

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

CATHY ZHU, *Applicant*

vs.

**PANASONIC CORPORATION OF NORTH AMERICA; TOKIO MARINE
MANAGEMENT, *Defendants***

**Adjudication Numbers: ADJ10166895; ADJ10166893
Santa Ana District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
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, except as noted below, we will grant reconsideration, rescind the WCJ's decision, and return this matter to the WCJ for further proceedings and decision. This is not a final decision on the merits of any issues raised in the petition and any aggrieved person may timely seek reconsideration of the WCJ's new decision.

We do not adopt and incorporate the Report's recommendation that we issue a decision after reconsideration reversing his decision. Instead, we will rescind the November 23, 2021 Joint Findings and Award, and return this matter to the WCJ to conduct further proceedings as he deems necessary and to issue a new decision in the first instance.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the November 23, 2021 Joint Findings and Award is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the November 23, 2021 Joint Findings and Award is **RESCINDED** and that the matter is **RETURNED** to the trial level for further proceedings and decision by the WCJ.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

ANNE SCHMITZ, DEPUTY COMMISSIONER
CONCUR NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

FEBRUARY 7, 2022

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

**CATHY ZHU
TOBIN LUCKS**

PAG/pc

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 OF WORKERS'
COMPENSATION JUDGE ON PETITION FOR RECONSIDERATION**

**I.
INTRODUCTION**

The applicant, Cathy Zhu, alleges she sustained a cumulative trauma injury to her psyche and headaches from June 30, 2014, to October 10, 2014 (ADJ10166895) and a specific injury to psyche and headaches on July 24, 2014 (ADJ10166893). The employer's workers' compensation carrier was Tokio Marine Management, Inc.

The Joint Findings and Order issued on February 2, 2018, found that the applicant did not sustain a psychiatric injury arising out of and in the course of employment, but also ordered further development of the record for the applicant to be evaluated by a panel Qualified Medical Evaluator in neurology concerning the industrial claim for headaches. Dr. Kenneth Geiger, M.D., was the replacement panel QME in neurology, and he issued a report dated January 31, 2020 (Board Exh. X).

Defendant filed a timely, verified Petition for Reconsideration on December 8, 2021, that appeals the November 23, 2021 Findings and Award, Findings of Fact #1. Petitioner contends that the COURT erred in finding a specific injury of July 24, 2014, causing headaches because Labor Code § 3600(a)(10) bars the specific injury claim. Petitioner also contends the WCJ erred in awarding future medical care for headaches given Dr. Kenneth Geiger found no need for future medical care. Defendant does not challenge the Findings of Fact that the applicant did not sustain a cumulative trauma injury.

The applicant filed a timely Answer on 12/13/2021. The applicant contends the WCJ correctly found that the applicant sustained a specific injury arising out of and in the course of employment on July 24, 2014, causing headaches. The applicant contends that she reported the injury, and her employer failed to provide her with a claim form. She attached a copy of cover letters addressed to the panel QME Dr. Geiger dated January 31, 2020, and January 6, 2020.

**II.
FACTS**

The applicant, Cathy Zhu, worked for Panasonic Avionic Corporation from June 30, 2014, to October 10, 2014, as a software test engineer (See MOH/SOE, September 19, 2016, 2: 1 - 2). On July 24, 2014, she alleged a specific injury when she bent down to pick up a key and struck her head against part of a wooden desk. After the injury, the applicant told a co-worker, "my brain is hurting." (report of Kenneth Geiger, M.D., January 31, 2020, pg. 3, 2nd

paragraph [Board Exh. X].) The applicant took Motrin for the headaches, and the headaches made it difficult for her to sleep (MOH/SOE for May 23, 2017, 4: 2.5; 4: 6.5 – 8). The work environment caused her headaches, sleeping problems, vomiting, and "brain confusion." (MOH/SOE, May 23, 2017, 5: 20.5 – 21.5.)

The panel QME, Kenneth Geiger, M.D., opined that the applicant reached maximum medical improvement from a neurological perspective. Based on her history, the applicant suffered a minor head injury at the workplace on July 24, 2014. The applicant did not sustain a cumulative trauma claim to her neurological system. The headaches resolved, and the applicant does not have any ratable permanent neurological disability. The injuries did not cause any temporary total disability on a neurological basis. (Kenneth Geiger, M.D., January 31, 2020, Medical Records, pg. 5 [Board Exh. X].)

