

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

PETER MANIS, *Applicant*

vs.

**ALPHABET INC., dba GOOGLE LLC, and OLD REPUBLIC INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ10848254
Oakland District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

Defendant seeks reconsideration of the Findings and Award, issued by the workers' compensation administrative law judge (WCJ) on April 14, 2021, wherein the WCJ found in pertinent part that applicant sustained a psychiatric injury, arising out of and occurring in the course of employment (AOE/COE), while employed by defendant.

Defendant contends that the reports from psychology qualified medical examiner (QME) Shawn L. Fruge, Psy. D., are not substantial evidence that applicant sustained a psychiatric injury AOE/COE.

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 for Reconsideration (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, and for the reasons discussed below, we will deny reconsideration.

BACKGROUND

Applicant claimed injury to his psyche while employed by defendant as a software engineer, during the period from May 6, 2015, through May 6, 2016.

QME Dr. Fruge evaluated applicant on May 21, 2018. Dr. Fruge took a history, reviewed the medical record, and conducted several psychology tests. The diagnoses included hypochondriasis disorder, generalized anxiety disorder, major depressive disorder, and narcissistic personality disorder; and the doctor assigned a Global Assessment of Function (GAF) of 51. (App.

Exh. 1, Dr. Fruge, June 20, 2018, pp. 46 – 47.) Addressing the issue of causation, Dr. Fruge explained:

After careful consideration of industrial and non-industrial stressors, it is this examiner's opinion, with reasonable medical probability, that Mr. Manis' pre-existing Hypochondriasis Disorder, Major Depressive Disorder, Nicotine Dependence, and feelings of nervousness were predominately (i.e., greater than 50%) aggravated by his cumulative, industrial exposure from 2010 to May of 2016, which increased his level of disability. The applicant's pre-existing feelings of nervousness rose to the level of Generalized Anxiety Disorder With Panic Attack. ¶ Mr. Manis' psychiatric disorders undoubtedly brought about disability, as they significantly hinder his capacity to function in personal and occupational spheres of his life, and require immediate medical intervention in order to be effectively managed. It was specific behaviors demonstrated by management of Google that led to Mr. Manis' psychiatric disability: (1) insufficient personnel support for work projects and on-call duties; (2) failure to communicate changes to project deadlines; (3) wrongful reprimands; and (4) unprofessional response to subordinate disclosure of suicidal ideation. (App. Exh. 1, p. 49.)

On December 3, 2018, Dr. Fruge's deposition was taken. (App. Exh. 2, Dr. Fruge, December 3, 2018, deposition transcript.) During the deposition Dr. Fruge reiterated his opinions as stated in the June 20, 2018 report (see e.g. App. Exh. 1, pp. 19 – 22) and his testimony included:

Q. Okay. I think one of the big things that came up was use of the terminology - - going back to Page 49, of aggravated by the cumulative industrial exposure, because -- in terms of what we think of in worker's comp, causation, aggravation.
A. So there's different types of causes. So aggravation is one type of cause. There's precipitant cause. There's a lot of different causes. So what I'm actually saying there is that he had a preexisting issue, and as a result of the industrial exposure, he became worse. (App. Exh. 2, p. 25.)

Later in the deposition, Dr. Fruge again stated that applicant's employment with defendant was the predominant cause of applicant's psychiatric condition. (App. Exh. 2, p. 30.)

Dr. Fruge was given a copy of applicant's personnel file to review and on July 11, 2019, he submitted a supplemental report. (App. Exh. 1, Dr. Fruge, July 10, 2019.) The doctor had been asked to assign a "specific percentage of causation" that he attributed to the "four behaviors demonstrated" by defendant as noted in his initial report. (App. Exh. 1, July 10, 2019, p. 2 [EAMS p. 58].) Dr. Fruge assigned the percentages of causation as requested, and he reiterated his opinion that applicant's work for defendant was the predominate cause of the aggravation of applicant's

psychiatric condition and the increase in his disability. (App. Exh. 1, July 10, 2019, p. 26 [EAMS p. 82].)

On March 3, 2020, applicant was re-evaluated by Dr. Fruge. (App. Exh. 1, Dr. Fruge, April 1, 2020.) The doctor took an interim history, reviewed a psychological evaluation by Sean Connolly, Ph.D., and performed several psychological tests. The diagnoses were the same as from the initial examination and the GAF was 55. (App. Exh. 1, April 1, 2020, p. 14 [EAMS p. 99].) Dr. Fruge again stated his opinion that applicant's condition was aggravated by his "cumulative industrial exposure" while working for defendant, and he stated that applicant's condition had not attained permanent and stationary status. (App. Exh. 1, April 1, 2020, pp. 17 – 18 [EAMS pp. 102 – 103].)

The parties proceeded to trial on February 3, 2021, and the issues submitted for decision included injury AOE/COE. (Minutes of Hearing and Summary of Evidence (MOH/SOE), February 3, 2021, p. 2.) Applicant testified on his own behalf, defendant did not call any witnesses.

DISCUSSION

As a preliminary matter, defendant's Petition for Reconsideration is timely. Defendant filed the Petition on May 7, 2021. However, the Petition did not come to the attention of the Appeals Board until July 7, 2021. Defendant's Petition was not timely acted upon by the Appeals Board, which has 60 days from the filing of a petition for reconsideration to act on that petition. (Lab. Code, § 5909.) Here, however, through no fault of defendant, the timely-filed Petition did not come to the attention of the Appeals Board until after the expiration of the statutory time period. Consistent with fundamental principles of due process, and in keeping with common sensibilities, we are persuaded, under these circumstances, that the running of the 60-day statutory period for reviewing and acting upon a petition for reconsideration begins no earlier than the Appeals Board's actual notice of the petition, which occurred on July 7, 2021. (See *Shipley v. Workers' Comp. Appeals Bd.* (1992) 7 Cal.App.4th 1104, 1107-1108 [57 Cal.Comp.Cases 493]; *State Farm Fire and Casualty v. Workers' Comp. Appeals Bd. (Felis)* (1981) 119 Cal.App.3d 193 [46 Cal.Comp.Cases 622, 624].)

Our review of the trial record indicates there is no dispute that applicant had psychiatric disorders prior to his employment by defendant. The dispute is whether the aggravation of that pre-existing condition constitutes an injury AOE/COE.

Labor Code section 3208.3 states in part:

(a) A psychiatric injury shall be compensable if it is a mental disorder which causes disability or need for medical treatment, and it is diagnosed pursuant to procedures promulgated under paragraph (4) of subdivision (j) of Section 139.2

...

(b)(1) In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.

(Lab. Code, § 3208.3.)

It has long been the law that the industrial aggravation of a pre-existing condition constitutes an industrial injury. (*Zemke v. Workers' Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358]; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner)* (1966) 65 Cal.2d 438 [31 Cal.Comp.Cases 421].) Regarding a psychiatric injury claim, the evaluator must first determine the threshold issue of whether an injured worker sustained a psychiatric injury. Once a psychiatric injury has been found, the doctor must then address the issue of whether actual events of employment were the predominate (greater than 50%) cause of the psychiatric condition. (Lab. Code §3208.3 (b).)

Here, QME Dr. Fruge examined applicant twice and reviewed the extensive medical record as well as applicant's personnel record. In his reports and deposition testimony he provided a detailed explanation as to his analysis and determination that applicant's work with defendant was the predominate cause of his aggravated psychiatric condition, i.e. his industrial injury.

It is well established that the relevant and considered opinion of one physician may constitute substantial evidence. (See *Place v. Workers' Comp. Appeals Bd.* (1970) 3 Cal.3d 372, [35 Cal.Comp.Cases 525].) To be substantial evidence a medical opinion must be based on pertinent facts, on an adequate examination and an accurate history, and it must set forth the basis and the reasoning in support of the conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) When a physician's report is well-reasoned, is based on an adequate history and examination and sets forth the reasoning behind the physician's opinion, not merely his or her conclusions; the report constitutes 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.* (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660].) We agree with

the WCJ's opinion that Dr. Fruge's reports and deposition testimony meet the requirements, as noted, to constitute substantial evidence and are an appropriate basis for the Findings and Award.

Finally, defendant argues that:

Aggravation is only a part of something rather than the whole of it, so to report that events of employment were a "substantial cause" of this worsening of only a part of Mr. Manis' already existing psychiatric problems tells us nothing about the proportion of this "part" of his psychiatric disorders to "the whole" of them. (Petition, p. 4.)

Defendant's argument clearly misconstrues the law that defines an aggravation of a pre-existing condition to be a new and separate injury. As noted above, it is well established that the industrial aggravation of a pre-existing condition constitutes an industrial injury. (*Zemke v. Workers' Comp. Appeals Bd.*, *supra*; *Reynolds Electrical & Engineering Co. v. Workers' Comp. Appeals Bd. (Buckner)*, *supra*.) Defendant cites no authority to the contrary and it submitted no evidence that is inconsistent with the opinions stated by Dr. Fruge.

Accordingly, we deny reconsideration.

For the foregoing reasons,

IT IS ORDERED that defendant's Petition for Reconsideration of the Findings and Award issued by the WCJ on April 14, 2021 is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

SEPTEMBER 7, 2021

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

**PETER MANIS
BOXER & GERSON
HANNA, BROPHY, MACLEAN, MCALEER & JENSEN**

TLH/pc

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