

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

AUGUSTIN RAMIREZ (DECEASED), *Applicant*

vs.

**FRITO-LAY, INC.; ACE AMERICAN INSURANCE COMPANY, administered by
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ11333725
Anaheim 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.

The relevant inquiry in a claim for a stress related physical injury is whether the work-related stress is a contributing cause as low as one percent to the applicant's injury. (*McAllister v. Workmen's Comp. Appeals Bd.* (1968) 69 Cal.2d 408, 418 [33 Cal.Comp.Cases 660]; *Lamb v. Workmen's Comp Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310].) In this case, we agree with the WCJ that the opinion of panel qualified medical examiner (PQME) Richard Hyman, M.D., is substantial medical evidence that applicant met the burden of proof. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc) [a medical opinion must be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions].)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

MAY 20, 2021

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

**AIDAN ALARID
ALYSE MARTINEZ
ETHAN ALARID
LEVITON, DIAZ & GINOCCHIO, INC.
ALBERT AND MACKENZIE**

PAG/ara

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

I.
INTRODUCTION

Date of Alleged Injury: January 1, 1997 through February 24, 2017

Parts of Body Alleged: Internal resulting in death

Identity of Petitioner: Defendant

Timeliness: The petition was timely filed on March 24, 2021

Verification: The petition was verified

Date of Orders: March 4, 2021

Petitioner’s Contentions: Petitioner contends the WCJ erred by finding the record sufficient on the disputed issues.

II.
STATEMENT OF FACTS

On February 24, 2017, applicant/decedent Augustine Ramirez was dropped off at work by his wife, Lorraine Ramirez at approximately 9:45 p.m. in order to begin his shift as a Custodian. (Joint Exhibit Z/EAMS Doc ID 34775923 at 27:15-23.) Mr. Ramirez had been working the graveyard shift from 10:00 p.m. – 6:00 a.m. full-time for the defendant employer since January 1, 1997. (*Id.* at 21:4-8.) On that evening, Mrs. Ramirez noticed that her husband did not look well. (*Id.* at 26:21-24.) Chatting in the car before the start of his shift, Mr. Ramirez, who had had a cough, complained to his wife of being tired. (*Id.* at 27:1-14; 27:24-28:19.)

Mr. Ramirez did not clock-in for his shift that night, having been found unresponsive on the ground by a co-worker. (*Id.* at 31:14-32:8; Joint Exhibit W/EAMS Doc ID 34775926 at p. 4; Defendant’s Exhibit A/EAMS Doc ID 34775928.) Mr. Ramirez, who suffered anoxic brain injury after cardiac arrest, never regained consciousness and died on July 7, 2017 from cardiac arrest secondary to coronary artery disease. (Joint W *supra* at p. 4; Joint Z *supra* at pp. 33-36; EAMS Doc ID 67227750.)

On May 30, 2018, an Application for Adjudication – Death Claim was filed. (EAMS Doc ID 67227750.) The matter was submitted on the documentary record on January 6, 2021 on the issues of injury AOE/COE, temporary disability, attorney’s fees and death benefits. (MOH/SOE 2:21-3:2.) On March 4, 2021, this trier of fact issued her Opinion on Decision and Findings and Award finding among other things that applicant sustained injury arising out of and occurring in the course of employment during the period January 1, 1997 through

February 24, 2017, resulting in his death on July 7, 2017. It is from this threshold finding that the Petition for Reconsideration was filed contending that the medical reporting did not constitute substantial medical evidence upon which the finding should have been made.

III. DISCUSSION

The parties presented the issue of injury AOE/COE to PQME Richard Hyman, M.D. Dr. Hyman, who specializes in Internal Medicine and Cardiology, was provided with the decedent's medical records, and the deposition of the decedent's widow, Mrs. Ramirez. Dr. Hyman also interviewed Mrs. Ramirez as part of his med-legal analysis. Dr. Hyman authored two reports and submitted for a video-deposition. (Joint Exhibits W-Y/EAMS Doc ID's 34775926; 34775927; 34775925.)

Dr. Hyman opined that employment can contribute to a sudden cardiac death on either a continuous trauma basis or as a result of a specific trauma if there was specific physical or emotional stress immediately precipitating the cardiac event. (Joint W/EAMS Doc ID 34775926 at pp. 4-5; Joint X/EAMS Doc ID 34775925 at p. 1; Joint Y/EAMS Doc ID 34775925 at 9:8-24.) As there was no evidence supporting that the decedent was performing any physical work immediately preceding his cardiac event, it was determined that there is no substantial medical evidence supporting that an industrial specific trauma contributed to the decedent's death. (Opinion on Decision at p. 2.)

