

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

LISA CANGELOSI, *Applicant*

vs.

**ORANGE COUNTY DEPARTMENT OF EDUCATION, permissibly self-insured,
administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Numbers: ADJ11876650; ADJ12092840 ADJ12092799
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, we will grant reconsideration, and amend the WCJ's decision as recommended in the report.¹

For the foregoing reasons,

IT IS ORDERED that reconsideration of the decision of June 2, 2022 is **GRANTED**.

¹ We note that the WCJ recommended that we add Finding of Fact 5. However there is an existing Finding of Fact 5. Accordingly, we added Finding of Fact 6. We also note that the Report is entitled "Report and Recommendation on Petition for Removal," but defendant sought reconsideration and the report addresses defendant's petition for reconsideration. Therefore, it appears that the reference to a petition for removal is a clerical error.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the decision of June 2, 2022 is **AMENDED** by the addition of Finding of Fact 6 as follows:

FINDINGS OF FACT

6. Dr. Lee is qualified and competent to provide a medical opinion on the issue of the applicant's respiratory injury.

WORKERS' COMPENSATION APPEALS BOARD

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ MARGUERITE SWEENEY, COMMISSIONER

/s/ JOSÉ H. RAZO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

August 8, 2022

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

**LISA CANGELOSI
SILBERMAN LAW OFFICES
LAW OFFICES OF VICTOR SARGAZY**

MWH/pc

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

REPORT AND RECOMMENDATION OF
WORKERS' COMPENSATION JUDGE
ON PETITION FOR REMOVAL

I.

INTRODUCTION

1. Applicant's occupation : Administrative Assistant
Applicant's Age : 59
Date of Injury : September 4, 2018 to October 22, 2018
Parts of Body Injured : head, eyes, nose, and respiratory system.
Manner in which it occurred : Continuous Trauma

2. Identity of Petitioner : Defendant Orange County Department of Education
Timeliness : Petition is timely
Verification : Petition is verified

3. Date of Order : June 2, 2022
4. Petitioner contends that the WCJ erred in:
 - a) Finding industrial causation based on speculation with no evidence of a mechanism of injury;
 - b) Finding industrial causation contrary to the evidence;
 - c) Relied on a QME's report that is not substantial medical evidence because it is un-ratable, relies on speculation, and was not based on an accurate history or factual evidence; and
 - d.) Disregarded pertinent evidence and relied on a QME who is not qualified to address the applicant's claim and failed to address the Petition to Strike filed by Defendant on November 29, 2021, as raised at the March 23, 2022 trial.

II

FACTS

The applicant Lisa Cangelosi, [] while employed as an administrative assistant by the Orange County Department of Education in Costa Mesa, California, during the periods of October 1, 2014 through October 20, 2018, September 4, 2018 through October 22, 2018, and September 1, 2014 through December 1, 2016 claimed to have sustained injury arising out of and in the course of employment to her head, eyes, nose, and respiratory system with asthma.

At trial, the applicant testified that during the course of her employment, she moved several times between multiple buildings. The applicant estimated that she had relocated facilities ten times over the last 20 years.

In September of 2014, the applicant was relocated to a facility located on 1st Street in Tustin. She was at the Tustin facility for two years until December of 2016, when she moved to the Harbor Learning Center in Fountain Valley¹

Before her transfer, the applicant sought treatment for complaints of cough and received Symbicort inhalers to treat reactive airway disease.²

The applicant testified that she did not have regular respiratory issues before working at the Tustin facility. She only had them when she was sick with bronchitis or a cold.³ Before working at the Tustin facility, the applicant would have to use inhalers on an irregular basis when she was either sick or suffering from bronchitis.⁴

However, while she was at the Tustin facility, the applicant had respiratory issues.⁵ The first recorded treatment for respiratory issues was on May 5, 2015, with Dr. Minar.⁶ The applicant continued to treat periodically, however her symptoms continued to worsen.⁷ By October of 2016, the applicant was improving with treatment. However, she still had a dry cough with some fits.⁸

The applicant worked at the Fountain Valley facility for approximately two years and was moved back to the Tustin facility in September 2018. She remained at the Tustin facility for about a month.⁹

The records reflect that the applicant had recurrent symptoms and was prescribed medication while working at the Fountain Valley facility.¹⁰ The applicant testified that her symptoms were milder while working at the Fountain Valley facility. However, she was still required to use a daily inhaler but did not have to use her emergency inhaler.¹¹

