**WORKERS' COMPENSATION APPEALS BOARD**

**STATE OF CALIFORNIA**

**CHADRICK HALL, *Applicant***

**vs.**

**DHL EXPRESS; AIU INSURANCE COMPANY, administered by SEDGWICK CLAIMS MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ16212301**
**Oakland District Office**

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

Applicant seeks reconsideration of the Findings and Order (F&O) issued on September 13, 2022, wherein the workers' compensation administrative law judge (WCJ) found that (1) while employed by defendant as a delivery driver on July 23, 2021, applicant did not sustain injury arising out of and occurring in the course of employment (AOE/COE) to his ankle (malleolus); and (2) applicant is not entitled to further medical treatment to cure or relieve him of the effects of his injury. The WCJ ordered that records from Novato Community Hospital not be admitted in evidence and that applicant take nothing on his claim.

Applicant contends that the WCJ erroneously failed to find that he sustained injury AOE/COE to the right ankle.

We received an Answer from defendant.

The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that the Petition be denied.

We have considered the allegations of the Petition, the Answer, and the contents of the Report. Based on our review of the record, and for the reasons stated below, we will grant reconsideration, and, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend to find that that applicant sustained injury AOE/COE to the right ankle, defer the

issue of what other parts of the body were injured, defer the issue of whether applicant is entitled to further medical treatment to cure or relieve the effects of injury, and rescind the order that applicant take nothing on his claim;[1] and we will return the matter to the trial level for further proceedings consistent with this decision.

**FACTUAL BACKGROUND**

On August 1, 2022, the matter proceeded to trial as to the following relevant issues:

1. Injury arising out of and in the course of employment.
2. Parts of body injured: right Achilles and right ankle.

(Minutes of Hearing and Summary of Evidence, August 1, 2022, p. 2:11-15.)

The WCJ admitted the QME reports of David Guzman, D.P.M., dated December 1, 2021 and April 19, 2022, into evidence. (*Id*. p. 3:13-14.) Both reports diagnose applicant's injury as a "[h]igh-grade probable complete tear of the Achilles tendon, right," and attribute "100% of Mr. Hall's disability . . . to industrial cause and 0% to preexisting cause or condition." (Ex. 101, QME Report of David Guzman, DPM, December 1, 2021, p. 5; Ex. 102, QME Report of David Guzman, DPM, April 19, 2022, pp. 5-6.) Both reports state as to the issue of causation: "When Mr. Hall stepped out of his delivery truck on 7/23/21, he felt severe pain (like someone was hitting him) at the back of his right ankle. After this, the symptoms worsened." (*Id*.)

The April 19, 2022 QME Report of David Guzman, D.P.M., states that he reviewed applicant's medical records, including:

| | |
|---|---|
| Kaiser Permanente | 10/6/21; 9/22/21; 9/21/21; 8/26/21; 8/19/21; 8/12/21; 8/9/21; 7 /31/21; 7/30/21; 7/29/21; **7/26/21 (Linda Jarvis); 7/25/21 (Jeffrey James, M.D.)** |
| Concentra | 7/27/21 |
| CMC | 7/23/21 |

**David L. Guzman, DPM 12/1/21**

**(**Ex. 102, QME Report of David Guzman, DPM, April 19, 2022, p. 4 [Emphasis in original].)

The April 19, 2022 QME Report of David Guzman, D.P.M., also states with regard to causation:

> **Mr. Hall states that on 7/24/21 he was experiencing pain in his right ankle/foot all day (Saturday). On 7/25/21, his nephews asked him to play basketball and he took them down to the gym. However, he stated that by the time he got there, just walking to the**

[1] We will leave the WCJ's order that that the records from Novato Community Hospital, exhibit E, be not admitted in evidence undisturbed as the parties have not sought reconsideration thereon.

> **gym was painful and he therefore did not play any basketball - nor did he do any running, jumping or additional walking at the gym whatsoever.**
> **(**Ex. 102, QME Report of David Guzman, DPM, April 19, 2022, p. 4 [Emphasis in original].)

The WCJ also admitted a January 26, 2022 letter from defendant to Dr. Guzman into evidence. (Minutes of Hearing and Summary of Evidence, August 1, 2022, p. 3:7.) It includes the following:

> Thank you for evaluating Chadrick Hall on 12/1/21. After reviewing your report, it seems apparent the provided cover letter and medicals were not reviewed. In your report, it states that he reported the claim and was sent to Concentra but there were no openings, so he went to Kaiser. Based on Kaiser reports included with this letter this proves to be inaccurate because the claim was reported on 7/26/21. In your report, there is no mention of the Kaiser medical reports provided from 7/25/21 and 7/26/21.
>
> On 7/25/21, he contacted his Kaiser physician and stated he was at the emergency room and was told he may have a ruptured Achilles. There is a telephone visit with Kaiser dated 7/26/21 in which it is reported he went to the emergency room yesterday and thinks he ruptured Achilles playing basketball. The mechanism is reported that he planted really hard and heard something pop that felt life not able to walk and fell to walk.
>
> Please address the provided reports in a supplemental report to more adequately address and consider the subsequent events that led up to Mr. Hall reporting an injury on 7/26/21. (Ex. 4, Letter from Sedgwick to Dr. Guzman, January 26, 2022, p. 1.)

At trial, applicant testified that his duties as a delivery driver included unloading large trucks from the airport, loading delivery trucks for their assigned routes, and delivering and picking up packages. (*Id.*, p. 4:10-12.) On Friday, July 23, 2021, he loaded his truck and drove Santa Rosa, where at approximately 3:30 or 4:00 p.m., he jumped out of his truck, felt something pop in his right ankle area, and continued to work until the end of his shift at 8:00 p.m. (*Id.*, p. 4:23-25.)

His symptoms worsened over the weekend, and he reported his injury on Sunday, after going to the hospital emergency room for pain. At the emergency room, he was informed that he needed to go to his own doctor, and he initially went to Concentra, and, thereafter, Kaiser. (*Id*., p. 5:1-6.)

At the emergency room, he told the doctors that he injured himself and that he was coming from attempting to play basketball. He also told a nurse that the injury was not from playing basketball, but occurred at work. The nurse said that applicant should tell his doctor. (*Id*., p. 5:7-14.)

Dr. Choung at Kaiser informed him that the initial report stated that the injury happened while he was playing basketball, and he corrected Dr. Choung, who indicated he would correct this information in his report. He also told Dr. Ledean at Kaiser about how the injury occurred. After being evaluated by Dr. Choung and Dr. Ledean, defendant's adjuster informed him that their findings were disputed and he was seen by panel QME Dr. Guzman. (*Id*., p. 5:15-22.) During his April 2022 re-evaluation by Dr. Guzman, he explained that the initial reports indicated that he was hurt playing basketball because he told the original doctors that he was on his way to play basketball when he went to the emergency room. (*Id*., p. 6:1-5.) He did not play basketball on the day he went to the emergency room. (*Id.,* p. 6:17-19.)

In the Report, the WCJ writes:

> On Sunday July 25, 2022, he had his brother take him to the emergency room at Novato Community Hospital.
>
> He reported to Kaiser July 26, 2021, for a telephone visit. This note indicated, in relevant part[], that he called in with a right Achilles rupture for 1 day. Went to the ER the previous day. Thinks that he ruptured his Achilles playing basketball. He planted really hard, heard something pop and felt like he was not able to walk. (Defendants Exhibit A).
>
> He next reported to Kaiser, Dr. Jun Danny Choung, on July 30, 2021 (Defendants Exhibit B), where it was noted, in relevant part, that the applicant indicated that the rupture happened on Sunday while he was playing basketball, but he did already feel some pain to the Achilles the Friday before while doing some strenuous work activities.
>
> The applicant was evaluated by a Panel QME, Dr. David Guzman. The undersigned did not find the reporting of Dr. David Guzman to be substantial medical evidence, as Dr. Guzman issue his reports without the benefit of all the medical records and a complete history. His reports are marked as Joint Exhibits 101 and 102. Dr. Guzman does find industrial causation.
>
> Applicant's exhibit 3 is the report of Dr. Timothy Ledean. Dr. Ledean indicates a mechanism of injury wherein the applicant was jumping in and out of his work truck and that is how he injured his ankle/Achilles. This report is dated August 12, 2021.
>
> Lastly, there is a medical report from Concentra dated July 27, 2021. This report also indicates a mechanism of injury of jumping from his work truck.
> . . .
> The undersigned, having reviewed the medical reports and listened to the testimony of the applicant, found the applicant's testimony regarding his mechanism of injury to not be credible and Ordered that he take nothing.
> (Report, p. 2.)

**DISCUSSION**

We observe that California has a no-fault workers' compensation system. With few exceptions, all California employers are liable for the compensation provided by the system to employees injured or disabled in the course of and arising out of their employment, "irrespective of the fault of either party." (Cal. Const., art. XIV, § 4.) The protective goal of California's no-fault workers' compensation legislation is manifested "by defining 'employment' broadly in terms of 'service to an employer' and by including a general presumption that any person 'in service to another' is a covered 'employee.'" (Labor Code §§ 3351, 5705(a);[2] *S. G. Borello & Sons, Inc. v. Department of Industrial Relations* (1989) 48 Cal.3d 341, 354 [54 Cal.Comp.Cases 80].)

Notwithstanding the above, section 3600 imposes liability on an employer for workers' compensation benefits only if its employee sustains an injury "arising out of and in the course of employment." An employer is liable for workers' compensation benefits, where, at the time of the injury, an employee is "performing service growing out of and incidental to his or her employment and is acting within the course of employment." (§ 3600(a)(2).) The determination of whether an injury arises out of and in the course of employment requires a two-prong analysis. (*LaTourette v. Workers' Comp. Appeals Bd.* (1998) 17 Cal.4th 644 [63 Cal.Comp.Cases 253].)

First, the injury must occur "in the course of employment," which ordinarily "refers to the time, place, and circumstances under which the injury occurs." (*LaTourette v. Workers' Comp. Appeals Bd.*, *supra*, 63 Cal.Comp.Cases at page 256.) An employee is acting within "the course of employment" when "he does those reasonable things which his contract with his employment expressly or impliedly permits him to do." (*Id*.) In other words, if the employment places an applicant in a location and he or she was doing an activity reasonably attributable to employment or incidental thereto, an applicant will be in the course of employment and the injury may be industrially related. (*Western Greyhound Lines v. Ind. Acc. Com.* (*Brooks*) (1964) 225 Cal.App.2d 517 [29 Cal.Comp.Cases 43].)

Second, the injury must "arise out of" the employment, "that is, occur by reason of a condition or incident of employment." (*Employers Mutual Liability Ins. Co. of Wisconsin v. I.A.C.* (*Gideon*) *(*1953) 41 Cal.2d 676 [18 Cal.Comp.Cases 286, 288].) "[T]he employment and the injury must be linked in some causal fashion," but such connection need not be the sole cause, it is sufficient if it is a "contributory cause." (*Maher v. Workers' Comp. Appeals Bd.* (1983) 33 Cal.3d 729 [48 Cal.Comp.Cases 326, 329].)

[2] Unless otherwise stated, all further statutory references are to the Labor Code.

The burden of proof rests on the party holding the affirmative of the issue, which must be met by a preponderance of the evidence. (§§ 5705, 3202.5.) Applicant therefore has the affirmative burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment.

In the present case, the WCJ found that applicant did not meet his burden because the reporting of QME Dr. David Guzman did not constitute substantial medical evidence and applicant's testimony regarding the mechanism of injury was not credible. (Report, p. 2.)

But on January 26, 2022, defendant requested that Dr. Guzman review applicant's July 25, 2021 and July 26 2021 Kaiser records; and on April 13, 2022 Dr. Guzman reported that he had reviewed the records and was made aware of the July 26, 2021 record indicating that applicant believed his injury occurred while playing basketball. (Ex. 102, QME Report of David Guzman, DPM, April 19, 2022, p. 4; Report, p. 2; Ex. 4, Letter from Sedgwick to Dr. Guzman, January 26, 2022, p. 1.) Nevertheless, Dr. Guzman remained of the opinion that applicant's injury occurred when he "stepped out of his delivery truck on 7/23/21 [and] he felt severe pain (like someone was hitting him) at the back of his right ankle," stating that applicant told him he "was experiencing pain in his right ankle/foot all day (Saturday) . . . . [and] did not play any basketball" before going to the emergency room. (Ex. 102, QME Report of David Guzman, DPM, April 19, 2022, pp. 4-6.)

