

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

MONICA HERNANDEZ, *Applicant*

vs.

**PIH WHITTER HEALTH HOSPITAL; Permissibly self-insured, administered by
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ13827102
Van Nuys 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 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, we will deny reconsideration.

We have given the WCJ's credibility determination 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.*)

The WCJ properly relied on the substantial opinion of panel qualified medical examiner (PQME) Thomas Vangsness, M.D. We observe, moreover, it is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER



/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

NOVEMBER 12, 2021

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

**MONICA HERNANDEZ
STRAUSSNER & SHERMAN
DAVID JANE & ASSOCIATES**

PAG/bea

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

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REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I.

INTRODUCTION

A Findings and Award and Order issued on August 27, 2021 in which it was found that Monica Hernandez, age 50 on her date of injury, while employed on August 10, 2018, as an Ultrasound Technician at 12401 Washington Blvd., Whittier, CA, by PIH Whittier Health Hospital, permissibly self-insured and administered by Athens administrators, sustained injury arising out of and in the course of employment to her cervical spine, thoracic spine, right shoulder, and right forearm, causing temporary disability through June 23, 2021 for which she has been adequately compensated, and an additional temporary disability for the period June 24, 2021 to present and continuing payable at the rate of \$1,128.26 per week. Based on this finding, an award issued for temporary disability payments at the rate of \$1,128.26 per week beginning June 24, 2021 and continuing, with aggregate disability payments, including disability payments made prior to June 24, 2021, not to extend for more than 104 compensable weeks within a period of five years from the date of injury.

Defendant filed a timely verified petition for reconsideration of the August 27, 2021 Findings and Award. Petitioner contends the WCJ erred by: a) finding applicant to be temporarily totally disabled based qualified medical report of PQME Thomas Vangsness, M.D., dated May 7, 2021 when defendant contends that the report is not substantial medical evidence.

II.

FACTS

Applicant is employed as an Ultrasound Technician by PIH Whittier Health Hospital. On August 10, 2018 applicant injured her right upper extremity when a patient she was assisting began to fall and forcefully pulled on applicant's right upper extremity. She was initially provided modified duty, physical therapy, and corticosteroid trigger point injections. On January 10, 2020 she underwent a right shoulder arthroscopic surgery by Daniel Kharrazi M.D.

On June 3, 2020 applicant was evaluated by PQME Thomas Vangsness, M.D. At that time he thought it was too early to make her permanent and stationary. Applicant was subsequently reevaluated by Dr. Vangsness on May 7, 2021. He noted that the insurance company would not allow applicant to return to her surgeon, Dr. Kharrazi. Instead she was now being seen by Pablo Pazmino, M.D. who apparently found her to be permanent and stationary and sent her back to work full-time. At trial, applicant provided credible and unrebutted testimony that Dr. Pazmino did not examine her. In fact, she only saw him at the time of the first visit and even then he did not examine her. He sat behind a desk while she sat across from him and he did not perform a physical examination. Applicant was not seen by Dr. Pazmino at the time of the April 29, 2021 appointment at which she was found permanent and stationary. She only saw a physician's assistant. However he did not perform a physical examination at that time either. At trial applicant testified that when she returned to full duty she began experiencing increased pain and problems and an inability to move her arm.

At the time of the May 7, 2021 reevaluation Dr. Vangsness indicated that he was very concerned that the applicant was not allowed to have a follow-up evaluation by Dr. Kharrazi who had performed her shoulder surgery. He indicated that he did not believe applicant had reached permanent and stationary status. He outlined work restrictions of no pushing, pulling, or lifting more than 20 pounds on any repetitive basis with the right upper extremity. He also indicated that he did not want applicant's elbows to go above her breast line in an elevated position. Applicant's employer would not allow her to return to work with these restrictions.

The matter proceeded to trial and a findings and award issued on August 27, 2021. It is from this findings and award that the defendant has filed a timely verified petition for reconsideration.

III.
DISCUSSION

A
**PQME Report of Thomas Vangsness, M.D. is Substantial Medical Evidence
of Applicants Temporary Disability Status**

Citing *Kyles v WCAB* (1987) 52 CCC 479 defendant argues that the report of PQME Thomas Vangsness, M.D. does not constitute substantial medical evidence because he did not review the medical reports of Dr. Pazmino. However, a failure to review evidence deemed to be inadmissible will not render a report insubstantial. (See *Sanchez v. Wong, dba Sunshine Food and Nursery*, 2016 Cal. Wrk. Comp. P.D. LEXIS 166.)

At trial defendant only offered one report from Dr. Pazmino. As to that report, applicant provided credible and unrebutted testimony that Dr. Pazmino did not examine her. In fact, she only saw him at the time of the first visit and even then he did not examine her. He sat behind a desk while she sat across from him and he did not perform a physical examination. Furthermore, applicant was not seen by Dr. Pazmino at the time of the April 29, 2021 appointment at which she was found permanent and stationary. She did see a physician's assistant. However he did not perform a physical examination either. The report of Dr. Pazmino offered by defendant was unsigned. California Code of Regulations §10670 (b) provides that the Worker's Compensation Appeals Board may decline to receive in evidence any physicians report that does not comply with Labor Code §4628. Labor Code §4628 (j) mandates that the physician signing the report must also sign and date a specified declaration. Labor Code §4628 (e) provides that "failure to comply with the requirements of this section shall make the report inadmissible as evidence" For these reasons Dr. Pazmino's report was found to be inadmissible and was ordered excluded from evidence. Defendant did not seek reconsideration of this order.

Defendant also argues the report of PQME Thomas Vangsness, M.D. is not substantial evidence based on their contention that the doctor did not review any medical records issued after 2020. This contention is not borne out by a review of

Dr. Vangsness' report. On page 6 of the report Dr. Vangsness indicates that he reviewed multiple physical therapy visits 09/22/2021-11/05/2021, 02/08/2021, and 02/18/2021-03/4/2021. (See Exhibit 1, Medical Report of QME Dr. Thomas Vangsness, dated May 7, 2021, page 6).

In his May 7, 2021 report Dr. Vangsness explained why he found the applicant to be temporarily totally disabled. He had previously evaluated her on two occasions. He performed a thorough physical examination noting a limited and painful range of motion of the right shoulder. He noted that applicant had returned to work full time but had pain every day at work. He diagnosed her with ongoing adhesive capsulitis with glenohumeral internal rotation deficit of the right shoulder. He explained that he did not believe she had reached a permanent and stationary status, that she had pain, and that she needed additional treatment including injections and stretching and possibly a manipulation under anesthesia. Dr. Vangsness attested in his report that he personally reviewed all of the available medical reports prior to the preparation of his report. His report included a review of medical and physical therapy reports from March of 2016 up through March 4, 2021. He specifically indicated that he did not have any of the records from Dr. Pazmino. On this basis this judge found the PQME Thomas Vangsness, M.D., dated May 7, 2021 to be substantial medical evidence on the issue of applicant's temporary total disability status. This judge did not find that the failure to review the unsigned report of Dr. Pazmino, a doctor who did not perform a physical examination, to undermine the substantiality of PQME Vangsness' report.

IV.

RECOMMENDATION

It is respectfully recommended the defendant's petition for reconsideration be denied.

DATE: September 27, 2021

Randal Hursh
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE