

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

ANDRE WILLIAMS, *Applicant*

vs.

**STAFF PRO, INC.; LIBERTY MUTUAL INSURANCE COMPANY; ALLIED BARTON
SECURITY SERVICES; XL INSURANCE OF AMERICA, administered by ESIS,
*Defendants***

**Adjudication Number: ADJ10452116
Los Angeles District Office**

**OPINION AND ORDER
DENYING PETITION FOR
RECONSIDERATION**

We have considered the allegations of the Petition for Reconsideration, 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, except as noted below, and for the reasons stated below, we will deny reconsideration.

Preliminarily, we note that former Labor Code¹ section 5909 provided that a petition for reconsideration was deemed denied unless the Appeals Board acted on the petition within 60 days from the date of filing. (Lab. Code, § 5909.) Effective July 2, 2024, section 5909 was amended to state in relevant part that:

- (a) A petition for reconsideration is deemed to have been denied by the appeals board unless it is acted upon within 60 days from the date a trial judge transmits a case to the appeals board.
- (b)
 - (1) When a trial judge transmits a case to the appeals board, the trial judge shall provide notice to the parties of the case and the appeals board.
 - (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

¹ All further statutory references are to the Labor Code, unless otherwise noted.

Under section 5909(a), the Appeals Board must act on a petition for reconsideration within 60 days of transmission of the case to the Appeals Board. Transmission is reflected in Events in the Electronic Adjudication Management System (EAMS). Specifically, in Case Events, under Event Description is the phrase “Sent to Recon” and under Additional Information is the phrase “The case is sent to the Recon board.”

Here, according to Events, the case was transmitted to the Appeals Board on August 6, 2024 and 60 days from the date of transmission is Saturday, October 5, 2024. The next business day that is 60 days from the date of transmission is Monday, October 7, 2024. (See Cal. Code Regs., tit. 8, § 10600(b).)² This decision is issued by or on Monday, October 7, 2024, so that we have timely acted on the petition as required by Labor Code section 5909(a).

Section 5909(b)(1) requires that the parties and the Appeals Board be provided with notice of transmission of the case. Transmission of the case to the Appeals Board in EAMS provides notice to the Appeals Board. Thus, the requirement in subdivision (1) ensures that the parties are notified of the accurate date for the commencement of the 60-day period for the Appeals Board to act on a petition. Section 5909(b)(2) provides that service of the Report and Recommendation shall be notice of transmission.

Here, according to the proof of service for the Report and Recommendation by the workers’ compensation administrative law judge, the Report was served on August 6, 2024, and the case was transmitted to the Appeals Board on August 6, 2024. Service of the Report and transmission of the case to the Appeals Board occurred on the same day. Thus, we conclude that the parties were provided with the notice of transmission required by Labor Code section 5909(b)(1) because service of the Report in compliance with Labor Code section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on August 6, 2024.

We now turn to the merits. In order to establish the compensability of a psychiatric injury under Labor Code section 3208.3, an injured worker has the burden of establishing “by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury.” (Lab. Code, § 3208.3(b)(1).) “Predominant as to all causes”

² WCAB Rule 10600(b) (Cal. Code Regs., tit. 8, § 10600(b)) states that:

Unless otherwise provided by law, if the last day for exercising or performing any right or duty to act or respond falls on a weekend, or on a holiday for which the offices of the Workers' Compensation Appeals Board are closed, the act or response may be performed or exercised upon the next business day.

means that “the work-related cause has greater than a 50 percent share of the entire set of causal factors.” (*Dept. of Corrections v. Workers’ Comp. Appeals Bd. (Garcia)* (1999) 76 Cal.App.4th 810, 816 [64 Cal.Comp.Cases 1356, 1360]; *Watts v. Workers’ Comp. Appeals Bd.* (2004) 69 Cal.Comp.Cases 684, 688 (writ den.); *Rolda v. Pitney Bowes, Inc.* (2001) 66 Cal.Comp.Cases 241, 246 (Appeals Board en banc).)

We agree with the WCJ that the opinions of Thomas Curtis, M.D., Judith Schwafel, Ph.D., and Gayle Windman, Ph.D., are substantial medical evidence upon which the WCJ properly relied in finding applicant’s psychiatric injury was predominantly caused by the industrial injury and thus compensable. It is well-established that the relevant and considered opinion of one physician may constitute substantial evidence, even if inconsistent with other medical opinions. (*Place v. Workmen’s Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) In order to constitute substantial evidence, a medical opinion must be predicated on reasonable medical probability and it must set forth the reasoning in support of its conclusions. (*Escobedo v. Marshalls* (2005) 70 Cal. Comp. Cases 604, 621.) A medical opinion is not substantial evidence when based on incorrect facts, history or legal theory, or surmise, speculation, conjecture or guess. (*Place v. Workers’ Comp Appeals Bd. (Place)* (1970) 3 Cal.3d 372, 378 [35 Cal.Comp.Cases 525]; *Escobedo v. Marshalls (Escobedo)* (2005) 70 Cal.Comp.Cases 604, 620-621.)

We do not adopt or incorporate the Report to the extent that it may conflate the issues of causation of injury and causation of permanent disability. As discussed in *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Board en banc):

The issue of the causation of permanent disability, for purposes of apportionment, is distinct from the issue of the causation of an injury. (See *Reyes v. Hart Plastering* (2005) 70 Cal.Comp.Cases 223 (Significant Panel Decision).) Thus, the percentage to which an applicant's injury is causally related to his or her employment is not necessarily the same as the percentage to which an applicant's permanent disability is causally related to his or her injury. The analyses of these issues are different and the medical evidence for any percentage conclusions might be different.

(*Id.* at p. 611.)

The only issue decided here is injury arising out of and occurring in the course of employment (AOE/COE). All other issues, including permanent disability and apportionment,

were deferred. Therefore, discussion of the findings on apportionment of disability made by Robert Moore, M.D., are not relevant.

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ KATHERINE A. ZALEWSKI, CHAIR

JOSEPH V. CAPURRO, COMMISSIONER
CONCURRING NOT SIGNING



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

October 7, 2024

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

**ANDRE WILLIAMS
LAW OFFICES OF HALEH SHEKARCHIAN
HANNA BROPHY MCLEAN MACLEER AND JENSEN
GALE SUTOW & ASSOCIATES**

PAG/oo

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

**REPORT AND RECOMMENDATION ON DEFENDANT'S PETITION FOR
RECONSIDERATION**

I

INTRODUCTION

- | | | |
|-------------------------------------|---|---|
| 1. Applicant's Occupation | : | Event staff supervisor and security officer |
| Date of Injury | : | March 18, 2016, through April 5, 2016 |
| Parts of Body Injured | : | psyche, stress, cardiac vascular accident (stroke), and paralysis of the right side of the body including right arm, right leg, right upper extremity |
| 2. Identity of Petitioner | : | Defendant Liberty Mutual Insurance Co. |
| Timeliness: | | The petition is timely filed. |
| Verification: | | The petition is verified. |
| 3. Date of Findings of Fact | : | July 05, 2024 |
| 4. Petitioner's contentions: | | |
| Defendant contends: | | |
| | | (a) the evidence does not justify the findings of fact; |
| | | (b) the findings of fact do not support the A ward. |

II

FACTS

Applicant ANDRE WILLIAMS, while employed during the period March 18, 2016 through April 5, 2016, as an event staff supervisor and a security officer, gate, Occupational Group No. 212, at El Segundo, California and Los Angeles, California, by Allied Barton and Staff Pro, Inc., claims to have sustained injury arising out of and in the course of employment to stroke, heart attack, stress, psyche, High blood pressure, paralysis of the right side of the body (arm, leg, upper extremity), circulatory system, and internal.

Pursuant to the parties stipulation, at the time of injury, Staff Pro, Inc. workers' compensation carrier was Liberty Mutual Insurance Company and Allied Barton's workers' compensation carrier was XL Insurance of America, administered by ESIS.

The above entitled matter was initially heard by Judge Douglas Watkins who vacated submission on June 23, 2021 and Ordered development of the record. After obtaining additional medical records the parties' submitted a joint stipulation to waive rights under Labor Code 5700

dated November 16, 2023 and agreed to submit the matter based on the record created by Judge Watkins (EAMS Doc ID# 49936214).

After reviewing all Exhibits the undersigned WCJ issued a finding that applicant sustained an industrial injury arising out of and in the course of employment to his psyche, stress, cardiac vascular accident (stroke), and paralysis of the right side of the body including right arm, right leg, and right upper extremity. The undersigned WCJ also found applicant is entitled to further medical treatment to cure and/or be relieved from the effects of the industrial injury. All other issues were deferred.

On July 29, 2024 defendant Liberty Mutual Insurance Company filed a Petition for Reconsideration. Reconsideration is sought as to the finding of industrial injury.

