

WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

HISHAM ALNATOUR (Deceased), *Applicant*

vs.

**CALIFORNIA DEPARTMENT OF TRANSPORTATION, legally uninsured,
administered by STATE COMPENSATION INSURANCE FUND, *Defendants***

**Adjudication Number: ADJ11692751
Bakersfield District Office**

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

Sally Alnatour (Ms. Alnatour), wife of deceased Hisham Alnatour (applicant), seeks reconsideration of the Findings and Orders (F&O) issued by the workers' compensation administrative law judge (WCJ) on February 17, 2022, wherein the WCJ found in pertinent part that applicant did not sustain injury in the form of a cerebrovascular accident (CVA/stroke), arising out of and occurring in the course of employment (AOE/COE) on February 18, 2018.

Ms. Alnatour contends that the opinions of internal medicine qualified medical examiner (QME) Syed Omar Tirmizi, M.D., are based on incorrect legal theories and are not substantial evidence on the issue of 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 defendant.

We have considered the allegations in the Petition and the Answer, 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

While employed by defendant as an engineer on February 18, 2018, applicant had a cerebrovascular accident (stroke) and he passed away on March 12, 2018. The cause of death was

CVA, diabetes type 2, atrial fibrillation, and hypertension. (Def. Exh. A, Dr. Tirmizi, June 2, 2020, p. 19, review of Kern County death certificate.)

On December 16, 2019, Ms. Alnatour's deposition was taken. Her testimony regarding her husband's (applicant's) work stress included:

Q. ... Was it known to you that he was stressed at work?

A. Yes.

Q. And how did you know that?

A. Well, the way he -- he's always in the evenings at the phone. Contractors will call him. The engineer that's doing the night shift would call him to take instructions from him. ¶ He was thinking of retiring, but he loved what he does. And he wanted to retire because of the -- the -- the load of stress from work, but he says that if he retires, what he's going to do, you know, just sit at home?

(Def. Exh. F, Ms. Alnatour, December 16, 2019, p. 57, deposition transcript.)

Q. So do you recall any incident that he had when he had a fight with someone over the phone shortly before his stroke?

A. There was a phone call with a contractor; and what I understood from the conversation, the contractor wanted to do a lane closure at the 5 Freeway, but my husband kept telling him you cannot perform a lane closure without CHP present. And there was like two to three calls. The same contractor would call back. And I heard my husband over and over and over telling him not to do the lane closure without CHP present. ¶ And I believe he also talked to an engineer in charge, to stress that point. But that night, the reason I remember it because he could not sleep. He could not fall asleep, and he kept getting back and forth to the bed. And he had his blood pressure was high, and he -- he -- and he had a bad nosebleed that night.

(Def. Exh. F, pp. 58 – 59.)

QME Dr. Tirmizi was provided medical records and was asked to submit a report addressing the issue of injury AOE/COE. In his June 2, 2020 report Dr. Tirmizi stated:

In the absence of any further records that shed light onto his work duty responsibility, I am unable to find any nexus between his work and the development of any of his medical conditions that may have resulted in CVA. It is most likely that he suffered an embolic CVA, given his long-standing history of atrial fibrillation. ¶ ... In this particular case, atrial fibrillation was responsible for his embolic CVA. His long-standing hypertension and diabetes were not responsible for the development of the acute CVA, although there may have been factors that may have influenced the size of the infarct, as well as the eventual outcome. Therefore, I am unable to find a correlation between his acute massive CVA, and subsequent respiratory compromise and demise with his work duties and responsibilities.

(Def. Exh. A, pp. 20 – 21.)

Dr. Tirmizi was asked to review Ms. Alnatour's deposition transcript and the transcript of applicant's co-worker Yasser Masri's deposition. He concluded:

Based on these depositions, I am unable to state with certainty if stress was a contributing factor to his stroke. He clearly had significant risk factors for stroke. ... I do not find a direct nexus between the alleged stress that his family has alleged and actual documentation of stress from his workplace. His coworker did not report stress and I have not been provided with any HR reports, where Mr. Alnatour may have directly complained about stress. On the other hand, it is noted that he would take pride in his work, he loved his work, and he was taking on additional projects. Therefore, it is my opinion that stress was not a contributing factor to the development of his stroke.

(Def. Exh. B, Dr. Tirmizi, November 21, 2020, pp. 5 – 6.)

Dr. Tirmizi's deposition was taken on July 8, 2021. The questions and answers regarding the doctor's understanding of what constitutes an injury AOE/COE included the following:

Q. Okay. And the reason for my question is because when we start looking at your reports, and I'm looking at the June 2, 2020, you indicated that you were asked to address the cause of death. In the second report you talk about correlation and you go onto talk about the nexus, but I want to understand from you, what is your understanding of the standard under South Coast Framing?¹

...

[A.]THE WITNESS: I'm happy to respond, but I am going to completely mess up what the law actually is in this matter. I am familiar with South Coast Framing and other similar issues, which are death cases, and the kind of standards that my reporting needs to be held up to in light of those cases. But I'm happy to answer questions that you have with my respect to my understanding ever those cases.

Q. ... And so the question that I had was, regarding the understanding that you have of South Coast Framing and the standard of South Coast Framing? ...

[A.] THE WITNESS: I'm going to give the same answer. I don't want to quote myself on a legal issue when I'm not a BAR certified attorney in the State of California.

(Joint Exh. 1, Dr. Tirmizi, July 8, 2021, pp. 5 – 6, deposition transcript.)

Q. Okay. So in order for the stress to have been a contributing factor, there had to have been a spike in blood pressure readings?

A. There has to be some concrete evidence that the individual was experiencing stress and that could be by testimony that he or she gave to another coworker or a perception of his family about the stress. Secondly, in association with the period of stress, there has to be a historical or documented evidence that the blood pressure was higher than it normally is.

¹ In reference to: *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, [80 Cal.Comp.Cases 489]

Q. So one of the things that you mentioned was that you needed to see some sort of evidence and you talked about, like, whether or not it was in regards to a coworker or whether it was through the family, which you were provided with the deposition of Ms. Alnatour. Did you have any reason to doubt her testimony?

A. I don't doubt her testimony, no.

Q. Okay. So then what is missing in this case is you needed some sort of corroborating evidence in order to show that the blood pressure was higher, at some times than other times?

A. That's part of the answer. There has to be an association of high blood pressure more than the individual's baseline during those periods of stress to make correlation that stress caused a spike in blood pressure. And No. 2, what Sally Alnatour perceived as stress has to be also something that is borne out by his human resources department or other coworkers that alluded that -- that allude to confirming that he was experiencing stress.

(Joint Exh. 1, pp. 8 – 9.)

Q. Okay. And then moving on then, is stress a contributing factor to the atrial fibrillation?

A. I'm sorry. Just stress or hypertension?

Q. Stress.

A. I'm not aware of any body of literature that describes only stress as contributing factor to atrial fibrillation. There is literature that supports stress as an individual contributor to hypertension and on a separate note, contributor to strokes, but I'm not aware of the direct correlation with atrial fibrillation.

Q. So just so I know, the acute CVA, that is a stroke, correct?

A. Yes.

Q. And is stress a contributing factor to that?

A. In broad strokes, yes. There is literature that psychiatric illness or stress are associated with a high instance of cerebral vascular incidents.

Q. Okay. And is stress a contributing factor to diabetes?

A. In general terms, it may be.

(Joint Exh. 1, pp. 13 – 14.)

The parties proceeded to trial on October 27, 2021. The issues submitted for decision included injury AOE/COE. (Minutes of Hearing and Summary of Evidence (MOH/SOE), October 27, 2021, p. 2.)

DISCUSSION

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 to be substantial evidence 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. (*Place v. Workmen's Comp. Appeals Bd.* (1970)

3 Cal.3d 372 [35 Cal.Comp.Cases 525]; *Hegglin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers' Comp. Appeals Bd.* (1968) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

When the death of an employee is proximately caused by an injury AOE/COE, the employer is liable to the employee's dependents for a death benefit. (Lab. Code, §§ 3600, 4701(b), and 4703; *South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.* (2015) 61 Cal.4th 291, [80 Cal.Comp.Cases 489]; see also Lab. Code, § 4706.) Medical evidence that industrial causation was reasonably probable, although not certain constitutes substantial evidence for a finding of injury AOE/COE. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 417 - 418 [33 Cal.Comp.Cases 660].) "The applicant in a workers' compensation proceeding has the burden of proving industrial causation by a 'reasonable probability.' (citation) That burden manifestly does not require the applicant to prove causation by scientific certainty." (*Rosas v. Worker's Comp. Appeals Bd.* (1993) 16 Cal.App.4th 1692, 1700 – 1701 [58 Cal.Comp.Cases 313].) It has long been the law that the acceleration, aggravation or 'lighting up' of a preexisting condition "is an injury in the occupation causing the same." (*Tanenbaum v. Industrial Acc. Com.* (1935) 4 Cal.2d 615, 617 [1935 Cal. LEXIS 590]; *Zemke v. Workmen's Comp. Appeals Bd.* (1968) 68 Cal.2d 794 [33 Cal.Comp.Cases 358].) For the purpose of meeting the causation requirement in a workers' compensation injury claim, including a claim for death benefits, it is sufficient if the work is a contributing cause of the injury. (*South Coast Framing, Inc. v. Workers' Comp. Appeals Bd.*, *supra*.)

Here, at her deposition Ms. Alnatour testified that applicant was "stressed at work." (Def. Exh. F, p. 57.) She then testified that there was a particular event, shortly before his stroke, when applicant had a series of stressful phone calls with a contractor, and she remembered the event because after the phone calls, applicant could not fall asleep, his blood pressure was high, and he had "a bad nosebleed that night." (Def. Exh. F, p. 59.)

As quoted above, Dr. Tirmizi testified that for stress to be a contributing factor to applicant's stroke, there had to be "concrete evidence" (testimony from a coworker or family member) that applicant was experiencing stress. (Joint Exh. 1, p. 8.) He then stated that although he believed Ms. Alnatour's testimony, he needed evidence that stress had caused a "spike" in applicant's blood pressure, and that what Ms. Alnatour perceived as stress had to be "borne out" by the "human resources department" or a coworker. (Joint Exh. 1, p. 9.) Dr. Tirmizi later testified

that he was aware of literature that psychiatric illness or stress are associated with a high instance of cerebral vascular incidents, and that stress may be a contributing cause of diabetes. (Joint Exh. 1, pp. 13 – 14.) Also, Dr. Tirmizi’s June 2, 2020 report contains a chart listing applicant’s blood pressure on various dates between November 24, 2012 and March 4, 2018. (Def. Exh. A, pp. 14 – 19.) The chart indicates applicant’s blood pressure on February 18, 2018, the day of the stroke, was the highest it had been since November 24, 2012.

Dr. Tirmizi did not explain why he believed Ms. Alnatour’s testimony had to be “borne out” by documents from defendant’s human resources department, nor did he explain why the information in the blood pressure chart (extracted from the medical records he reviewed) was not evidence that applicant’s blood pressure had “spiked.” Finally, Dr. Tirmizi did not explain why although stress is associated with a high instance of cerebral vascular incidents (strokes), and stress may be a contributing cause of diabetes, it was his opinion that applicant’s stroke was not related in any way to his work stress, as described by Ms. Alnatour.

It is not clear whether Dr. Tirmizi understands that if the employee’s work is a contributing cause of his or her injury, then the injury is industrial, or if he believes that the employee’s work must be the single factor causing the injury for it to be industrial. Also, as discussed above, Dr. Tirmizi clearly stated his opinion that applicant’s stroke was not related to his work, but he did not explain his reasoning or analysis in reaching his conclusion, and his deposition testimony appears to be inconsistent when addressing that issue. Thus his opinions do not constitute substantial evidence. (*South Coast Framing, Inc. v. Workers’ Comp. Appeals Bd.*, *supra*; *Escobedo v. Marshalls*, *supra*.)

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue, or when it is necessary in order to fully adjudicate the issues. (Lab. Code §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) When the medical record requires further development, the record should first be supplemented by physicians who have already reported in the case. (See *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2001) 67 Cal.Comp.Cases 138 (Appeals Board en banc).)

Under the circumstances of this matter, it is appropriate for the parties to request that Dr. Tirmizi submit a supplemental report addressing the issue of injury AOE/COE, as discussed herein. We recommend, upon return to the trial level, that the WCJ calendar a Status Conference

at which he and the parties can agree on the instructions to be sent to Dr. Tirmizi, regarding their request for a supplemental report.

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 February 17, 2022, is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the February 17, 2022 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/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

April 29, 2022

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

**SALLY ALNATOUR
LAW OFFICE OF CHAIN, COHN & STILES
STATE COMPENSATION INSURANCE FUND**

TLH/pc

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