On this record, it is clear that as of April 13, 2022, Dr. Guzman's reporting was informed by adequate medical history and otherwise based on pertinent facts and an adequate medical examination; and, as such, was sufficient to constitute substantial medical evidence. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 620-621 [2005 Cal. Wrk. Comp. LEXIS 71] (Appeals Bd. en banc).) Therefore, we conclude that the WCJ erroneously failed to consider Dr. Guzman's reporting when she found that applicant did not sustain injury AOE/COE to the right ankle.

However, the WCJ based her finding not only on her assessment of Dr. Guzman's reporting, but also her assessment of applicant's credibility as to the mechanism of injury. (Report, p. 2.) The WCJ's assessment of applicant's credibility is entitled to great weight and should not be rejected without contrary evidence of considerable substantiality. (*Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *McAllister v. Workers' Comp. Appeals B*d. (1968) 69 Cal.2d 408 [33 Cal.Comp.Cases 660].)

However, in addition to Dr. Guzman's medical reporting—reporting which describes with specificity the progression of applicant's pain symptomatology after he stepped out of his work truck—the medical records of Dr. Choung, Dr. Ledean, and Concentra all trace applicant's pain progression back to strenuous work activity or otherwise indicate that applicant injured himself while jumping from his work truck. (Ex. 102, QME Report of David Guzman, DPM, April 19, 2022, p. 4; Report, p. 2.) We deem this evidence that applicant sustained injury at work to be of considerable substantiality that outweighs the inconsistent and rather limited evidence that applicant sustained injury off work. Accordingly, we conclude that the WCJ erroneously found that applicant did not sustain injury AOE/COE to the right ankle based upon her assessment of applicant's credibility.

Accordingly, we will grant reconsideration, and, as our Decision After Reconsideration, we will affirm the F&O, except that we will amend to find that that applicant sustained injury AOE/COE to the right ankle, defer the issue of what other parts of the body were injured, defer the issue of whether applicant is entitled to further medical treatment to cure or relieve the effects of injury, and rescind the order that applicant take nothing on his claim; and we will return the matter to the trial level for further proceedings consistent with this decision.

For the foregoing reasons,

**IT IS ORDERED** that the Petition for Reconsideration the Findings and Order issued on September 13, 2022 is **GRANTED**.

**IT IS FURTHER ORDERED**, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order issued on September 13, 2022 is **AFFIRMED,** except that it is **AMENDED** as follows:

## FINDINGS OF FACT

1. CHADRICK HALL born on _____ while employed on July 23, 2021 as a delivery driver in California, by DHL EXPRESS, DHL EXPRESS, INC., whose workers' compensation insurance carrier was SEDGWICK PLEASANTON, SEDGWICK ROSEVILLE, sustained injury arising out of and occurring in the course of employment to the right ankle.

2. The issue of what other parts of the body were injured is deferred.

3. The issue of whether applicant is entitled to further medical treatment to cure or relieve the effects of injury is deferred.

## ORDER

IT IS ORDERED that the records from Novato Community Hospital, exhibit E, be not admitted in evidence.

**IT IS FURTHER ORDERED** that the matter is **RETURNED** to the trial level for further proceedings consistent with this opinion.

**WORKERS' COMPENSATION APPEALS BOARD**

**/s/ CRAIG SNELLINGS, COMMISSIONER**

**I CONCUR,**

**/s/ JOSEPH V. CAPURRO, COMMISSIONER**

**KATHERINE WILLIAMS DODD, COMMISSIONER**
**CONCURRING NOT SIGNING**

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

**DECEMBER 2, 2022**

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

**CHADRICK HALL**
**BOXER & GERSON**
**ALBERT & MACKENZIE**

**SRO/ara/cs**

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