

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

RA SAMANTHA MOEUN, *Applicant*

vs.

**CALIFORNIA PAYROLL GROUP; GREAT AMERICAN ALLIANCE INSURANCE
COMPANY, administered by STRATEGIC COMP, *Defendants***

**Adjudication Number: ADJ12728099
Riverside 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 employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) In this case, we agree with the WCJ that applicant did not meet her burden of proof.

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/ CRAIG SNELLINGS, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

DECEMBER 10, 2021

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

**RA SAMANTHA MOEUN
MICHAEL SULLIVAN & ASSOCIATES**

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I certify that I affixed the official seal of
the Workers' Compensation Appeals
Board to this original decision on this date.
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REPORT & RECOMMENDATION OF JUDGE ON PETITION FOR RECONSIDERATION

Introduction

Petitioner Ra Samantha Moeun (hereafter applicant), in propria persona, filed a Petition for Reconsideration on 10/11/2021 contesting the Findings and Order, dated 9/17/2021, and served on 9/22/2021. The applicant alleges that by the award the WCJ acted without or in excess of his powers; that the evidence does not justify the findings of fact; and that the findings of fact do not support the order, decision, or award. The Petition is not signed and it is not verified.

On 10/11/2021, the applicant dismissed her attorney and filed her petition for reconsideration.

The petition is based on the finding that QME Leisure Yu, M.D., did not find that the applicant sustained injury arising out of and in the course of employment.

Respondent, California Payroll Group, (hereafter defendant), by and through their counsel; Sullivan & Associates; filed a verified Answer to the Petition for Reconsideration on 10/15/2021. Defendant contends the applicant has not established grounds for reconsideration under Labor Code section 5903 and the form and content requirements under Labor Code section 5902. Defendant also contends that that the Petition for Reconsideration fails to set forth specifically and in full detail the grounds for the petition.

FACTS

Ra Samantha Moeun, born [], while employed on 10/6/2019 by California Payroll Group, as a cashier, claimed to have sustained injury arising out of and in the course of employment to her right ankle, right foot, right calf, right lower extremity, and sleep disorder.

On 2/26/2020, an Order Compelling Attendance to a Deposition was issued due to the applicant failing to appear at a deposition on 2/10/2020.

On 10/26/2020, an Order Compelling Attendance at a Medical Examination was issued for the applicant failing to appear at a QME on 9/15/2020.

The applicant was not present at the trial set on 7/6/2021, so the matter was continued. At the trial on 8/17/2021, the applicant was not present. On 10/11/2021, the applicant filed a Dismissal of Attorney and filed a Petition for Reconsideration.

Leisure Yu, M.D., prepared a QME report dated 12/1/2020 (Exhibit A). The applicant reported that she had complaints to her right ankle and right foot. She denied any prior right ankle and right foot injuries. She stated that she was injured when she was about to help a customer and as she stood up from her chair and turned, she twisted her right foot. The injury was reported and she was referred for treatment. The review of records showed right ankle sprain and right foot sprain on 8/15/2010 and 3/25/2012. On 4/9/2014, she was seen for right foot pain with x-rays on 5/21/2014 showing hallux valgus with pes planus. On 10/27/2015, she was seen for bilateral foot pain. Dr. Yu concluded that the applicant did not sustain work related injuries to the right ankle or right foot. The applicant has a history of chronic recurrent right and left ankle and foot sprain, strain and pain. The history of right ankle and foot strain dates back to 8/15/2010. Dr. Yu questions the veracity of the applicant's history statements.

Dr. Yu prepared a supplemental report dated 1/22/2021 (Exhibit B). He reviewed additional records. He maintains that the applicant did not sustain work related injuries to the right ankle or right foot. Her current and present complaints with respect to her lower extremities are the result of chronic recurrent ankle strain/sprain that involves the right ankle and right foot.

Based upon the medical reports of Leisure Yu, M.D., dated 12/1/2020 and 1/22/2021, it was found that applicant did not sustain injury to her right ankle, right foot, right calf, right lower extremity, and sleep loss arising out of and occurring in the course of employment on 10/6/2019.

1. Applicant disagrees with the findings of Dr. Leisure Yu.

Applicant prepared a hand written petition on the DWC/WCAB Form 45. The handwriting is not clearly legible. She states that she disagrees to the finding that Dr. Leisure Yu reported. She states that she continues to have symptoms from the injury. She contends that the Dr. Yu did not review all the records or include the car accident in 2014. She has pictures to show. Copies of the pictures were attached to the petition. The petition is not signed and it is not verified.

Disagreeing with the opinion of the QME is not a valid ground on which to challenge a decision and seek reconsideration under Labor Code section 5903.

In his QME report dated 12/1/2020, Dr. Yu stated that on 4/9/2014, she was seen for right foot pain with x-rays on 5/21/2014 showing hallux valgus with pes planus. Dr. Yu concluded that the applicant had a history of chronic recurrent right and left ankle and foot sprain, strain and pain. The history of the right ankle and foot strain dated back to 8/15/2010.

The finding that that the applicant did not sustain an injury on 10/6/2019 arising out of and in the course of employment was based on the QME reports by Dr. Yu. The applicant was given an opportunity to testify at the trial, but she did not appear on 2 occasions. The applicant's attorney was present at the trial. There is no evidence that the applicant was denied due process.

RECOMMENDATION

It is recommended that the Petition for Reconsideration be denied.

DATED AT RIVERSIDE, CA

**DAVID THORNE
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE**