

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

VIRGINIA BARRIOS DE HUEZO , *Applicant*

vs.

**BARRETT BUSINESS SERVICES, INC.,
permissibly self-insured, *Defendants***

**Adjudication Number: ADJ10960924
Van Nuys 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 admonish applicant's attorney for failing to cite to the record with any specificity, which is an additional basis for denial. WCAB Rule 10945(a) provides, in relevant part:

(B) Every petition for reconsideration, removal or disqualification shall fairly state all of the material evidence relative to the point or points at issue. Each contention shall be separately stated and clearly set forth. *A failure to fairly state all of the material evidence may be a basis for denying the petition.*

(b) Every petition and answer shall support its evidentiary statements by specific references to the record.

(1) References to any stipulations, issues or testimony contained in any Minutes of Hearing, Summary of Evidence or hearing transcript shall specify:

(A) The date and time of the hearing; and

(B) If available, the page(s) and line number(s) of the Minutes, Summary, or transcript to which the evidentiary statement relates (e.g., "Summary of Evidence, 5/1/08 trial, 1:30pm session, at 6:11-6:15").

- (2) References to any documentary evidence shall specify:
- (A) The exhibit number or letter of the document;
 - (B) Where applicable, the author(s) of the document;
 - (C) Where applicable, the date(s) of the document; and
 - (D) The relevant page number(s) (e.g., "Exhibit M, Report of John A. Jones, M.D., 6/16/08 at p. 7.").
- (3) References to any deposition transcript shall specify:
- (A) The exhibit number or letter of the document;
 - (B) The name of the person deposed;
 - (C) The date of the deposition; and
 - (D) The relevant page number(s) and line(s) (e.g., "Exh. 3, 6/20/08 depo of William A. Smith, M.D., at 21:20-22:5]").
- (Cal. Code Regs., tit. 8, § 10945(a)-(b), emphasis added.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ PATRICIA A. GARCIA, DEPUTY COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 23, 2023

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

**VIRGINIA BARRIOS DE HUEZO
BARKHORDARIAN LAW FIRM
INGBER & WEINBERG**

PAG/abs

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

**REPORT AND RECOMMENDATION
ON PETITION FOR RECONSIDERATION**

I.
INTRODUCTION

1. Findings & Order: Served 08/07/2023
2. Identity of Petitioner: Applicant
3. Verification: Yes
4. Timeliness: The petition is timely
5. Date Petition filed: 08/24/2023
6. Petitioner asserts that the undersigned's Finding of Fact and Order is contrary to the evidence at Trial and the medical evidence of fibromyalgia and [aggravation] of her hypertension and diabetes citing to Internal PQME Dr. Fisher based upon the records of and deposition testimony of Dr. Tuan Nguyen, who has treated the applicant since 2015.

II.
FACTS

The applicant was let go from her employment as a packer of small sex toys. She had been employed in this capacity from approximately 10/01/2014 ending 06/30/2017, approximately 18 months of employment. She [thereafter] reported a cumulative trauma to her neck, thoracic, lumbar spine, bilateral wrists, and right shoulder, diabetes, fibromyalgia, hypertension, psyche, and dental.

A decision in favor of the applicant, issued excepting the claims of fibromyalgia, aggravation of her diabetes and hypertension.

Applicant's counsel filed a timely Petition for Reconsideration. Defense counsel filed an Answer on 08/31/2023.

III.
DISCUSSION

Exhibit B is the transcript of the cross examination of Dr. Tuan Nguyen, a family practice doctor, who treated the applicant commencing 2015 and continuing through 2019. This deposition does not support diagnoses or treatment for fibromyalgia, nor a work-related onset of overall pain except related to a single episode of the flu. Over the years, he prescribed for the applicant's diabetes and hypertension, both longstanding pre-existing conditions with no indication of any industrial aggravation.

Exhibit 7 the internal reporting of QME Dr. Fisher the blood chemistry is described as within normal limits in his report **07/31/2018**¹ wherein he finds fibromyalgia supported by applicant's **self-report**. He lists reference material as support for his position as an herbal treatment approach 2015 by Katya Adachi MD that gives a summation that no one really knows the causation bridge for fibromyalgia.