Dr. Hyman additionally opined that decedent's employment contributed to his cardiac event on a continuous trauma basis.

“Although he had many nonindustrial causes, he apparently had significant issues with shift work and sleep deprivation which was a significant source of stress. The widow indicates that this became acute in the last two years but had been going on for 12 years. Assuming this history is correct, he would have sufficient perceived work related stress to have aggravated or accelerated the underlying coronary artery diseaseso that his death would be considered work related.” (Joint W *supra* at p. 5)

Dr. Hyman reiterated this opinion in both his deposition and second report ultimately deferring to the trier of fact on the issue of Mrs. Ramirez's reporting of her husband's condition.

“The history I got was that he had a 12- to 15-year problem relating to the job relating to doing shift work and causing a sleep disorder and for the last two years he was depressed over this.

So if the trier of fact believes that the widow's history is correct, then the situation is industrial.” (Joint Y *supra* at 9:8-24.)

“ . . . we have the testimony of the widow who feels that he was very upset and had difficulty for 10-12 years up to the time of his death with doing shift work...

Again, if the trier of fact feels the widow’s history is correct and that he had a shift work disorder, then there was an industrial contribution to his coronary disease condition on a continuous trauma basis.” (Joint X *supra* at p. 3.)

Petitioner’s argument is that Dr. Hyman’s medical reporting and opinions do not constitute substantial medical evidence in part because Dr. Hyman deferred certain issues to the trier of fact. Contrary to the representations of the Petitioner, however, neither the Court nor decedent’s widow made a determination on the decedent’s medical diagnosis or cause of death, nor were they asked to. Dr. Hyman deferred to this trier of fact the determination of the veracity of Mrs. Ramirez’s account of the effect of the graveyard shift on her husband’s physical and mental health. (Joint Y *supra* at 12:12-23; Joint X *supra* at pp. 2-3.) That is just what this court did.

Mrs. Ramirez reported that her husband had struggled working the graveyard shift for years as he found it difficult to restfully sleep during the day. (Joint W *supra* at 2; Joint Z *supra* at 43:19-25.) Mrs. Ramirez also reported that her husband had been feeling depressed and anxious because of his shift, his inability to sleep, and the impact his job was having on his family life. (Joint Z *supra* at 43:8-18; 44:5-45:1.)

Loma Linda University Medical Center records also document that decedent had a history of depression, anxiety and insomnia. (Joint X *supra* at 2.) In the year preceding his death, decedent was noted to have extreme fatigue, anxiety and shortness of breath. (*Id.*) Decedent reported feeling fatigued after sleep nearly every day and reported experiencing daytime fatigue. (*Id.*) The decedent had also advised that he had fallen asleep while driving. (*Id.*)

Dr. Hyman expressly deferred to this trier of fact regarding Mrs. Ramirez’s reporting of her husband’s history and the difficulties he experienced as a result of his graveyard shift.

“I mean the history I’ve got is 12 years of working graveyard shift, which resulted in a sleep disturbance, and that the last two years he was depressed over that. So that would certainly be sufficient stress on an industrial basis even though he had some nonindustrial stress to contribute at least 1 percent or more to the coronary disease and, therefore, it would be industrial.” (Joint Y *supra* at 11:9-15.)

“Assuming that that history is correct, he would have sufficient perceived work related stress to have aggravated and accelerated the underlying coronary artery disease so that his death would be considered work related.” (Joint W *supra* at p. 5.)

“So if the trier of fact believes that the widow’s history is correct, then the situation is industrial. If the trier of fact does not believe he has a chronic history of perceived work-related stress that would contribute 1 percent or more to his underlying coronary disease, then it’s not work-related.” (Joint Y supra at 12:18-23.)

There is nothing in the record contradicting Mrs. Ramirez’s account. There is nothing in the record contradicting the history reflected in the reporting of Loma Linda University Medical Center. Based thereon, Mrs. Ramirez’s account of her husband’s struggles with sleep, anxiety and depression as a result of his graveyard shift remain unrebutted. The Court was therefore left with but one choice - to believe the history provided by Mrs. Ramirez.

IV.
CONCLUSION

After a review of all of the documentary evidence submitted, this Court found the reporting of PQME Dr. Richard Hyman constituted substantial medical evidence. The Court therefore found that the existing record was sufficient to decide the disputed issues, and it did so.

V.
RECOMMENDATION

Based on the foregoing, it is respectfully requested that the petition for reconsideration be DENIED.

DATE: April 1, 2021

Stefanie Ashton
WORKERS' COMPENSATION JUDGE