

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

COLLY CHENG, *Applicant*

vs.

**BENIHANA;
ZURICH NORTH AMERICA,
ADMINISTERED BY
BROADSPIRE, A CRAWFORD COMPANY, *Defendants*
Adjudication Numbers: ADJ13383180, ADJ12445186
Los Angeles 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. We note that we did not adopt the section titled "Denial(s)" since the issue of whether the claims were timely denied so that they were presumed compensable was not raised by defendant in its Petition. (Report, pp. 3-4.) We conclude that the WCJ's decision is supported by substantial medical evidence, and we will not disturb it.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

November 27, 2023

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

**THE DENTAL TRAUMA CENTER, LIEN CLAIMANT
LAW OFFICE OF SAAM AHMADINIA, COUNSEL FOR LIEN CLAIMANT
FLOYD SKEREN MANUKIAN LANGEVIN, LLP**

AS/mc

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

JOINT REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION

I. INTRODUCTION

COLLY CHENG born on 01/29/1963 while employed during the period 05/25/1997 through 08/01/2019 as a server at Santa Monica, California, by BENIHANA, whose workers' compensation insurance carrier was ZURICH NORTH AMERICA, claimed to have sustained injury arising out of and occurring in the course of employment to her shoulders, left arm, left elbow, fingers, low back, legs, knees, high blood pressure, dental and headaches in ADJ12445186; and in ADJ13383180 (same date of injury) to her psyche and dental.

Petitioner defendant Zurich North America, administered by Broadspire, seeks reconsideration of the finding that applicant suffered a dental injury arising out of and occurring in the course of employment and that defendant has liability for the treatment furnished therefor by lien claimant Dental Trauma Center.

II. CONTENTIONS

Petitioner contends that it was error to find industrial injury because the medical reporting in evidence is not substantial medical evidence, and that that the claims were timely denied.

III. FACTS

Applicant filed a claim of cumulative trauma injury to her shoulders, left arm, left elbow, fingers, low back, legs, knees, high blood pressure, dental and headaches in ADJ12445186 entered in EAMS FileNet as of 08/12/2019 together with proof of service on Zurich and the employer (EAMS Doc. ID No. 29979409).

Petitioner avers for the first time on reconsideration that this claim was timely denied by the Answer dated 10/23/2019, never proffered in evidence at trial (EAMS Doc. ID No. 30673023). Neither was the Answer listed on the pretrial conference statement (EAMS Doc. ID No. 47820466).

The parties engaged panel qualified medical examiner Harout Balian, M.D. in the field of Physical Medicine and Rehabilitation who reported on 04/26/2021(Lien Claimant's Exhibit 5) that applicant did suffer a CT injury to her "lower back, bilateral shoulder (sic), left elbow, fingers, and bilateral lower extremities / knees," which parts of body were said to be "in my specialty range." He recorded that applicant presented with headaches and

psychological/emotional problems as well as dental issues and hypertension. He found that her injury complaints stem from her employment over 22 years (page 61).

PQME Dr. Balian took a history of symptoms related to applicant's psyche which she reported as the result of work exposure (page 8). He diagnosed dental bruxism (page 60). He summarizes Cynthia Mathis, M.D.'s "State Panel Qualified Medical Evaluation" of 03/19/2020 (not elsewhere in evidence) whose history included: "Dental - She reports she was told by her dentist that she chipped her front tooth because she has been grinding her teeth because of stress. She is presently awaiting fabrication of a night guard."

A Comprehensive Medical/Legal Psychological Evaluation dated 09/16/2019 was admitted in evidence from Anthony Francisco, Ph.D. (Lien Claimant's Exhibit 7). Dr. Francisco reported that applicant suffered from Major Depressive Disorder, Adjustment Disorder with Anxiety and Depressed Mood and Psychological Factors Affecting Physical Conditions, all of which were directly caused by work exposure. He took a history of work activities and her report of symptoms:

From a physical perspective, Ms. Colly Cheng states that from 5/26/1997-8/01/2019, she developed pain and symptoms to her lumbar spine, left shoulder, left elbow, left arm, fingers, bilateral knee, dental, psyche, headaches and hypertension due to her repetitive work duties as a Server.

The evidence presented by defendants consists of a delay notice of 08/21/2019 (Defendant's Exhibit A) and a denial letter of 08/21/2020 (Defendant's Exhibit B).

IV. DISCUSSION

Medical Evidence

The orthopedic CT injury is fully supported by PQME Dr. Balian.

Petitioner contests the conclusion of Meyer Schames, D.D.S. (Lien Claimant's Exhibit 3, report of 01/10/2020) on the ground that it fails to include the "how and why" of pain and emotional stressors being causative of bruxism.

The petition itself quotes Dr. Schames at length, where the doctor opines "clenching her teeth and bracing her facial musculature in response to orthopedic pain, and also in response to resultant emotional stressors experienced. This has caused her to develop facial pain" and "due to the chronicity of the facial pain and the continued bruxism, Ms. Cheng's facial pain has evolved into having Trigeminal Nerve Pain/Central Sensitization components to her facial pain" and "That

there were also objective classical textbook referral patterns of pain from the patient's right anterior neck sternocleidomastoid muscle referring pain directly up into the facial areas."

Against this petitioner argues: "The only assessment on "how and why" the applicant's myofascial pain of the facial musculature would be industrial was the doctor's examination, which found myofascial pain of the facial and cervical musculature that evoked subjective tenderness and objective palpable trigger points and taut bands with the musculature."

Here petitioner is pitting a layman's medical science analysis against that of the medical expert.

PQME Dr. Balian did conclude that the neck and upper back pain was referred from the shoulders. Petitioner argues that this makes neck or upper back pain nonindustrial and therefore the myofascial response is nonindustrial.

First, Dr. Schames did not limit the dental injury cause to neck and upper back pain, but to orthopedic pain in general. Second, if the neck and upper back pain was referred from industrially injured parts of body (as the PQME found), it still stemmed from the CT injury.

Turning to Dr. Francisco, his 25 page report includes a history of applicant's job duties, including the "fast-paced high volume demands of her job," and "stress in her job and overwork" and her development of orthopedic symptoms, dental problems, headaches and hypertension. He reviewed and recorded her mental status evaluation and conducted psychological testing. He took medical, legal, and social histories. He made diagnoses and finds industrial causation.

It is noted that the causation of dental issues is not attributed by lien claimant solely to psychologic or emotional factors. Nevertheless, the unrebutted report of Dr. Francisco supports an underlying psychological industrial injury.

There is no evidence of PQME evaluations in the fields of psychiatry or psychology or dentistry to contest the reporting in evidence.

Instead, armed with this medical evidentiary record, petitioner resolved the claim(s) by compromise and release in the sum of \$125,000.00.

V. RECOMMENDATION

Based on the foregoing the undersigned WCALJ recommends that the petition for reconsideration be denied.

DATED AT OXNARD, CALIFORNIA

DATE: 10/02/2023

WILLIAM M. CARERO
WORKERS' COMPENSATION JUDGE