When she returned to the Tustin facility, her symptoms returned, and she started having headaches with a runny nose and runny eyes. The applicant

¹ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 7, Lines 10 to 14

² DEFENDANT'S S: Subpoenaed records from Mary Minar, Pages 1 to 8; and DEFENDANT'S U: Subpoenaed records from CVS, Page 5

³ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 7, Lines 23 to 24

⁴ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 8, Lines 3 to 5

⁵ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 7, Lines 23 to 25

⁶ DEFENDANT'S S: Subpoenaed records from Mary Minar, Page 7

⁷ DEFENDANT'S S: Subpoenaed records from Mary Minar, Page 20

⁸ DEFENDANT'S T: Subpoenaed records from Marlo Ross, Page 20

⁹ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 7, Lines 15 to 18

¹⁰ DEFENDANT'S S: Subpoenaed records from Mary Minar, Page 43 to 48

¹¹ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 8, Lines 10 to 12

started coughing more consistently and had difficulty breathing when she had to walk across the facility.¹²

The records reflect that on October 22, 2018, the applicant sought treatment asserting that she had had symptoms for a month since returning to the Tustin facility.¹³

The applicant's symptoms became more manageable since leaving the Tustin location, and she no longer requires an emergency inhaler. However, she has some lingering effects as she has difficulty breathing while climbing stairs or going for long walks.¹⁴

III DISCUSSION

The evidence does support the Workers' Compensation Judge's finding that the applicant met her burden of industrial causation.

The defendant asserts that the evidence does not support the Workers' Compensation Judge's finding that the applicant met her burden of industrial causation.

First, the defendant asserts that the applicant did not present any evidence to establish any type of exposure in the workplace.

In support of its assertion, the defendant references the applicant's medical records, which provide a history of the applicant's respiratory issues prior to, during, and after her working at the Tustin facility. These records do not provide any conclusion that the cause of the applicant's respiratory issues was industrial.

The defendant further references the deposition of their environmental expert Mr. Ginsborg. Mr. Ginsborg testified "that if he had found any evidence of a health hazard to the employees, he would have required Orange County Department of Education to take immediate action to correct the issues."

The Deposition of Mr. Ginsborg had several attachments that the parties referenced in the deposition. One of these documents was an email from Mr. Ginsborg to the defendant. In the Email, Mr. Ginsborg stated that the area is safe for continuous occupancy and should not pose a hazard to the typical occupants.¹⁵

¹² Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 8, Lines 13 to 15

¹³ DEFENDANT'S S: Subpoenaed records from Mary Minar, Page 49

¹⁴ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 9, Lines 1 to 3

¹⁵ DEFENDANT'S B: Deposition of Daniel Ginsborg dated September 6, 2019, Page 195

The email notes that there was visible mold of the *Stachybotrys* species, suggesting significant wetness for an extended period of time.¹⁶

It was recommended that a portion of a wall should be removed and the wall cavity inspected for water damage and mold growth.¹⁷

The attached Direct Microscopic Examination Report revealed mold growth in the facility in March 2013.¹⁸

An Industrial Hygiene Survey Abbreviated Report Indoor Air Quality was performed in October of 2018, and provided that the mold spore concentrations inside the OCDE Administrative office areas ranged from 40 to 600 spores per cubic meter (spores/m³) and were below the levels measured outdoors.¹⁹

Again Mr. Ginsborg opined that, in terms of potential mold exposure, the facility was safe for continuous occupancy, and the mold levels did not pose a hazard to the typical occupants.²⁰

Based on the reports and studies of Mr. Ginsborg in 2014 and 2018, though not at levels found to affect a typical occupant, there was evidence there was mold in the Tustin facility in both 2014 and 2018.

The defendant's second assertion is that the applicant did not establish a connection between her symptoms and her employment.

The defendant believes that the applicant's prior history of respiratory problems and the persistence of her respiratory issues when not present in the Tustin facility are conclusive as to the persistence of her respiratory issues when not present in the Tustin facility are conclusive as to the issue of causation.

The undersigned judge found to the contrary. The parties were instructed to return to the Panel Qualified Medical Examiner, Dr. Donald T. Lee. The parties were to inquire whether the levels of mold or other irritants identified in the October 24, 2018, Environmental Report caused injury to the applicant's respiratory system or aggravated, or exacerbated, a pre-existing respiratory condition.²¹

The parties deposed Dr. Lee, and during the examination, Dr. Lee testified that he looked to the presence of spores and molds inside regardless of the fact

¹⁶ DEFENDANT'S B: Deposition of Daniel Ginsborg dated September 6, 2019, Page 195

¹⁷ DEFENDANT'S B: Deposition of Daniel Ginsborg dated September 6, 2019, Page 195

¹⁸ DEFENDANT'S B: Deposition of Daniel Ginsborg dated September 6, 2019, Page 201

¹⁹ DEFENDANT'S K: Full environmental report dated October 23rd, 2018, Page 1

²⁰ DEFENDANT'S K: Full environmental report dated October 23rd, 2018, Page 3

²¹ EAMS Doc ID: 74198159 ORDER VACATING FA 5/17/2021

that their levels were higher outside. He stated that the fact was that there were spores and molds in this situation.

Dr. Lee stated that because of the applicant's underlying COPD and asthma, the levels of spores and molds present in the facility were sufficient to cause injury to the applicant.

Dr. Lee stated that asthma is a reversible airway disease that can be treated for and controlled until the next trigger causes an asthmatic attack. However, COPD is an obstructive lung disease that is chronic and causes persistent injury that is not reversible. Reactive airway disease was closer to COPD in that it is not reversible but is close to asthma in its symptoms.²²

Dr. Lee stated that anything that triggers a reaction in someone with COPD gets a kindling effect and the threshold to have a flare-up is lower with each subsequent exposure.²³

Though Dr. Lee did find industrial causation, he acknowledged that he could not quantify how much the Cladosporium and Penicillium/Aspergillus mold exacerbated or aggravated the applicant's underlying COPD and asthma. He stated that it would be a least 1%.²⁴

Dr. Lee's opinions were rational and persuasive on the issue of causation.

The undersigned judge based his determination of industrial causation on the applicant's testimony, the medical records, the environmental reports, and the reporting of Dr. Lee.

The undersigned Judge was not required to speculate as to the presence of mold, spores, or irritants in the Tustin facility, as this was documented in the environmental reports submitted by the defendant.

Nor was the undersigned Judge required to speculate about the mechanism of injury as Dr. Lee stated that given the applicant's pre-existing repertory issues, she had a lower threshold for exposure to suffer harm from mold and spores identified in the environmental reports.

There was credible and reliable evidence that the applicant was exposed to mold and spores while in the Tustin facility and that this exposure, with reasonable medical probability, caused injury to the applicant.

Wherefore, the undersigned Judge was not in error in finding that the applicant's exposure to mold and spores while working for the Orange County

²² COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 25 Line 6 to 17

²³ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 25 Line 15 to 17 & Page 29 lines 12 to 17

²⁴ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 15

Department of Education caused injury to her respiratory system between September 1, 2014 and December 1, 2016 and September 4, 2018 and October 22, 2018.

The evidence does support the Workers' Compensation Judge's finding for finding industrial causation.

Defendant asserts that the evidence does not support the Undersigned Judge's basis for finding industrial causation. Specifically, the defendant asserts that the Undersigned Judge relied on the applicant's increased symptoms at the Tustin facility and reduction in treatment for respiratory symptoms after she left the Tustin facility in finding industrial causation.

Though the undersigned Judge took into consideration the amount of time that the applicant was not at the Tustin facility and the infrequency of her treatment visits, these were only part of the evidence the undersigned Judge relied on in making his decision and determinations.

The most persuasive evidence was the opinions of Dr. Lee expressed in his deposition.

Defendant points to the medical record documenting the applicant's pre-existing respiratory issues. These pre-existing respiratory issues were taken into consideration by the undersigned Judge as it was these issues that, as explained by Dr. Lee, made the applicant more sensitive to the levels of mold and spores in the facility.²⁵

As to the applicant's complaints of respiratory issues, the defendant asserts that the applicant's respiratory complaints did not begin until the applicant reported to her doctor her respiratory problems. The defendant asserts that the applicant failed to explain why her symptoms suddenly manifested after fifteen months at the Tustin facility.

The applicant testified at trial that she started having respiratory problems within a few months of being at the Tustin facility.²⁶ The undersigned Judge found the applicant credible, and her testimony contradicts the defendant's assertion. Based on the applicant's credible testimony, the applicant started having respiratory problems within a few months of working at the Tustin facility.

Defendant's third assertion is that the successful treatment of the applicant's symptoms while at the Tustin facility contradicts the finding of industrial causation.

²⁵ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 25 Line 15 to 17 & Page 29 lines 12 to 17

²⁶ Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 10, Lines 4 to 5

The undersigned judge disagrees. The fact that the applicant was treated and had a successful reduction of symptoms establishes only that the applicant had respiratory issues while at the Tustin facility that were successfully treated. Successful treatment does not negate the injury or speak to the cause of that injury. It is only evidence that the injury was successfully treated.

The defendant's fourth assertion is that the undersigned Judge's findings disregard the evidence indicating that the applicant continued to have respiratory symptoms at Harbor Learning Center.

The defendant asks what caused the applicant's ongoing symptoms at Harbor Learning Center and where is the evidence that the applicant's symptoms were caused by her placement in the Tustin facility rather than just a progression of her pre-existing condition?

The answer lies in the opinions of Dr. Lee. Dr. Lee stated that because of the applicant's underlying COPD and asthma, the levels of spores and molds present in the facility were sufficient to cause injury to the applicant. Dr. Lee further stated that COPD is a chronic obstructive lung disease that causes persistent injury.²⁷ That every flare-up causes a lowering of the exposure threshold to have another flare-up.²⁸

Given the chronic nature of COPD, it is not unexpected that the applicant would have symptoms even after leaving the Tustin facility.

The defendant's final assertion is that the applicant did not produce evidence that her move to a new home did not cause her symptoms. This is a misstatement of the burden of proof.

An applicant has the burden to prove that her injury arose out of and in the course of employment. This burden does not require an applicant to prove that the injury did not occur in a non-industrial environment. It requires that the applicant only establish that her employment caused her injury.

As discussed previously, Dr. Lee stated that because of the applicant's underlying COPD and asthma, the levels of spores and molds present in the facility were sufficient to cause injury to the applicant.

Though Dr. Lee did find industrial causation, he acknowledged that he could not quantify how much the Cladosporium and Penicillium/Aspergillus mold exacerbated or aggravated the applicant's underlying COPD and asthma. He stated that it would be a least 1%.²⁹

²⁷ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 12 lines 10 to 12

²⁸ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 12 lines 15 to 17

²⁹ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 15

Any exposure to non-industrial molds and spores that cause a flare-up is more appropriately addressed through apportionment and does not negate that the applicant, based on the opinions of Dr. Lee, sustained an injury as a result of her exposure to mold and spores at the Tustin facility.

Wherefore, the undersigned Judge was not in error in finding that the applicant's exposure to mold and spores while working for the Orange County Department of Education caused injury to her respiratory system between September 1, 2014 and December 1, 2016 and September 4, 2018 and October 22, 2018.

The medical reports relied upon by the Workers' Compensation Judge are supported by the evidence.

The defendant asserts that Dr. Lee's reports are not substantial medical evidence and are not supported by the law or evidence in this case.

Specifically, the defendant asserts that Dr. Lee stated that he would find industrial causation with any level of mold found in the Tustin facility, thereby creating an impossible standard. The defendant asserts that according to Dr. Lee's opinion, every person with any pre-existing respiratory complaints will develop an industrial injury unless provided with a respirator and a clean room.

The undersigned judge disagrees. Dr. Lee was not asked if the level of mold and spores at the facility where the applicant worked would cause injury to anyone working there but if the "applicant's" exposure while at the facility caused her injury.

Dr. Lee's opinion was that the applicant's pre-existing respiratory issues made the exposure threshold required for the applicant to have a respiratory reaction lower than the typical individual.

Dr. Lee's statement that he would find industrial causation with any level of mold found in the Tustin facility was specific to the applicant. It does not follow that because Dr. Lee states that the applicant reacted to the mold levels that everyone would.

The defendant further asserts that Dr. Lee's reporting is not substantial medical evidence, because Dr. Lee acknowledges that he could not quantify how much the Cladosporium and Penicillium/Aspergillus mold exacerbated or aggravated the applicant's underlying COPD and asthma.³⁰

The issue set for trial and presented to Dr. Lee was causation. Dr. Lee addressed causation, explaining how the applicant's pre-existing respiratory issues were exacerbated and aggravated by her exposure to mold and spores in

³⁰ COURT X: Deposition Transcript of Dr. Donald Lee , 10-26- 2021, Page 15

the Tustin facility, even though the mold levels were not considered dangerous for the typical occupant.

