

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

DAVID MATTHEWS *Applicant*

vs.

SIMI VALLEY CYCLES; AMGUARD INSURANCE COMPANY, *Defendant*

**Adjudication Number: ADJ14069848
Van Nuys District Office**

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

Defendant seeks reconsideration of a workers' compensation administrative law judge's (WCJ) Findings and Award of September 28, 2022, wherein it was found that while "employed on November 21, 2020 and/or during the period August 2020 through November 21, 2020, as a motorcycle mechanic," applicant sustained industrial injury to his cervical spine, shoulders, left arm, and elbows.

Defendant contends that the WCJ erred in finding a specific injury "and/or" a cumulative injury where applicant has raised only the issue of a specific injury. Defendant argues that the WCJ's confusion as to whether applicant sustained a specific "and/or" cumulative injury is evidence that any finding of industrial injury is premature.

We have received an Answer from the applicant, and the WCJ has filed a Report and Recommendation on Petition for Reconsideration.

We will grant reconsideration and amend the WCJ's decision to reflect that applicant has sustained a specific industrial injury and delete any reference to a cumulative injury, which is currently not raised by applicant's operative pleadings.

On January 5, 2021, applicant filed an Application for Adjudication of Claim alleging a November 21, 2020 specific injury to his neck with radiculopathy down his left arm while "repairing a motorcycle and on a test drive." On April 14, 2021, applicant amended his application to allege a cumulative injury sustained from August 15, 2020 to November 21, 2020.

Applicant was then evaluated by panel qualified medical evaluator Clive M. Segil, M.D. on July 29, 2021. Applicant explained his injury to Dr. Segil as follows:

Mr. Matthews relates that on November 21, 2020, he had just finished working on a motorcycle and as he was performing a test ride, with a full head helmet on, he leaned forward on the motorcycle when he felt “a pop,” in his neck, followed by immediate pain.

(July 29, 2021 report at p. 4.)

Dr. Segil concluded that, “Based on the available evidence presented to me today, I find the cervical spine, bilateral shoulders and bilateral elbows to be related to the claimed industrial injury which occurred on November 21, 2020. The mechanism of injury and a review of the medical reports does support industrial causation.” (July 29, 2021 report at p. 22.)

Based on Dr. Segil’s report, on October 5, 2021, applicant amended his application to again allege only a November 21, 2020 specific injury.

The matter proceeded to trial, at which the parties stipulated that “while employed on November 21, 2020” applicant claimed specific injury to the neck, left arm, bilateral shoulders and elbows.” However, although Dr. Segil’s medical report was unrebutted, after conclusion of trial, the WCJ issued a Notice of Intent to Find Contrary to the Stipulations Regarding Date of Injury which read, in pertinent part, as follows:

IT APPEARING THAT upon review of the evidence and trial testimony it is more reasonable that the applicant’s physical findings and complaints developed over time due to the degenerative nature of the parts of body at issue

GOOD CAUSE APPEARING;

IT IS the courts [sic] intent to make a finding of cumulative trauma versus a specific injury.

Ultimately, the WCJ issued her decision that applicant sustained industrial injury “on November 21, 2020 and/or during the period August 2020 through November 21, 2020.”

Labor Code section 3208.1 states in pertinent part:

An injury may be either: (a) “specific,” occurring as the result of one incident or exposure which causes disability or need for medical treatment; or (b) “cumulative,” occurring as repetitive mentally or physically traumatic activities

extending over a period of time, the combined effect of which causes any disability or need for medical treatment.

As the Court of Appeal wrote in *Western Growers Ins. Co. v. Workers' Comp. Appeals Bd. (Austin)* (1993) 16 Cal.App.4th 227, 234-235 [58 Cal.Comp.Cases 323]:

In any given situation, there can be more than one injury, either specific or cumulative or a combination of both, arising from the same event or from separate events. (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.* (1990) 219 Cal.App.3d 1265, 1271; *City of Los Angeles v. Workers' Comp. Appeals Bd.* (1978) 88 Cal.App.3d 19, 29; *State Comp. Ins. Fund v. Workmen's Comp. App. Bd.* (1969) 1 Cal.App.3d 812, 819.) The number and nature of the injuries suffered are questions of fact for the WCJ or the WCAB. (*Aetna Cas. & Surety Co. v. Workmen's Comp. Appeals Bd.* (1973) 35 Cal.App.3d 329, 341; *LeVesque v. Workmen's Comp. App. Bd.* (1970) 1 Cal.3d 627, 637.) For example, if an employee becomes disabled, is off work and then returns to work only to again become disabled, there is a question of fact as to whether the new disability is due to the old injury or whether it is due to a new and separate injury. (See *Assurance Corp. v. Industrial Acc. Com.* (1922) 57 Cal.App. 257, 259-260; *Huston v. Workers' Comp. Appeals Bd.* (1979) 95 Cal.App.3d 856.) In addition, one exposure may result in two distinct injuries, posing another question of fact. (*Chevron U.S.A., Inc. v. Workers' Comp. Appeals Bd.*, supra, 219 Cal.App.3d at p 1271.) If a worker not only suffers a nervous breakdown but also develops an ulcer as a result of work-related stress, there would be two distinct injuries from one exposure. The nature and the number of injuries suffered are determined by the events leading to the injury, the medical history of the claimant, and the medical testimony received.

Any award of a WCJ or the Appeals Board must be supported by substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Bracken v. Workers' Comp. Appeals Bd.* (1989) 214 Cal.App.3d 246, 255 [54 Cal.Comp.Cases 349]; *County of San Luis Obispo v. Workers' Comp. Appeals Bd. (Martinez)* (2005) 133 Cal.App.4th 641, 648 [70 Cal.Comp.Cases 1247].) Substantial evidence has been described as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion and must be more than a mere scintilla. (*Braewood Convalescent Hosp. v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566].) It is axiomatic that a WCJ may only rely on evidence admitted in the record or matters that are properly the subject of judicial notice.

“Where an issue is exclusively a matter of scientific medical knowledge, expert evidence is essential to sustain a commission finding; lay testimony or opinion in support of such a finding does not measure up to the standard of substantial evidence. [Citation.] Expert testimony is necessary ‘where the truth is occult and can be found only by resorting to the sciences.’ [Citation.]” (*Peter Kiewit Sons v. Ind. Acc. Comm. (McLaughlin)* (1965) 234 Cal.App.2d 831, 838 [30 Cal.Comp.Cases 188].)

Generally, medical causation cannot be established without expert medical evidence. As the *McLaughlin* court explained:

If a painter falls to the ground as the result of a scaffold collapse, breaking his leg, common sense dispenses with medical evidence of causation. Other sources of disability are less available to lay discernment. In *City & County of San Francisco v. Industrial Acc. Com. [(Murdock) (1953)]* 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103], the court annulled a finding of industrial causation of a fatal heart attack, asserting the necessity of medical evidence. *Guarantee Ins. Co. v. Industrial Acc. Com. [(Tuban) (1949)]* 88 Cal.App.2d 410 [13 Cal.Comp.Cases 264], held that lay evidence was not adequate to establish impairment of vision by arc welding flashes. In *Pacific Employers Ins. Co. v. Industrial Acc. Com. [(Collins) (1941)]* 47 Cal.App.2d 494 [6 Cal.Comp.Cases 270], the connection between an industrial leg trauma and varicose ulcers was held to be outside the competence of lay witnesses.

Examples might be multiplied. They condense into the general proposition that the medical cause of an ailment is usually a scientific question, requiring a judgment based upon scientific knowledge and inaccessible to the unguided rudimentary capacities of lay arbiters.

(*McLaughlin, supra*, 234 Cal.App.2d at p. 839.)

The unrebutted medical opinion in this case was that applicant sustained industrial injury as a result of the specific November 21, 2020 incident. The WCJ erred in substituting her lay opinion in the place of the only medical opinion in evidence. We therefore grant reconsideration and amend the WCJ’s to find only a specific November 21, 2020 injury. We note that the only issue for adjudication at trial was injury arising out of and in the course of employment. Any issue of apportionment to factors other than the specific injury was not at issue, and we express no opinion regarding any future determination of this issue.

For the foregoing reasons,

IT IS ORDERED that that Defendant's Petition for Reconsideration of the Findings and Award of September 28, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Award of September 28, 2022, is **AMENDED** as follows:

FINDINGS OF FACT

1. DAVID MATTHEWS, age 50 at the time of injury, while employed on November 21, 2020, as a motorcycle mechanic at Simi Valley, California, by SIMI VALLEY CYCLES, whose workers' compensation insurance carrier was AMGUARD INSURANCE COMPANY, sustained injury arising out of and occurring in the course of employment to his cervical spine, bilateral shoulders, left arm and elbows.
2. All other issues are deferred, with jurisdiction reserved.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 23, 2022

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

**DAVID MATTHEWS
THE BRIDGFORD LAW OFFICE
ALBERT AND MACKENZIE**

DW/mc

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