

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

MONIQUE VASQUEZ, *Applicant*

vs.

**PIH HEALTH WHITTIER HOSPITAL;
ATHENS ADMINISTRATORS, *Defendants***

**Adjudication Number: ADJ13073418
Anaheim 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, amend the WCJ's decision as recommended in the report¹, and otherwise affirm the April 26, 2021 Findings, Award, and Order.

For the foregoing reasons,

IT IS ORDERED that reconsideration of the April 26, 2021 Findings, Award, and Order is **GRANTED**.

¹ It appears the WCJ inadvertently recommended the deferral of Finding of Fact number 2 which addresses applicant's earnings. However, there is no dispute as to earnings. The parties stipulated at the April 1, 2021 trial that applicant's earnings were \$722.73 per week, which is consistent with Findings of Fact 2. Rather, the dispute in this case relates to temporary disability which is addressed in Findings of Fact number 3. Therefore, we interpret the WCJ's recommendation accordingly.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the April 26, 2021 Findings, Award, and Order is **RESCINDED** and **SUBSTITUTED** with a new Findings and Order as provided below:

FINDINGS OF FACT

1. Applicant, while employed during the period 2005 through May 2019 at Whittier, California, by PIH Health Whittier Hospital, then permissibly self-insured, administered by Athens Administrators, sustained injury arising out of and occurring in the course of employment to the thoracic spine, right shoulder and right elbow.
2. Applicant's actual earnings at the time of injury were \$722.73 per week.
3. The issue of temporary disability is deferred.
4. Defendant is obligated to authorize applicant to undergo an internal medicine consultation.
5. Attorney fees are deferred.

ORDER

IT IS HEREBY ORDERED that:

1. The issue of temporary disability is deferred.
2. Defendant shall authorize applicant to undergo an internal medicine consultation

WORKERS' COMPENSATION APPEALS BOARD

/s/ DEIDRA E. LOWE, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

/s/ KATHERINE WILLIAMS DODD, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 19, 2021

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

**MONIQUE VASQUEZ
LAW OFFICES OF THOMAS F. MARTIN
DAVID JANE & ASSOCIATES**

PAG/abs

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 ON RECONSIDERATION

I **INTRODUCTION**

Defendant has filed a timely and verified petition for reconsideration wherein they dispute the Findings, Award and Order dated 04/26/2021 finding that the injury caused temporary disability from 03/18/2020 through 01/13/2021 less amounts earned by applicant and amounts paid by defendant, and that defendant is obligated to authorize applicant to undergo an internal medicine consultation. Defendant contends that the finding on these issues is not based on substantial medical evidence.

II **STATEMENT OF FACTS**

Applicant,... while employed during the period 2005 through May 2019 at Whittier, California by PIH Health Whittier Hospital, then permissibly self-insured administered by Athens Administrators, sustained injury arising out of and occurring in the course of employment to thoracic spine, right shoulder and right elbow.

A trial was held in this matter on 04/11/2021. Testimony was taken of the applicant. Following review of the testimony and medical reports and records of all the physicians in this matter as well as other documentary evidence, the Court issued a Findings, Award & Order finding that applicant's actual earnings at the time of injury were \$722.73 per week; that the injury caused temporary disability from 03/18/2020 through 01/13/2021 less amounts earned and amounts paid by defendant; that defendant is obligated to authorize applicant to undergo an internal medicine consultation; and that Applicant's attorney has performed services of a reasonable value of 15% of the temporary disability. The court ordered the issue of applicant's entitlement to temporary disability indemnity from 01/14/2021 to the present and continuing is deferred and that defendant authorize applicant to undergo an internal medicine consultation.

III **DISCUSSION**

In its opinion on decision the Court stated its determination that applicant is entitled to temporary disability from 03/18/2020 through 01/13/2021 less amounts earned and amounts paid by defendant, and that defendant is obligated to authorize applicant to undergo an internal medicine consultation is decision based upon review of the entire record.

Defendant contends that the opinions of primary treating physician Dr. Evan Marlowe do not constitute substantial medical evidence because they are based an inadequate medical history,

that he fails to disclose the basis for his conclusion for finding industrial injury and that his opinions are based on conflicting or incorrect information.

