi not being substantial evidence, and never raised these issues of false

and/or invented reports until the Petition for Reconsideration. Petitioner does not state with specificity what exactly is contained within the reports of Dr. Mahmoudi that is allegedly false or invented.

Petitioner also states, in essence, that she received ineffective interpreting services. Petitioner never complained about the interpreters before, had control over the selection of the interpreters, and provides no evidence or examples of what exactly the interpreters may have not properly translated. This issue was not brought up at either trial in 2018 or 2021, and it is improper to bring this issue up for the first time at Reconsideration.

Petitioner asserts that this Judge treated her as a prostitute. This is beyond outrageous. At the trial in 2018, it was DEFENSE COUNSEL, upon cross-examination, while asking Petitioner how any injury to her reproductive system and/or how having painful intercourse was affecting her ability to work, that defense counsel asked if Petitioner was working as a “hooker.” There was an objection to the question by Applicant’s counsel, which was sustained, and counsel was strongly admonished. Petitioner has not forgotten this question and has brought this incident up REPEATEDLY since 2018. This question has caused a tremendous amount of acrimony by Petitioner. But at NO TIME did this Judge treat Petitioner as a prostitute, and at no time did the record in this case establish any such fact.

It is accurate that there have been a multitude of settlement discussions between the parties, some in the presence of this Judge or with the assistance of this Judge. Applicant participated in the discussions by having private discussions with her attorney. She was ably represented by counsel.

Issues of self-procured medical care and other costs including mileage have been deferred, at Petitioner’s request.

As to the “words” attributed to this Judge: Taken out of context, they don’t mean much. Put into the context of settlement discussions, conferences, and multiple trials, they are clearly snippets of discussions and explanations throughout a litigated case. Nothing cited by Applicant shows any basis to establish that the Findings were in any way incorrect. As to the conversations between Petitioner and her then-attorney-of-record: These are conversations which are privileged and should not have been disclosed. Further, they show a progression of discussion over the merits of the case from a time the case was in a denied status, to the time of trial in which serious settlement discussions were held. I have no personal knowledge as to these conversations, and have no way to know if they are accurate. There was no testimony as to any of this. Nothing is

under oath. Any more importantly, nothing in these “conversations” form a basis for finding that any of the determinations in this case should be overturned or annulled as Petitioner requests.

As to any fraud perpetuated against EDD, I have no idea to what Petitioner refers, what she means, what evidence she has, etc.

Applicant is angry. She lost her baby. There is no way to know if she would have lost the baby even absent the industrial injury, but the PQME gave her the benefit of the doubt in the AOE/COE evaluation, as did I at the AOE/COE trial. Understandably, she wants compensation for the life of her unborn child. She also blames this injury for the failure of her marriage. Petitioner considers herself totally disabled. There is no evidence that Petitioner’s injuries rate more than 11%. She was provided medical care, medical-legal evaluations, and more importantly, a fair trial. She was awarded future medical care. There is nothing more that Petitioner can be awarded. There was no error in the Findings and Award, and there is no basis to disturb the determinations made therein.

IV.

RECOMMENDATION

The Petition for Reconsideration should be denied.

DATE: 07/23/2021

**ADORALIDA PADILLA
WORKERS' COMPENSATION JUDGE**

OPINION ON DECISION

The facts of this case are that Applicant was employed as a housekeeper for Best Western in Monterey. She was approximately two (2) months pregnant when on 08/16/2012 she suffered a fall in a bathroom, hitting her abdomen against a bathtub. She began bleeding and declined the medical care offered by her employer on that date. She then sought medical care the following day at Planned Parenthood where was told she was no longer pregnant. She continued to work, and eventually left that employer and took on other employment, where she suffered a second industrial injury in 2013.

Applicant has complained of chronic pain in the pelvic area, pain with lifting, and painful intercourse as a result of the 08/16/2012 industrial injury.

The claim was originally denied, but liability was found following a trial on 03/08/2018, with a Findings and Order having issued on 07/20/2018.

BODY PARTS; PERMANENT DISABILITY

It is noted that the Pre-Trial Conference Statement indicates that “psyche” is admitted. At trial, defense counsel stated that this was an inadvertent error, and that psyche was denied.