III

DISCUSSION:

A Petition for Reconsideration is the appropriate mechanism to challenge a final order, decision, or award (Labor Code Section 5900). An order that resolves or disposes of the substantive rights and liabilities of those involved in a case is a final order. See *Marani an v. Workers' Compensation Appeals Board* (2000) 81 Cal. App. 4th 1068 [65 Cal. Comp. Cases 650; *Safeway Stores, Inc. v. Workers' Compensation Appeals Board (Pointer)* (1980) 104 Cal. App. 3d 528 [45 Cal. Comp Cases 410].

In the present matter defendant Liberty Mutual Insurance Company argues the Court erred in finding the reports from Hamlin Psyche Center authored by Dr. Thomas Curtis, Dr. Judith Schwafel, and Dr. Gayle Windman when read together with the deposition testimony of Dr. Thomas Curtis meet the substantial medical evidence threshold, and establish that applicant sustained a compensable psychiatric injury as a result of the alleged cumulative trauma injury that occurred with both defendant employers Staff Pro Inc., and Allied Barton. Additionally, defendant argues the Court erred in finding the reporting of the Panel Qualified Medical Examiner in Neurology Dr. Robert Moore met the substantial medical evidence threshold, and establishes the stressful work environment created by both defendant employers contributed to and ultimately resulted in his Cardiac Vascular Accident (CVA) injury.

Psychiatric Injury AOE/COE:

In order to establish that a psychiatric injury is compensable, an employee shall demonstrate by a preponderance of the evidence that actual events of employment were

predominant as to all causes combined of the psychiatric injury. (Labor Code Section 3208.3(b)). Additionally, no compensation shall be paid by an employer for a psychiatric injury if the injury was substantially caused by a lawful, nondiscriminatory, good faith personnel action (Labor Code Section 3208.3(h)). In *Rolda v. Pitney Bowes* (2001) 66 Cal.Comp.Cases 24 1 (appeals board en banc), the appeals board set out a sequential method by which to analyze whether the legal, factual and medical requirements of this affirmative defense have been met, in a given case. The board summarized the analysis as follows:

First, the WCJ must determine whether the alleged psychiatric injury involves actual events of employment, and if so, whether competent medical evidence establishes the required percentage of industrial causation. If these first two conditions are met, the WCJ must then decide whether any of the actual employment events were personnel actions. If so, the WCJ must next determine whether the personnel action or actions were lawful, nondiscriminatory and made in good faith. Finally, if all these criteria are met, competent medical evidence is necessary as to causation; that is, whether or not the personnel action or actions are a substantial cause, accounting for at least 35 to 40 percent, of the psychiatric injury.

In the present case, applicant filed an Application for Adjudication of Claim alleging he sustained a cumulative trauma injury while employed by both employers Allied Barton and Staff Pro, Inc., during the period March 18, 2016, through April 5, 2016 that caused an injury to his psyche, circulatory system, internal, stress, stroke, heart attack, high blood pressure, paralysis of the right side of the body including right arm, right leg, right upper extremity. Both defendants issued a Notice Regarding Denial of Workers Compensation Benefits (Exhibit A and K). Following Labor Code 4060 and 4062.2 applicant was examined by Panel Qualified Medical Examiner in Psychiatry Dr. Gregory Cohen who issued two reports dated May 24, 2018 and January 11, 2023 diagnosing applicant with depressive disorder and assigning a GAF score of 61; however, Dr. Cohen's reporting finds applicant is unable to demonstrate by a preponderance of the evidence that actual events of employment were predominant as to all causes combined of the psychiatric injury. Dr. Cohen broadly finds 75% of applicant's psychiatric impairment is apportioned to pre-existing medical illness, primarily high blood pressure, and 25% is apportioned to the alleged cumulative trauma injury sustained at both employers Allied Barton and Staff Pro, Inc.

The Court found Dr. Cohen's finding that 75% of applicant's psychiatric impairment is apportioned to pre-existing illness was vague, conclusory, and not supported by the facts. After

taking a detailed history from the applicant Dr. Cohen apportions 0% of applicant's current psychiatric disability to applicant's past psychiatric history; 0% to applicant being assaulted by an ex-girlfriend; 0% to applicant's ex-wife interfering with applicant visiting his son; 0% to applicant being a victim of an assault and robbery; and 0% to applicant being twice married and divorced. Dr. Cohen fails to address whether the applicant's work stress as a result of being understaffed while working for Staff Pro Inc., or applicant's alleged harassment and discrimination at Allied Barton contributed to his psychiatric impairment. Dr. Cohen appears to give no weight to the emails from applicant to his supervisors at Staff Pro complaining about being understaffed during events that took place in March and April of 2016, shortly before applicant suffered a stroke. Based on Dr. Cohen's conclusory findings the Court finds Dr. Cohen's reporting does not meet the substantial medical evidence threshold and cannot be relied upon to issue a finding.

To rebut Panel QME Dr. Cohen's findings applicant submitted several reports from the Hamlin Psyche Center authored by Dr. Thomas Curtis, Dr. Judith Schwafel, and Dr. Gayle Windman. Dr. Thomas Curtis, Dr. Judith Schwafel, and Dr. Gayle Windman all finding applicant sustained an industrially related psychiatric injury as a result of his employment at both employers Allied Barton and Staff Pro, Inc. The deposition of Dr. Curtis was taken on November 16, 2017 wherein Dr. Curtis explains that while applicant was stressed at both employers he would attribute the stroke to Staff Pro because applicant was disturbed about Staff Pro at the time of the stroke (Exhibit 13, page 20 line 9). Dr. Curtis further testified that 55% of applicant's psychiatric impairment is apportioned to applicant's employment at Staff Pro for events precipitating the stroke; 15% is apportioned to applicant's overall employment at Staff Pro; 10% is apportioned to applicant's employment at Allied Barton; and 20% is apportioned to pre-existing nonindustrial condition. The Court found the reports from Hamlin Psyche Center authored by Dr. Thomas Curtis, Dr. Judith Schwafel, and Dr. Gayle Windman when read together with the deposition testimony of Dr. Thomas Curtis meet the substantial medical evidence threshold, and establish that applicant sustained a compensable psychiatric injury as a result of the alleged cumulative trauma injury that occurred with both employers Staff Pro Inc., and Allied Barton.

Defendant's argument that applicant's psychiatric injury was the result of lawful, nondiscriminatory personnel actions is not supported by the evidence. Defendant submitted employment records from Staff Pro Inc. that confirm applicant was indeed understaffed and unable to take emergency restroom breaks at work events in March and April of 2016 (Exhibit D). The

statements signed by supervisors Kerry Lewis and Joe Paradice included in Exhibit D appear to minimize the understaffing issues, but do not dispute applicant was indeed understaffed. Similarly the records and emails from Allied Barton show applicant repeatedly raised issues of harassment and retaliation with his supervisors prior to his Cardiac Vascular Accident (CVA) injury.

Stroke Injury AOE/COE:

In the case of *South Coast Framing v. WCAB (Clark)*, (2015) 80 Cal Comp Cases 489, the California Supreme Court stated in relevant parts, "All that is required [to prove industrial injury] is that the employment be one of the contributing causes without which the injury would not have occurred."

As discussed above, applicant filed an Application for Adjudication of Claim alleging he sustained a cumulative trauma injury while employed by both employers Allied Barton and Staff Pro, Inc., during the period March 18, 2016, through April 5, 2016 that caused an injury to his psyche, circulatory system, internal, stress, stroke, heart attack, high blood pressure, paralysis of the right side of the body including right arm, right leg, right upper extremity. Following Labor Code 4060 and 4062.2 applicant was examined by Panel Qualified Medical Examiner in Neurology Dr. Robert Moore who issued three reports dated December 10, 2018; March 4, 2020; and May 19, 2023 finding the predominate cause of applicant's stroke is due to his poorly controlled blood pressure. However, in his most recent supplemental report Dr. Moore states within reasonable medical probability approximately 20% of applicant's hypertension is related to chronic stress. Dr. Moore goes on to state applicant's disability due to stroke is 15% apportioned to chronic stress and 85% apportioned to non-stress related causes. Dr. Moore found multiple incidents of work related stress in the reviewed records. The Court accepted the reporting of Dr. Robert Moore as substantial medical evidence. The Court found applicant's employment with both defendants involved stress, and the medical evidence establishes the stressful work environment contributed to and ultimately resulted in applicant's Cardiac Vascular Accident (CVA) injury. Therefore, applicant has met his burden of proving that his stroke and subsequent paralysis of the right side arose out of employment and has occurred in the course of employment.

IV

RECOMMENDATION

For the reasons stated above, it is respectfully requested that defendant's Petition for Reconsideration be denied.

Date: 08/06/2024

EDGAR MEDINA
Workers' Compensation Judge