Exhibit 6, Dr. Fishers **02/19/2019**² report is missing a critical page outlining the findings and records in support of his opinion. Dr. Fisher's report dated **05/06/2019**³ simply states the applicant fulfills the criteria for fibromyalgia without explaining.

He goes on to state the fibro is due to her work-related trauma but only citation is to an article by a Dr. L Marks and S MacKenzie, in a wellness newsletter. It does not appear to be a peer reviewed research document published in a medical journal.

Dr. Fisher then utilizes *Almaraz Guzman*, Chapter 13 on arousal disorders stating that although he did not find a significant number of tender points, he states he does not believe it is necessary. This explanation of causation is not persuasive and not substantial evidence on causation regarding fibromyalgia.

Going next to his report of **08/20/2019**⁴, he felt her complaints of headache, fatigue and back pain were all related to fibromyalgia without any references. It also ignores the causation decided by the orthopedic and dental QMEs.

On the issue of fibromyalgia, Dr. Fisher is not substantial evidence. Subsequent to all of Dr. Fisher's reporting parties went to QME Dr. Anderson to deal with fibromyalgia.

PQME DR. ANDERSON- INTERNAL MEDICINE/RHEUMATOLOGY

QME Dr. Anderson issued one report Exhibit A, dated 09/24/2021 he is board certified in internal medicine with a subspecialty in rheumatology. It is noted that the applicant tells Dr. Anderson she has not worked since March 2019. She does not reveal her employment between 2017 and the date of her exam.

He surmises her conditions referential to his specialty as essential hypertension, diabetes myelitis type II, hypercholesterolemia, hypothyroidism, gastro esophageal reflux disease and osteoarthritis. He notes that she has no symptoms of rheumatoid disease or systemic lupus. She does not report any history of fibromyalgia.⁵

QME Dr. Anderson discusses her symptom complaints and takes a pain questionnaire. He reviews the deposition of Dr. Nguyen and chiropractic care dating back to 2013. She does disclose the car accident of April 2013 referencing her prior back injury. He reviews the treatment notes of Dr. Nguyen, and the panel QME's in this matter including the reporting of Dr. Fisher.

¹ Exhibit 7

² Exhibit 6

³ Exhibit 5

⁴ Exhibit 3

⁵ Exhibit A, page 4.

The applicant reports employment at BBSI packing sex toys from 10/01/2014 through her last date of work and termination on 06/30/2017 reciting symptom onset 12/2015 reviewing the medical records in detail beginning on page 10 and concluding on page 72.

He does not find a basis for any aggravation of her diabetes or hypertension in the medical records.⁶

On page 75, he addresses causation finding that the hypertension is nonindustrial, the diabetes is nonindustrial, hypercholesterolemia is nonindustrial, the hypothyroidism is nonindustrial, the gastroesophageal reflux disease is 40% industrial due to the cumulative trauma due to the need for medications treating hand pain otherwise causation is nonindustrial. This is mirrored by the osteoarthritis of her hands where he attributes 40% to repetitive use of bands on the job and 60% to the underlying idiopathic disorder. He goes on to state he did not find rheumatoid nodules or other evidence of systemic inflammatory autoimmune disease.

In his explanation comment on page 75, he states that:

“I think that the overall cause for the internal medicine conditions of hypertension, diabetes, high cholesterol, and hypothyroidism is nonindustrial as I am unable to elucidate a mechanism of industrial causation. Most of these conditions are associated with metabolic syndrome with increased body mass index, hypothyroidism is of an idiopathic causation. I do not think working at an assembly line type of environment and packing boxes could contribute to these conditions developing without some mechanism and simply mentioning ‘stress’ without specific details beyond that would not be sufficient to justify industrial causation.”

Applicant’s counsel apparently does not read the cited evidence of QME Dr. Anderson or the records and deposition of Dr. Tuan Nguyen as I did. I fail to find Dr. Fisher’s opinion on fibromyalgia to be substantial evidence.

IV.
JUDGES RECOMMENDATION ON PETITION FOR RECONSIDERATION

It is respectfully recommended that the Petition be denied, and the decision go undisturbed.

DATE: 09-01-2023

Lynn Devine
WORKERS' COMPENSATION
ADMINISTRATIVE LAW JUDGE

⁶ Exhibit A, page 72, paragraph 2.