

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

ROXANNA RUIZ, *Applicant*

vs.

LOWES COMPANIES, INC.; SEDGWICK, *Defendants*

**Adjudication Number: ADJ12095988
Stockton 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 WCJ properly relied on the substantial opinion of primary treating physician Arun Duggal, M.D. Moreover, we have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id.*)

Lastly, to the extent petitioner challenges the deferral of Employment Development Department (EDD)'s lien, we note that finding is not final. We evaluate interlocutory or procedural issues raised by the petition under the removal standard applicable to non-final decisions because they may later be challenged by a petition for reconsideration once a final decision issues. The Appeals Board will grant removal only if the petitioner shows that significant prejudice or irreparable harm will result if removal is not granted. (Cal. Code Regs., tit. 8, former § 10843(a), now § 10955(a) (eff. Jan. 1, 2020); see also *Cortez, supra*; *Kleemann, supra*.) Also, the petitioner must demonstrate that reconsideration will not be an adequate remedy if a final decision adverse to the petitioner ultimately issues. (Cal. Code Regs., tit. 8, former § 10843(a),

now § 10955(a) (eff. Jan. 1, 2020).) Here, we are not persuaded that significant prejudice or irreparable harm will result if removal is denied and/or that reconsideration will not be an adequate remedy.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ MARGUERITE SWEENEY, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 13, 2021

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

**ROXANNA RUIZ
RANCANO & RANCANO
DIETZ, GILMORE & CHAZEN
EMPLOYMENT DEVELOPMENT DEPARTMENT**

PAG/pc

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

Case Name:	Roxanna Ruiz v. Lowe's Company, Inc., permissibly self-insured
Workers' Compensation Judge:	Deborah A. Whitcomb
Date(s) of Injury	CT ending 20 April 2018

**REPORT AND RECOMMENDATION ON
PETITION FOR RECONSIDERATION**

INTRODUCTION

The defendant, Lowe's Company Inc., PSI, is seeking reconsideration of the 23 September 2021 Findings of Fact, Award, and Order. The verified Petition for Reconsideration was filed twenty-one days after service.

FACTS

The relevant facts in this matter are as follows:

1. The applicant, while working as a warehouse worker, suffered an industrial injury to her low back.
2. The applicant's earnings were such that her total temporary disability indemnity rate is \$344.80 per week.
3. Arun Duggal, M.D. was identified as the applicant's primary treating physician and provided some medical treatment.
4. The applicant was found to be entitled to temporary disability from 18 May 2021 through, at least, 17 August 2021¹
5. All other issues, including other periods of temporary disability and the lien of EDD, are deferred with jurisdiction reserved to the Workers' Compensation Appeals Board ("WCAB").
6. On 14 October 2021, the defendant verified petition for reconsideration.

PETITIONER'S CONTENTIONS ON RECONSIDERATION

The defendant is [asserting] that the reporting of the PTP, Dr. Duggal, is not substantial medical evidence, the parties Agreed Medical Evaluator should decide the issues set for expedited hearing, that EDD's lien should not have been

¹ Finding of Fact 6.

deferred, and that documentation attached to the Petition for Reconsideration ("Petition") was unavailable at the time of the trial and should now be considered.

RESPONSE TO PETITIONER'S CONTENTIONS/DISCUSSION

It should be noted that a cursory date review of the documents attached to the Petition predate the trial date. Thus, the reporting was definitely in existence at the time of the trial. The defendant has attached reports of Dr. Duggal between March 2021 and July 2021, the defense counsels correspondence from 16 March 2021, correspondence from [Sedgwick] (the third party administrator) and a benefits printout from April 2021. It is unclear how the aforementioned documents were unavailable to the defendant for producing at trial in August 2021. The Declaration of Readiness to Proceed to an Expedited Hearing was filed 8 June 2021. Therefore, the defendant had notice at least one month prior to the hearing that evidence in the form of documents and/or witness testimony would be required if there was no resolution of the issues. Either party appears for an expedited hearing without evidence at its own peril.

In regard to the EDD lien, there was no way to proceed given the failure of the parties to provide any information for resolution of the EDD lien. It was appropriate to defer the lien of EDD.

In regard to Michael Sommer, M.D. resolving the temporary disability dispute as the parties' Agreed Medical Evaluator ("AME"), there was no representation of an AME agreement. The matter came on the Expedited Calendar to resolve the issue of the applicant's entitlement to temporary disability.

In regard to the reporting of Dr. Duggal as the PTP, his reporting was found to be substantial medical evidence for a limited period of temporary disability, from 18 May 2021 through 17 August 2021. The aforementioned time period was all that could be documented. The defendant offered no rebuttal evidence. The applicant's testimony was found to be credible, and she had not returned to work as of the date of the trial. However, there was no other contemporaneous medical reporting other than the period found. Therefore, the question of whether there was a further period of temporary disability was left open for further discovery.

CONCLUSION

There is substantial medical evidence upon which to grant a finding of temporary disability from 18 May 2021 through 17 August 2021. Any further period of temporary disability, including reimbursement to EDD for some of the aforementioned time period is appropriately deferred pending development of the record.

RECOMMENDATION

For the foregoing reasons, I recommend that the Petition for Reconsideration be denied.

October 21, 2021
Deborah A. Whitcomb
Workers' Compensation Judge