Defendant contends that Dr. Marlowe's reports dated from 03/18/2020 through at least July 2020 are not based on an inadequate medical history because these reports find that applicant sustained a specific injury on 01/22/2019; that Dr. Marlowe's earlier reports state applicant denied a history of diabetes mellitus but in later reports she disclosed a history of injury to diabetes and that Dr. Marlowe did not review all of applicant's medical records and reports in this matter. These contentions lack merit.

In their petition defendant states that on 01/30/2019 applicant initially claimed to have sustained an injury at work on 01/22/2019 and that the claim was accepted for the right wrist, right elbow, right shoulder and thoracic spine. Defendant then states that applicant later clarified that her claim of injury was not actually related to a specific injury but was the result of cumulative trauma in her deposition and at her evaluations and treatment with Dr. Matthew Longacre, that an Application for Adjudication was filed alleging a cumulative trauma injury for the thoracic spine, shoulders, elbows, wrists, hands, back, knees and diabetes and that the cumulative trauma claim was admitted for the thoracic spine, right shoulder and right elbow only. (Pet. For Recon, at 2:15-23.) The Court notes that the Court file indicates that the Application for Adjudication for the cumulative trauma injury was filed on 03/17/2020.

Defendant argues that the reports of the prior primary treating physician, Dr. Matthew Longacre dated from 06/13/2019 through 2/20/2020 (Defendant's Exhibit's "S" through "J") and the QME report from Dr. Paul Milling dated 06/15/2020 (Defendant's Exhibit "I") find that applicant did sustain a cumulative trauma injury and the applicant's condition became permanent and stationary on 02/20/2020.

Applicant's Exhibit's "13" through "1" consist of medical reports of Dr. Evan Marlowe at IPM Medical Group from 03/18/2020 through 01/13/2021. The reports of Dr. Marlowe dated up through 07/29/2020 (Applicant's Exhibit's "1" through "7", respectively) contain the following history of injury presented by the patient:

"On 01/22/2019 the patient sustained work related injury to the neck, back, shoulders, right upper extremity, back and noted radiating pain to her right lower extremity.

On 01/22/2019 the patient was at work and has a sharp onset of pain to her neck and right shoulder and right upper arm. She is not aware what brought on her pain. Mrs. Vasquez sought medical treatment at an Urgent Care facility. She was provided with a sling and had an unrecalled injection given to reduce pain. The patient showed up for work on 01/23/2019 and referred to the work comp care center and had light duty restrictions and able to work at light duty for 6 weeks"

Beginning with his 09/09/2020 report (Applicant's Exhibit "8"), under the section entitled "Treatment Plan"¹, Dr. Marlowe states:

"Regarding her injury, she denies sustaining a specific injury. She is alleging a CT injury and reports pain in these regions for years. The alleged body parts are listed above. I find it medically probable that she sustained a cumulative trauma injury to those regions."

All of Dr. Marlowe's reports contain the following job description:

"Physical demands of the job included prolonged sitting, occasional walking, climbing 1 flight of stairs, kneeling, some squatting, frequent crouching, repetitive bending, frequent stooping, frequent twisting at the neck and waist, reaching at, above and below shoulder and head level, working in confined and awkward spaces or in awkward positions, turning, gripping, grasping, torquing, pushing and pulling a computer mouse. The patient was required to lift and carry up to 10+ pounds. The patient is 5'5" she weighs 170 pounds and is right hand dominant. She was required to perform data entry, make and take phone calls, fax, used a keyboard, computer mouse and read 2 monitors.

The patient was working 8 hours per day. She was working 5 days a week."

Since defendant has admitted that applicant sustained a cumulative trauma injury to thoracic spine, right shoulder and right elbow, the issue is moot.

The medical reports of Dr. Marlowe dated through 10/21/2020 do state that applicant denied a history of diabetes. Dr. Marlowe's reports dated subsequent to 10/21/2020 do state that applicant has a history of diabetes. However, applicant's past history of diabetes is irrelevant to the issue of temporary disability because the applicant is claiming entitlement to temporary disability indemnity based on her orthopedic injuries not diabetes.

Defendant correctly notes that Dr. Marlowe's reports indicate that he reviewed an Urgent Care Visit note dated 01/22/2019 and Dr. Milling's QME report dated 06/15/2020. (Pet for Recon., at 9:14-15.) However, in reviewing Dr. Milling's report dated 06/15/2021 the Court notes that there is a six page addendum attached to his report entitled Review of Medical Records. Presumably the parties sent Dr. Milling medical reports and records from all the physicians in this matter issued prior to the date of the QME exam.

Defendant argues that Dr. Marlowe failed to disclose the basis for opinion that applicant sustained a specific injury at work. As discussed above, Dr. Marlowe initially reported that applicant first noticed the onset of symptoms on 01/22/2019 and that she was not aware what brought on her pain. Initially, applicant did claim that the date of injury was 01/22/2019 but later,

¹ Beginning in his 12/01/2020 report (Applicant's Exhibit "3"), Dr. Marlowe discusses this information on the last page of each report in a separate section entitled "Causation."

after retaining counsel, the date of injury was amended to a cumulative injury. When Dr. Marlowe was made aware of this change in the date of injury, he agreed that she sustained a cumulative trauma injury. Since defendant has admitted a cumulative trauma injury to thoracic spine, right shoulder and right elbow the issue is moot.

Defendant contends that Dr. Marlowe's reports contain conflicting and inconsistent information whether applicant is working. The Court believes this contention has merit.

In reviewing each of Dr. Marlowe's reports the Court notes they contain the following information: In the section entitled "Subjective Complaints", it states that "*the patient is working.*" In the section entitled "Job Description" it states "*Mrs. Vasquez is currently working at light duty capacity as of 03/17/2020 to present.*" In the section entitled "Treatment Plan", it states "*Pt tried returning to work but was told she would have to type 8 hours a day, and so could not be accommodated.*" Under the section entitled "Work Status", it states:

"Modified Duty: The patient is prescribed modified as described below. The patient is to remain at modified duty until the next clinic visit.

The patient is not to lift greater than 10 pounds.

The patient is restricted completely from overhead work with the affected extremity.

The patient is not to push or pull greater than 10 pounds.

Patient is TTD if accommodations are not available.

Limit computer use to 30 minutes consecutively, 4 hours cumulatively per shift.

Site must be ergonomically correct."

The court also notes that in Dr. Marlowe's reports dated 12/1/2020 and 01/13/2021(Applicant's Exhibit's "3" and "2", respectively), under the section entitled "Social History", it states:

*"NOTE: In 5/2020 the patient gained employment at a hospital as a front desk/intake worker. **She is currently working symptomatic.**" (Emphasis added.)*

No further details were listed regarding applicant's subsequent employment. Specifically, Dr. Marlowe does not state whether applicant is working full or part time, does not describe the job duties applicant is performing, whether the duties of this job are within the restrictions he imposed and whether the symptoms applicant is experiencing is the result of the industrial injury, subsequent employment or both. The Court also notes that none of the other reports from Dr. Marlowe contain this information.

On page 3 of Dr. Milling's QME report, under the section entitled "Occupational History" it states:

"The examinee began working with PIH Health Whittier Hospital in May 2005 and has been working for them for 15 years. The examinee has been on temporary total disability status since March 18, 2020. She states they did not have modified duty for her of working four hours a day instead of

eight. She works as a front desk at a hospital doing scheduler.” (Emphasis added.)

Applicant testified that she worked for PIH Whittier Hospital sometime in March 2020, that she has not worked anywhere since then because she is on a leave of absence and that she was told to take a leave of absence because they could not provide with work within the restrictions given by Dr. Marlowe. (MOH/SOE 04/02/2021 Trial, at 9:13-25 and 10:16-19.)

Defendant does not dispute applicant’s testimony that applicant has not worked for PIH Whittier Hospital since 03/17/2020 because they were not able to accommodate the work restrictions imposed by Dr. Marlowe. (Pet. For Recon, at 4:9-17.) The medical record indicates applicant has been working for another employer after she stopped working for PIH Whittier Hospital. However, applicant was not questioned about the information regarding the subsequent employment contained in the reports of Dr. Marlowe and Dr. Milling discussed above.

Given the conflicting information between the applicant’s testimony and the medical record regarding applicant’s employment status, the court agrees that its finding that the injury caused temporary disability from 03/18/2020 through 01/13/2021 less amounts earned and amounts paid by defendant, and attorney fees should be vacated and the matter returned to the trial level for further development of the record on those issues.

