

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

**SHAKEITHA DATRICE, *Applicant***

**vs.**

**IDEMIA AMERICA CORPORATION and SENTRY CASUALTY INSURANCE  
COMPANY, *Defendants***

**Adjudication Number: ADJ12548158  
Van Nuys District Office**

**OPINION AND ORDER  
GRANTING PETITION FOR  
RECONSIDERATION  
AND DECISION AFTER  
RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on April 2, 2021, wherein the WCJ found in pertinent part that based upon the report and deposition testimony of ophthalmology agreed medical examiner (AME) David a. Sami, M.D., applicant did not sustain an injury arising out of and occurring in the course of employment (AOE/COE) to her eyes.

Applicant contends that: 1) The provisions of Labor Code section 3202 warrant a finding of injury AOE/COE. 2.) Applicant's exposure to smoke and inhalant toxins at the workplace caused her symptoms. 3.) Applicant met her burden of proof that her Vogt-Koyanagi-Harada disease [VKHD/ VKH; also known as Harada's Disease] is an industrial injury. 4.) The fact that she was diagnosed with VKHD after the smoke from the nearby wildfire hurt her eyes should be considered proof that the VKHD was caused by her work. 5.) The report and deposition testimony of AME Dr. Sami are not substantial evidence. 6.) The aggravation of a pre-existing condition is an industrial injury and the causation of VKHD is unknown to science, so her condition should be deemed an industrial injury.

We received a Report and Recommendation on Petition for Reconsideration (Report) from the WCJ recommending the Petition be denied. We received a Response (Answer) from defendant.

We have considered the allegations in the Petition for Reconsideration (Petition) and the Answer, and the contents of the Report. Based on our review of the record, and for the reasons

discussed below, we will grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

## **BACKGROUND**

Applicant claimed injury to her eyes (VKHD) and in the form of stress while employed by defendant as a Transportation Security Administration Duty Type Agent on November 12, 2018. On February 11, 2019, applicant's treating physician diagnosed her as having "Harada's Disease OU [both eyes]." (Def. Exh. C, Dr. Sami, February 17, 2020, p. 5, record review.)

AME Dr. Sami evaluated applicant on February 17, 2020. Dr. Sami took a history, reviewed the medical record and performed an ophthalmic examination. In the Impressions/Diagnosis section of his report Dr. Sami stated:

History of recurrent episodes of ocular injection, light sensitivity and retrobulbar pain, Right and Left eye. Applicant reports that she first became symptomatic in November 2018 in temporal association with being stationed at a facility near active fires (Paradise fire). Following multiple Ophthalmology evaluations, a diagnoses of Vogt-Koyanagi-Harada syndrome was made.  
(Def. Exh. C, p. 9.)

Regarding the cause of the VKHD, Dr. Sami stated:

Review of the medical literature indicates that VKH is an autoimmune disease. An autoimmune response against antigens associated with melanocytes in a genetically susceptible individual, that may be triggered by after a viral exposure. With reasonable medical probability exposure to aerosolized contaminants related to the Paradise fire were not the causative agent with respect to the development of VKH syndrome in this case.  
(Def. Exh. C, p. 9.)

Dr. Sami's deposition was taken on September 21, 2020. (App. Exh. 4, Dr. Sami, September 21, 2020, deposition transcript.)<sup>1</sup> His testimony included the following:

Q. So with VKH specifically, is there anything that a person could be exposed to environmentally that could cause that autoimmune disease to start in the body?

A. It's a good question and I did my best to research the issue and I really could not find a good answer, and I certainly could not find enough evidence to rise,

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<sup>1</sup> The September 21, 2020 deposition transcript was also admitted into evidence as Defendant's Exhibit G.

if you will, to the level of reasonable medical probability. ¶ Now, if there is an allergist, or I should say an immunologist who is involved in this case who really believes that exposure can be linked to VKH, I would be happy to consider that. But, again, it was difficult for me to make that link based on the information that was available to me.

Q. So is that something that you would recommend in this case if the applicant hadn't seen an allergist or Immunologist or for her to see one and then review that doctor's findings?

A. I would have no objection to having an allergist immunologist weigh in on whether the cause of exposure was a decisive factor in the development of the VKH. My personal opinion, as you see in my report, is that I don't think you can make that claim to the level of reasonable medical probability, but I certainly will consider, and if appropriate, defer to an immunologist in that case.  
(App. Exh. 4, pp. 10 – 11.)

