

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

**RICHARD SATTLER, *Applicant***

**vs.**

**GREKA INTEGRATED, INC., administered by ZURICH INSURANCE, *Defendants***

**Adjudication Numbers: ADJ11229321; ADJ11229322; ADJ12416949  
Santa Ana District Office**

**OPINION AND ORDER  
DENYING PETITION FOR  
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 deny reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration is **DENIED**.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**

**/s/ JOSÉ H. RAZO, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**AUGUST 28, 2023**

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

**RICHARD SATTLER  
LAW OFFICE OF JAMIE A. BLUNT  
A. MARCUS HALL & ASSOCIATES**

**AH/cs**

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**  
**ON PETITION FOR RECONSIDERATION**

Applicant was employed as a pump installer for defendant where he sustained an injury during the period January 1, 2004 through June 1, 2017 to his right leg (deep vein thrombosis) and circulatory system. Applicant's claim was accepted as it was presumed compensable due to defendant having failed to issue a timely denial of Applicant's claim.

The parties utilized AME internist Dr. Alan Ross regarding Applicant's claim of having developed deep vein thrombosis as a result of industrial exposure. Dr. Ross issued an initial report after which he was subsequently deposed. At the initial trial setting it was revealed that Dr. Ross's report contained an inaccurate history, and the parties were ordered to procure supplemental reporting to address the inaccuracies in the report.

The parties proceeded to trial on the issues of injury to Applicant's right leg and nervous system and attorney fees. The undersigned issued an Opinion, Findings, and Order finding Applicant to have sustained industrial injury to his right leg resulting in deep vein thrombosis but finding no injury to applicant's nervous system.

Defendant is aggrieved of the undersigned's decision and filed a timely and verified Petition for Reconsideration.

Defendant's Petition for Reconsideration alleges that the undersigned erred by not following the opinion of internal AME Dr. Alan Ross in finding that Applicant did not develop deep vein thrombosis on an industrial basis. Defendant argues that the AME's opinion in the matter should be favored over that of Dr. Saghafi in regards to his opinion on causation and that the undersigned should have requested development of the record to rectify any discrepancies.

As stated in the opinion on decision, the undersigned did not find the reporting of AME Ross to constitute substantial medical evidence. California Labor Code section 4628(a) denotes the essential requirements of a med-legal report:

(a) Except as provided in subdivision (c), no person, other than the physician who signs the medical-legal report, except a nurse performing those functions routinely performed by a nurse, such as taking blood pressure, shall examine the injured employee or participate in the non-clerical preparation of the report, including all of the following:

- (1) Taking a complete history.
- (2) Reviewing and summarizing prior medical records.
- (3) Composing and drafting the conclusions of the report.

8 CCR 10682 provides more elaboration regarding physicians' reports as evidence by indicating what should be included in medical reporting. Section (b)(5) lists "The patient's medical history, including injuries and condition, and residuals thereof, if any;". Section (c) continues by stating "All medical-legal reports shall comply with the provisions of Labor Code section 4628. Except as otherwise provided by the Labor Code and the Rules of Practice and Procedure of the Workers' Compensation Appeals Board, failure to comply with the requirements of this rule will not make the report inadmissible but will be considered in weighing the evidence."

In the present matter, the initial report by Dr. Ross dated July 16, 2020, contained incorrect information as to Applicant's medical history. The report states that Applicant had undergone a left hip replacement, that his sister suffered short-term memory issues. (Joint Exhibit BB, page 9). He also reported that Applicant's father passed away from complications of dementia and a heart attack (Exhibit BB, pages 9, 11). Applicant is also noted as having denied being seen by a psychiatrist. (Joint Exhibit BB, page 11).

At trial Applicant testified that he has never undergone any surgery to his left hip or made any complaints of hip problems. Testimony was also taken that he does not have a sister and that his father passed away from pneumonia unrelated to a heart attack or dementia.

He also testified that at the time he was examined by Dr. Ross, he had already been seen by a psychiatric evaluator. (MOH/SOE dated April 5, 2023, page 4 lines 8-21).

Dr. Ross was deposed after his initial report on January 21, 2021, and a supplemental report as obtained dated May 24, 2022. While the deposition brings to light the errors contained in the reporting regarding Applicant's medical history, the deposition testimony and subsequent report do not explain the reason for the discrepancy or point to where the error originated from. (Exhibit CC, page 23 line 10, page 25 line 12, page 32 line 1).

In order to constitute substantial evidence, expert medical opinion must be framed in terms of reasonable medical probability, be based on an accurate history and an examination, and must set forth reasoning to support the expert conclusions reached. (*E.L Yeager v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).) Based upon Applicant's testimony at trial when compared with the medical reporting and deposition transcript of Dr. Ross, the undersigned did not find that the reporting constituted substantial medical evidence as the history presented was incorrect as to multiple factual points. Furthermore, when provided the

opportunity to correct the errors in supplemental reporting, the undersigned did not find that they were adequately addressed as it was not explained or discussed the source of the incorrect information. As such, the undersigned could not be certain that other aspects of the report were also not in error and found the documents not to constitute substantial medical evidence.

Defendant also argues that the undersigned should have further developed the record as to any discrepancies in the reporting of the AME to resolve any conflicts in the reporting that would otherwise result in a denial of due process. The undersigned disagrees.

At the initial MSC setting on this matter regarding the present issues before the Court, the undersigned discussed with the parties the issues with the medical reporting. Upon review of the report and discussion with the parties, it was determined by the undersigned that the reporting would need to be corrected before proceeding due to the errors contained in the report.<sup>1</sup> The parties subsequently obtained supplemental reporting from Dr. Ross as well as Dr. Saghafi.

The duty of a WCJ to order development of the record is well established by case law. “Based on the constitutional mandate to accomplish substantial justice, the WCJ has a duty to develop an adequate record. (See Swezey, Cal. Workers' Compensation Practice (Cont.Ed.Bar 1985) § 1.9, pp. 6-7, id. (Cont.Ed.Bar Supp. 1999), § 8.27, at p. 176; and see *Tyler v. Workers' Comp. Appeals Bd.*, supra, 56 Cal.App.4th at pp. 392-394; *McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1120; *M/A Com-Phi v. Workers' Comp. Appeals Bd.*, supra, 65 Cal.App.4th at p. 1025.)” *Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 402 [94 Cal.Rptr.2d 130].

In the present matter the parties were already provided the opportunity to develop the record by judicial order; the nature of the errors contained in Dr. Ross’ reporting was known when parties appeared at the MSC of August 24, 2021. The parties were ordered to develop the record to addresses the errors in the AME report largely based on the fact that the parties selected Dr. Ross as AME and his opinion should be given great weight. *Power v. WCAB* (1986) 179 Cal. App. 3d 775, 782. Having been provided the opportunity to address the errors, it cannot be said that defendant suffered a denial of due process by not further developing the record.

Having found the AME reporting not to be substantial medical evidence and having the reporting of Dr. Saghafi which was found to be such, the undersigned believed that a finding based

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<sup>1</sup> Minutes of Hearing dated 8/24/21 EAMS doc ID.

upon the reporting of Dr. Saghafi was appropriate based on the Court's holding in *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138; (en banc).

**RECOMMENDATION**

It is respectfully recommended that Defendant's Petition for Reconsideration be denied.

DATE: July 13, 2023

Jeremy Clift  
WORKERS' COMPENSATION JUDGE