

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

SHAMIMA AKTAR, *Applicant*

vs.

**U.S. BANK, and OLD REPUBLIC INSURANCE COMPANY, administered by CANNON
COCHRAN MANAGEMENT SERVICES INC., *Defendants***

**Adjudication Number: ADJ13886990
Santa Rosa District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Findings and Orders (F&O), issued by the workers' compensation administrative law judge (WCJ) on June 18, 2021, wherein the WCJ found in pertinent part that applicant did not sustain an injury arising out of and occurring in the course of employment (AOE/COE) to her left knee on February 20, 2020, or August 17, 2020. The WCJ ordered that applicant take nothing by way of her injury claim.

Applicant contends that she obtained new medical information that was not submitted at the time of the trial, and that her claim was denied due to, "Unethical Practice in DWC Unit by employers like US Bank, Insurance company like CCMSI, Medical Management company like Corvell and Urgent Care like Concentra", and my injury date 08/17/2020 is correct and real." (Petition, p. 3, quotations in original.)

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, and for the reasons discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further

proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

BACKGROUND

Applicant claimed injury to her left knee while employed by defendant as a bank teller.

On December 3, 2020, orthopedic qualified medical examiner (QME) Laura N. Sciaroni, M.D., evaluated applicant. Dr. Sciaroni examined applicant, took a history, and reviewed the September 2, 2020 evaluation report from Jason Justin, PA-C. The diagnosis (Impression) was, “Lower back and left lower extremity pain of uncertain etiology.” (Joint Exh. 1, Dr. Sciaroni, December 3, 2020, p. 9.)

The parties proceeded to trial on February 10, 2021, the issues identified by the parties included injury AOE/COE, the date of the claimed injury, and the parts of body injured. (Minutes of Hearing and Summary of Evidence (MOH/SOE), February 10, 2021, p. 2.) The matter was continued to March 30, 2021.

The WCJ’s summary of applicant’s testimony included: Applicant testified that she had been treated by Dr. Dean Thompson and that she had been referred to Dr. Koch. (MOH/SOE, March 30, 2021, p. 2.) The applicant first obtained treatment from her private physician at Kaiser. She got an x-ray on August 17, 2020. (MOH/SOE, March 30, 2021, p. 4.) “[S]he was obtaining treatment from Kaiser...” (MOH/SOE, March 30, 2021, p. 6.) “She believes a Concentra report states her injury was work related.” (MOH/SOE, March 30, 2021, p. 7.)

DISCUSSION

Any award, order, or decision of the Appeals Board 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].) A medical opinion is not substantial evidence if it is based on facts no longer germane, on inadequate medical histories or examinations, on incorrect legal theories, or on surmise, speculation, conjecture, or guess, and the medical opinion must set forth the reasoning behind the physician’s opinion, not merely his or her conclusions; a mere legal conclusion does not furnish a basis for a finding. (*Hegglin v. Workmen’s Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers’ Comp. Appeals Bd.* (1970) 69 Cal.2d 399, [33

Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

The parties in a worker's compensation case are to provide the QME with the medical file. (Cal. Code Regs., tit. 8, § 35(a).) As noted above, the only medical report reviewed by QME Dr. Sciaroni was the September 2, 2020 evaluation report from Jason Justin, PA-C. Applicant testified that she received treatment from various providers. Dr. Sciaroni was not provided the complete medical record to review.

Pursuant to Labor Code section 4605:

Nothing contained in this chapter shall limit the right of the employee to provide, at his or her own expense, a consulting physician or any attending physicians whom he or she desires. Any report prepared by consulting or attending physicians pursuant to this section shall not be the sole basis of an award of compensation. A qualified medical evaluator or authorized treating physician shall address any report procured pursuant to this section and shall indicate whether he or she agrees or disagrees with the findings or opinions stated in the report, and shall identify the bases for this opinion.
(Lab. Code, § 4605.)

Having not been provided the complete medical record, Dr. Sciaroni did not have an adequate medical history and she was not able to address the reports from applicant's treating doctors as required by Labor Code section 4605. Thus, her report is not substantial evidence regarding the issue of injury AOE/COE, and it cannot be the basis for the WCJ's decision.¹

In our *en banc* decision, *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138 (Appeals Board en banc), we stated that “[s]ections 5701 and 5906 authorize the WCJ and the Board to obtain additional evidence, including medical evidence, at any time during the proceedings (Citations).” (*Id.* at p. 141.) We also stated that before directing augmentation of the medical record we must establish, as a threshold matter, that specific medical opinions are deficient, for example, that they are inaccurate, inconsistent or incomplete. “Where the medical record requires further development either after trial or submission of the case for decision,” the medical record should first be supplemented by physicians who have already reported in the case. (*Id.*, at pp. 139, 142.) Under the circumstances of this matter, it is appropriate

¹ We also note that in her report, Dr. Sciaroni did not state her opinion specifically addressing the issue of injury AOE/COE. Upon return of this matter, it is appropriate for Dr. Sciaroni to provide her opinion as to the issue of injury AOE/COE and that she explain her reasoning and analysis for her opinion on that issue.

that the parties provide Dr. Sciaroni the complete medical record, and request that after reviewing the record, she submit a supplemental report addressing the issue of injury AOE/COE, as discussed herein.

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion, and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration of the Findings and Orders issued by the WCJ on June 18, 2021, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the June 18, 2021 Findings and Orders is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

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

September 7, 2021

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

**SHAMIMA AKTAR
LAW OFFICES OF SCHLOSSBERG & UMHOLTZ**

TLH/pc

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