Q. So with regard to the allergist or immunologist, would you find that your findings on causation would be more complete or thorough if you received a report from an allergist or immunologist commenting on this case, or do you believe that your report as is, is complete and thorough?

A. So I made an effort to do the research that I thought was necessary, and I'm comfortable with the report that I have written. And at this moment in time, my opinions have not changed with respect to the report that I wrote. ¶ Having said that, if an allergist -- I should say immunologist weighs in and is able to, if you will, come up with evidence or make a rational argument why the VKH was caused by toxins in association with the fires, I'm certainly willing to consider that and, if appropriate, make amendments to my prior opinion.  
(App. Exh. 4, p. 18.)

The parties proceeded to trial on December 23, 2020, the issues identified by the parties included injury AOE/COE, and the matter was continued. (Minutes of Hearing and Summary of Evidence (MOH/SOE), December 23, 2020, p. 2.) At the March 10, 2021 trial applicant testified and the matter was submitted for decision. (MOH/SOE, March 10, 2021.)

## **DISCUSSION**

We first note that pursuant to Appeals Board Rule 10945(c)(1):

Copies of documents that have already been received in evidence or that have already been made part of the adjudication file shall not be attached or filed as exhibits to petitions for reconsideration, removal, or disqualification or answers. Documents attached in violation of this rule may be detached from the petition or answer and discarded.

(2) A document that is not part of the adjudication file shall not be attached to or filed with a petition for reconsideration or answer unless a ground for the petition for reconsideration is newly discovered evidence.  
(Cal. Code Regs., tit. 8, § 10945.)

Also, Appeals Board Rule 10940(d) states:

A petition shall not exceed 25 pages and an answer shall not exceed 10 pages unless allowed by the Appeals Board. Any verification, proof of service, exhibit, document cover sheet or document separator sheet filed with the petition or answer shall not be counted in determining the page limitation. Upon its own motion or upon a showing of good cause, the Appeals Board may allow the filing of a petition or answer that exceeds the page limitations. A request to exceed the page limitations shall be made by a separate petition, made under penalty of perjury, that specifically sets forth reasons why the request should be granted.  
(Cal. Code Regs., tit. 8, § 10940.)

Applicant's Petition has eleven exhibits (91 pages) attached which is in clear violation of Appeals Board Rules 10940(d) and 10945(c). (Cal. Code Regs., tit. 8, §§ 10940 and 10945.) The exhibits will not be considered and counsel is reminded that failure to comply with the Appeals Board Rules may be deemed sanctionable conduct.

Any award, order, or decision of the Appeals Board must be supported by substantial evidence. (Lab. Code, § 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274, 281 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312, 317 [35 Cal.Comp.Cases 500].) A medical opinion is not substantial evidence if it is based on information that is not accurate, on facts no longer germane, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Here, AME Dr. Sami is an ophthalmologist. As noted above, he performed an ophthalmic examination of applicant and he agreed with the earlier diagnosis of VKHD/Harada's Disease. Later in his report, and during his deposition, he explained that VKHD is an autoimmune disease. Dr. Sami testified that he was unable to determine if exposure to an environmental contaminant could be a cause of the VKHD autoimmune disease. (App. Exh. 4, pp. 10 – 11.) He later testified that he did not object to having an immunologist provide an opinion on whether the exposure to the smoke from the Paradise fire was a factor in applicant's development of the VKHD; and that

if an immunologist weighs in and is able to, “come up with evidence or make a rational argument” as to why the VKHD was caused by toxins in association with the fires, he would be “willing to consider that and, if appropriate, make amendments to my prior opinion.” (App. Exh. 4, p. 18.) He also said he would defer to an immunologist’s opinion if appropriate. (App. Exh. 4, p. 11.)

Dr. Sami’s report and testimony are quite clear that although the VKHD causes ophthalmology symptoms, it is an autoimmune disease. He acknowledged that immunology is not his area of expertise and that he would defer to the opinions of an immunologist. Thus, it appears that the record as it now stands is not adequate to make a final determination regarding the threshold issue of whether applicant’s VKHD constitutes an injury AOE/COE.

The Appeals Board has the discretionary authority to develop the record when the record does not contain substantial evidence pertaining to a threshold issue. (Lab. Code, §§ 5701, 5906; *Tyler v. Workers’ Comp. Appeals Bd.* (1997) 56 Cal.App.4th 389 [62 Cal.Comp.Cases 924]; see *McClune v. Workers’ Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117 [63 Cal.Comp.Cases 261].) We are returning this matter to the WCJ for the parties to develop the record so that it contains substantial evidence to support a determination of whether applicant’s VKHD constitutes an injury AOE/COE. Under the circumstances of this matter, we recommend the parties have applicant evaluated by an internal medicine – infectious disease/immunology AME or in the alternative that the WCJ appoint a regular physician of that specialty. (Lab. Code, § 5701.)