III. **DISCUSSION**

The applicant filed the claim form in October 2015, wherein she alleged a specific injury on June 30, 2014. The claim form thus is dated about a year after her employment ended on October 10, 2014, and it is consequently a post-termination claim. Labor Code § 3600(a)(10) provides that:

"Except for psychiatric injuries governed by subdivision (e) of Section 3208.3, where the claim for compensation is filed after notice of termination or layoff, including voluntary layoff, and the claim is for an injury occurring prior to the time of notice of termination or layoff . . .:

Defendant contends that none of the exceptions to Labor Code 3600(a)(10)(A) to (D) apply. Those subsections provide that:

"[N]o compensation shall be paid unless the employee demonstrates by a preponderance of the evidence that one or more of the following conditions apply:

(A) The employer has notice of the injury, as provided under Chapter 2 (commencing with Section 5400), prior to the notice of termination or layoff.

(B) The employee's medical records, existing prior to the notice of termination or layoff, contain evidence of the injury.

(C) The date of injury, as specified in Section 5411, is subsequent to the date of the notice of termination or layoff, but prior to the effective date of the termination or layoff.

(D) The date of injury, as specified in Section 5412, is subsequent to the date of the notice of termination or layoff."

According to the employer witnesses, the applicant never reported any specific or cumulative trauma injuries while employed by Defendant. Stephanie Simpson is a senior human resource liaison at Panasonic (MOH/SOE, April 3, 2017, 11.5 – 12.5). The applicant never reported any injuries. The first time she learned the applicant was claiming a work injury was on October 27, 2015, more than a year after the applicant's employment ended on October 10, 2014 (MOH/SOE, April 3, 2017, 13.5 16).

The applicant's supervisor, Ernest Daniel Ochoa, testified that they had weekly staff meetings and one-on-one sessions with the applicant and team members. The applicant never reported that she suffered a work-related injury, and the applicant never said she was suffering from headaches or had hit her head on a table (MOH/SOE, August 24, 2017, 2: 9 – 10.5). The WCJ found the credible testimony of Stephanie Simpson and Ernest Daniel Ochoa.

The applicant testified that she told a co-worker after the injury, "my brain is hurting." (report of Kenneth Geiger, M.D., January 31, 2020, pg. 3, 2nd paragraph [Board Exh. X].) On the whole, however, the testimony of the employer witnesses was more reliable and credible than that of the applicant. The WCJ determined the employer did not have notice of the injury before the notice of termination or layoff on October 10, 2014, and Labor Code § 3600(a)(10)(A) does not apply as an exception to the post-termination defense.

The applicant testified that she did not seek any medical treatment while she was working and that the only doctor seen while she was still working was her dentist (MOH/SOE, May 23, 2017, 5: 24.5 - 6:1). The first Kaiser record addressing the applicant's headaches is October 22, 2014. The doctor advised the applicant to take Ibuprofen for headaches. (Kaiser record, 10/22/2014, Bates Stamp pg. 20.) The applicant was seen a year later by Steven Luh, M.D., who indicated that the applicant was "unable to work at this time due to the following medical issues: Anxiety, headache, insomnia; she is anticipated to return in three weeks. She has been advised to seek workers' compensation." (Kenneth Geiger, M.D., January 31, 2020, Medical Records, pg. 5 [Board Exh. X].) There were no medical records showing treatment for headaches that existed before the applicant terminated employment. Therefore, Labor Code § 3600(a)(10)(B) does not apply.

The applicant's date of injury was July 24, 2014, which was before the date of the notice of termination or layoff, October 10, 2014. Therefore, Labor Code § 3600(a)(10)(C) also does not apply. Finally, Labor Code § 3600(a)(10)(D) does not apply since it applies only to cumulative trauma claims.

After reviewing the facts of the case and Labor Code § 3600(a)(10), it appears that the post-termination defense applies to the specific injury claim and that none of the exceptions in subsections (A) to (D) apply. If the applicant's

specific injury claim is barred, she would not be entitled to future medical care for the headaches on an industrial basis.

IV.
RECOMMENDATION

Because of the preceding, the WCJ respectfully requests that the Petition for Reconsideration filed by Tobin Lucks on behalf of Defendant, Tokio Marine Management, Inc. be granted and that a decision after reconsideration issue, with specific findings of fact that the applicant's claim of injury for July 24, 2014, is barred by Labor Code § 3600(a)(10), and further there is consequently no right to future medical care for the headaches.

DATE: December 22, 2021

Richard Brennen

WORKERS' COMPENSATION JUDGE