Defendant contends that there is no substantial medical evidence to support the need for an internal medicine consultation. This contention lacks merit.

Applicant testified that she initially treated with Dr. Matthew Longacre (Orthopedic Surgeon) for her work injury. Defendant’s Exhibits “J” through “S” consist of medical reports from Dr. Longacre dated from 02/20/2020 through 05/16/2019, respectively. Applicant testified that Dr. Longacre recommended that she undergo right shoulder surgery after undergoing various types of treatment. Applicant testified that she was in preparation for having right shoulder surgery around 12/12/2019 but did not undergo the surgery because of poorly controlled pre-existing diabetes. (MOH/SOE 04/01/2021 Trial, at 8:1-11.)

Applicant testified when she last saw Dr. Longacre on 02/20/2020 he told her that the insurance company was pushing him to release her because they were unable to perform surgery right away. (MOH/SOE 04/01/2021 Trial, at 8:16-24.) In his report dated 02/20/2020, under the section entitled “Treatment Recommendations”, Dr. Longacre states that applicant has not received clearance to undergo right shoulder surgery because her diabetes is not controlled and she has not received any medical treatment for her diabetes. Dr. Longacre states since there is no immediate timetable for applicant to undergo right shoulder surgery, he has decided to declare her condition permanent and stationary.

In his 12/01/2020 report, under the section entitled “Treatment Plan”, Dr. Marlowe states that applicant should undergo an internal medical evaluation to determine “COE” for her diabetes denied (Applicant’s Exhibit “3”).

Applicant testified that her diabetes preexisted her employment PIH Health Whittier Hospital and that she was not cleared for right shoulder surgery in December 2020 because her diabetes

was poorly controlled. (MOH/SOE 04/01/2021 Trial, at 7:1-25 and 8:4-7.) As discussed above, Dr. Longacre indicated that he declared applicant's condition to be permanent and stationary because she has not received any medical treatment for her diabetes and that she is unable to undergo surgery until her diabetic condition is under control.

It is well settled that a defendant is liable for treatment for a nonindustrial condition if it is reasonable and necessary to aid in the treatment of an injured workers' injuries. If there is a dispute regarding whether applicant's diabetic condition was aggravated or accelerated by the industrial injury then the treating physician would be allowed at defendant's expense to refer the applicant to a secondary treating physician in internal medicine for a medical-legal evaluation on the issue of causation of that body part.

The issue at trial was whether defendant was obligated to authorize applicant to undergo an internal medical consult pursuant to the recommendation of Dr. Marlowe in his 12/21/2020 report. Dr. Marlowe requested an internal medical consult on the issue of causation regarding applicant's claim of injury to diabetes. Defendant has denied injury to diabetes. (Pet. For Recon, at 2:20-23.)

Defendant's Exhibit "A" consists of a notice of denial of workers' compensation benefits form dated 03/27/2020. The notice states that the applicant's claim of injury is denied because there is currently no legal, factual or medical evidence to support your alleged cumulative trauma injuries from 01/01/2005 through 05/01/2019 to the neck, back, arms, wrists, shoulders and internal (diabetes) arose out of and occurred in the course of employment. Subsequently, defendant admitted injury to thoracic spine, right shoulder and right elbow. However, no evidence was offered to indicate if defendant conducted a good faith investigation regarding applicant's claim of injury to diabetes pursuant to Cal. Code of Regs., tit. 8, section 10109.

In addition, the evidence indicates that applicant's diabetic condition needs to be treated so it can be brought under control before she could undergo right shoulder surgery. According to Dr. Longacre's report dated 01/09/2021, under the section entitled "Plan", defendant previously authorized applicant to undergo right shoulder surgery. (Defendant's Exhibit "K".) In order to determine what treatment is needed applicant would need to be evaluated by an internal medicine specialist.

IV **RECOMMENDATION**

The petition for reconsideration should be granted and Findings of Fact numbers Two and Five should be vacated and the matter returned to the trial level for further development of the record on the issues of temporary disability and attorney fees. Otherwise, the petition for reconsideration regarding the Finding of Fact number Four that defendant is obligated to authorize applicant to undergo an internal medicine consultation should be denied.

DATE: May 28, 2021

Howard Lemberg
WORKERS' COMPENSATION JUDGE