Finally, notwithstanding the fact that we are rescinding the F&O, we must note that applicant makes various arguments for which there is no factual or legal basis. For example, the argument that “because applicant was diagnosed with VKHD after the smoke from the wildfire hurt her eyes, the smoke caused the VKHD,” is not supported by any evidence. The fact that event “Y” happened after event “X” does not mean that event “Y” was caused by event “X.” The argument, “post hoc, ergo propter hoc” i.e. it happened after this, therefore it was caused by this, has no factual and/or rational basis in this matter. Also, the argument that applicant’s belief that “her exposure to smoke and inhalant toxins at the workplace caused her symptoms is evidence that the smoke actually caused her symptoms,” appears to be premised only on applicant’s “belief.” There is no evidence that applicant is a medical expert and in turn her “belief” does not constitute factual evidence. Making arguments that are “indisputably without merit” may be deemed bad faith actions and counsel is again reminded that failure to comply with the Appeals Board Rules may be sanctionable conduct. (Cal. Code Regs. tit. 8, § 10421.)

Accordingly, we grant reconsideration, rescind the F&O, and return the matter to the WCJ for further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

For the foregoing reasons,

**IT IS ORDERED** that applicant's Petition for Reconsideration of the Findings and Order issued by the WCJ on April 2, 2021, is **GRANTED**.

**IT IS FURTHER ORDERED** as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the April 2, 2021 Findings and Order is **RESCINDED** and the matter is **RETURNED** to the WCJ to conduct further proceedings consistent with this opinion and to issue a new decision from which any aggrieved person may timely seek reconsideration.

**WORKERS' COMPENSATION APPEALS BOARD**

/s/ KATHERINE A. ZALEWSKI, CHAIR

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

I DISSENT,

/s/ DEIDRA E. LOWE, COMMISSIONER



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

**JUNE 18, 2021**

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

**SHAKEITHA DATRICE C/O LAW AT YOUR SIDE  
LAW AT YOUR SIDE  
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY**

**TLH/pc**

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

## DISSENTING OPINION OF COMMISSIONER DEIDRA E. LOWE

For the reasons discussed below, it is my opinion that Dr. Sami's report and deposition testimony are substantial evidence that applicant did not sustain an injury AOE/COE. Based thereon, I respectfully dissent.

In addition to examining applicant, Dr. Sami researched medical literature pertaining to the issue of whether being exposed to air contaminants would be a cause of VKHD. (Def. Exh. C, pp. 11 – 13.) He gave a clear explanation of why, "[E]xposure to aerosolized contaminants related to the Paradise fire were not the causative agent with respect to the development of VKH syndrome in this case." (Def. Exh. C, p. 9.) There is no evidence in the trial record indicating that Dr. Sami's opinions are based on information that is not accurate, on facts no longer germane, on incorrect legal theories, or on surmise, speculation, conjecture, or guess. He also explained his analysis and the reasoning for reaching his conclusion that applicant's VKHD was not the result of her employment with defendant. Thus, his opinions meet the requirements of the case-law cited by the majority above, and they constitute substantial evidence. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workers' Comp. Appeals Bd.* (1970) 69 Cal.2d 399, [33 Cal.Comp.Cases 647]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc).)

Further, Dr. Sami was chosen by the parties as an AME, presumably because of his expertise and neutrality, so his opinions should be followed unless there is good reason to find his opinions unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) As stated above Dr. Sami's opinions are substantial evidence and there is no basis for finding his opinions unpersuasive. Additionally, there is not any medical evidence in the trial record that is inconsistent with Dr. Sami's conclusion.

Finally, the record does not reflect that at any time prior to the trial, that applicant took any action in regard to being examined by an immunologist or an allergist. Also, at the trial, applicant did not ask that she be allowed to undergo an immunology consult, or an allergy consult, and the issue was not raised in the Petition.

As such, applicant did not meet her burden of proof and there is no need to develop the record.



For these reasons, I disagree with the majority and I dissent.



**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ DEIDRA E. LOWE, COMMISSIONER**

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**SHAKEITHA DATRICE C/O LAW AT YOUR SIDE  
LAW AT YOUR SIDE  
STOCKWELL, HARRIS, WOOLVERTON & HELPHREY**

**TLH/pc**

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