Dr. Lee's deposition, he was informed that the Undersigned Judge requested a more comprehensive explanation of causation. The Undersigned Judge did not ask Dr. Lee to address disability and apportionment as those issues had not been submitted for decision.

An evaluator shall address all contested medical issues arising from all injuries that are within the evaluator's scope of practice and areas of clinical competence. The reporting evaluator shall attempt to address each question raised by each party in the issue cover letter sent to the evaluator.³¹

The evaluator shall advise the parties in writing of any disputed medical issues outside of the evaluator's scope of practice and area of clinical competency in order that the parties may initiate the process for obtaining an additional evaluation.³²

In this matter, Dr. Lee advised the parties that he was unable to quantify how much the Cladosporium and Penicillium/Aspergillus mold in the Tustin Facility exacerbated or aggravated the applicant's underlying COPD and asthma.

Dr. Lee's inability to address the issue of apportionment does not necessarily make his report inadmissible but was considered in the Undersigned Judge's weighing of the evidence.

The Undersigned Judge had requested that Dr. Lee specifically address the issue of causation.

Dr. Lee took into consideration the applicant's medical history, personal reporting, and the environmental report on the Tustin Facility when determining the reasonable medical probability that the applicant's exposure to mold and spores at the facility caused an injury.

Dr. Lee provided a well-reasoned opinion on the issue of causation. As such, Dr. Lee's reporting was substantial evidence.

Wherefore, the undersigned Judge was not in error in finding that the applicant's exposure to mold and spores while working for the Orange County Department of Education caused injury to her respiratory system between September 1, 2014 and December 1, 2016 and September 4, 2018 and October 22, 2018.

³¹ 8 CCR § 35.5(c)(1)

³² 8 CCR § 35.5(d)

The QME is not qualified to issue an opinion regarding the applicant's pulmonary condition.

The defendant asserts that Dr. Lee's field of specialty for QME purposes is toxicology, and as such, he is not qualified to issue an opinion regarding the applicant's pulmonary condition.

After the matter was set for trial, the defendant filed a Petition To Strike Reporting Of QME, Dr. Donald Lee, And Request For Independent Medical Evaluator Pursuant To Labor Code § 5701.

The basis for the defendant's request is its assertion that according to the defendant's research, Dr. Lee's primary practice is focused on cosmetic and aesthetic treatments, including Botox, waxing, and liposuction, not pulmonology.

The Undersigned Judge notes that a discussion of the defendant's Petition to Strike was inadvertently left out of the Finding of Fact and Opinion on Decision.

Defendant did not raise the issue of Dr. Lee's qualification until after the matter was set for trial. Furthermore, when the defendant filed its petition, Dr. Lee had already issued two medical-legal reports. The reports of Dr. Lee were submitted by the defendant as evidence and taken into evidence without objection.³³

The undersigned judge finds that the defendant's request for the striking of Dr. Lee and appointment for a regular physician is untimely and that the defendant should be estopped from raising the issue of Dr. Lee's competency.

Furthermore, in considering the issue and request to strike the Undersigned Judge had reviewed the medical reporting and deposition of Dr. Lee. It was found that at no time did Dr. Lee express to the parties that pulmonary issues were not within his specialty and area in which he was not competent to evaluate the applicant.

Furthermore, a specialty in toxicology would appear to be a specialty that is appropriate for determining if the exposure to mold and spores, sometimes toxic substances, has accrued and caused an injury.

Based on the evidence submitted, Dr. Lee was qualified to issue an opinion on the issue of causation of the applicant's pulmonary injury.

³³ Minutes of Hearing and Summary of Evidence dated 3-23-2022, Page 2 and Minutes of Hearing and Summary of Evidence dated 10-15-2020, Page 5

Wherefore, the Undersigned Judge was not in error in relying on the opinions of Dr. Lee.

However, the Undersigned Judge requests that the Appeals Board amend the findings and award to correct the omission of the Undersigned Judge's finding and that Dr. Lee is competent to act as the qualified medical examiner in this matter.

RECOMMENDATION

For the reasons stated above, it is respectfully recommended that the defendant's petition for reconsideration be denied.

It is further recommended that the Undersigned Judge's Findings be amended to include the following finding of fact:

5. Dr. Lee is qualified and competent to provide a medical opinion on the issue of causation of the applicant's respiratory injury.

DATE: June 23, 2022

Oliver Cathey

WORKERS' COMPENSATION

ADMINISTRATIVE LAW JUDGE