Applicant offered very little in terms of medical evidence, with the majority of the exhibits having been offered and admitted in relation to establishing liability at the 2018 trial. As to the evidence offered at this trial, Applicant offers Exhibit 4, the report of Dr. Ramirez from 01/31/2017. This report indicates diagnosis of chronic pelvic pain, dyspareunia, dysmenorrhea, and possible pelvic inflammation. Dr. Ramirez directed Applicant to return for a pelvic ultrasound. There are no other records from Dr. Ramirez and therefore the results of any testing are unknown. It is noted that the visits with Dr. Ramirez were more than four (4) years ago and Applicant certainly had time to obtain medical records. There are no opinions or conclusions and no analysis as to causation, impairment, apportionment, etc. There is no discussion as to a review of prior records. As such, the report of Dr. Ramirez is not substantial evidence on any issues presented.

There is also a joint exhibit from the parties, Joint Exhibit 11, a report from Massoud Mahmoudi, D.O., dated 11/07/2019. It is noted that Dr. Mahmoudi did not have much more in terms of gynecological medical records for Applicant, with the majority of the records reviewed dealing with a subsequent 2013 injury rather than the 2012 injury herein. Dr. Mahmoudi had

examined Applicant early-on, and based on his opinions and reports, the injury was found compensable.

Dr. Mahmoudi notes a review of medical reports from Dr. Lopez, a psychiatrist, who apparently examined Applicant in relations to the subsequent 2013 injury with the subsequent employer. In the review of these reports, Dr. Mahmoudi notes that Dr. Lopez reports Applicant got over the loss from the miscarriage, and has no persistent depression or irritability from that event. This is really the only reference to any current opinions as to the psyche. Based on this medical reporting, coupled with no psychiatric Qualified Medical Examination, and no psychiatric treatment records in relation to the 2012 injury, Applicant has failed in her burden of establishing that she suffered a psychiatric injury as a result of the 08/16/2012 fall at work.

Dr. Mahmoudi does indicate that Applicant has pelvic pain, and based on his findings, uses Table 7-10 of the AMA Guides, and places Applicant in a Class 1, with a 7% Whole Person Impairment (WPI) with a 2% add-on for pain, for a total WPI of 9%. This impairment rates as follows: 7.05 – 9[2]10 – 340F – 10 – 11, which is payable at the rate of \$230.00 per week, for 34.25 weeks, for a total of \$7,877.50. Applicant did previously testify in 2018 that she returned to work for this employer and then resigned her position for other employment. There was no evidence of any offer of regular, modified or alternate work. The issue of whether Applicant was entitled to a 15% increase, or whether the employer was entitled to a 15% decrease, was not raised at trial and no evidence was offered on the issue by either side. As such, both parties have failed to raise the issue and the issue is deemed waived. The permanent disability shall be paid at the straight \$230.00 per week rate without increase or reduction.

NEED FOR FURTHER MEDICAL CARE

As Applicant has not established any psychiatric injury as a result of this 08/16/2012 injury, there can be no award of medical care for said condition. Defendant has stipulated to a need for medical care for the abdomen, reproductive system and bilateral inguinal area.

LIABILITY FOR SELF-PROCURED MEDICAL CARE

This issue was raised by Applicant and it was requested that this issue remain specifically deferred. The parties shall attempt informal resolution of any outstanding issue. WCAB jurisdiction remains reserved.

ATTORNEY'S FEES

Both Applicant's attorney and defense counsel agreed that the permanent disability rated to 11%. It is also noted that Applicant adamantly refused to execute any settlement documents at that amount, even though she had no evidence of injury to the psyche and no evidence of any permanent disability greater than the 11%. Applicant was admonished several times that going forward to trial on this record was in bad faith, but Applicant maintained it mattered not what this Judge decided, she would be filing an "appeal" nevertheless.

Applicant was further admonished that this Judge would consider awarding attorney's fees of 20% for making Applicant's counsel go forward to an unnecessary trial. Applicant's counsel declined to accept increased fees, and indicated he could only agree to what was listed on the Pre-Trial Conference Statement. As such, the attorney's fees will be awarded in an amount of 15% of the permanent disability awarded herein, to be commuted from the far end of the Award. As permanent disability is valued at \$7,877.50, the attorney's fee is \$1,181.63.

DATE: 06/22/2021

**ADORALIDA PADILLA
WORKERS' COMPENSATION JUDGE**