WORKERS' COMPENSATION APPEALS BOARD
STATE OF CALIFORNIA

DANIEL ALVAREZ, *Applicant*

vs.

COMPASS FOODS, INC., and COMPWEST INSURANCE COMPANY, *Defendants*

Adjudication Number: ADJ17001262
San Francisco 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.

I.

Preliminarily, we note that former Labor Code[1] 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.

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

> (2) For purposes of paragraph (1), service of the accompanying report, pursuant to subdivision (b) of Section 5900, shall constitute providing notice.

(§ 5909.)

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 October 22, 2024, and 60 days from the date of transmission is Saturday, December 21, 2024, which by operation of law means that this decision is due by Monday, December 23, 2024. (Cal. Code Regs., tit. 8, § 10600.) This decision is issued by or on December 23, 2024, so that we have timely acted on the Petition as required by 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.

According to the proof of service for the Report and Recommendation by the WCJ, the Report was served on October 22, 2024, and the case was transmitted to the Appeals Board on October 22, 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 section 5909(b)(1) because service of the Report in compliance with section 5909(b)(2) provided them with actual notice as to the commencement of the 60-day period on October 22, 2024.

II.

To be considered substantial evidence, a medical opinion "must be predicated on reasonable medical probability." (*E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *McAllister v. Workmen's*

Comp. Appeals Bd. (1968) 69 Cal.2d 408, 413, 416–17, 419 [33 Cal.Comp.Cases 660].) A physician's report must also be framed in terms of reasonable medical probability, it must not be speculative, it must be based on pertinent facts and on an adequate examination and history, and it must set forth reasoning in support of its conclusions. (*Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687]; *Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 612 (Appeals Board en banc), 70 Cal.Comp.Cases 1506 (writ den.).) For the reasons stated by the WCJ in the Report, we find that opinion of panel qualified medical evaluator (PQME) Michael Bronshvag, M.D., to be substantial medical evidence which supports the finding of injury arising out of and occurring in the course of employment (AOE/COE).

Moreover, the applicant credibly testified that while cleaning an IQF machine, he started to feel dizzy, he felt tightness in his upper body, and his joints were stiff like muscle cramps (Minutes of Hearing and Summary of Evidence (MOH/SOE), 6/18/24, at p.4:22-25, 32-33); he heard a hissing noise (MOH/SOE at p. 6:22-24); and he realized that a CO2 valve on the IQF machine was open. (MOH/SOE at p. 4:13-14, 16-17, 27-28, 32-33). Applicant's credible testimony was uncontroverted. We have given the WCJ's credibility determination great weight because the WCJ had the opportunity to observe the demeanor of the witness. (*Garza v. Workmen's Comp. Appeals Bd*. (1970) 3 Cal.3d 312, 318-319 [35 Cal.Comp.Cases 500].) Furthermore, we conclude there is no evidence of considerable substantiality that would warrant rejecting the WCJ's credibility determination. (*Id*.)

For the foregoing reasons,

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

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ JOSEPH V. CAPURRO, COMMISSIONER

/s/ PAUL F. KELLY, COMMISSIONER

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

December 23, 2024

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

DANIEL ALVAREZ
GIMBEL LAW FIRM
LAUGHLIN, FALBO, LEVY & MORESI

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 PETITION FOR RECONSIDERATION AND NOTICE OF TRANSMISSION TO WCAB

INTRODUCTION

Defendant seeks reconsideration of my Findings of Fact. The substantive decision set forth therein was a finding of injury AOE/COE. In its petition, defendant contends my Findings of Fact was issued without or in excess of the appeals board powers, the evidence does not justify the Findings of Fact, and the Findings of Fact to not support the Order, Decision or Award. The petition is timely and verified. Applicant filed an answer.

FACTS

1. Procedural background

The primary issue in this trial was AOE/COE. Applicant was working as an IQF machine (a machine that freezes chicken parts) production worker on the date of the claimed injury, September 28, 2022. Applicant claims he sustained a pontine hemorrhage as a result of carbon dioxide poisoning at the jobsite. Defendant contends applicant's injury was the result of uncontrolled hypertension, and/or that there is insufficient evidence that the carbon dioxide levels were high enough to cause poisoning in the room where applicant was working.

The matter proceeded to trial on June 18, 2024.

2. Evidence at trial and decision

At the trial, the parties offered eleven total exhibits consisting of medical reports, QME deposition transcripts, an OSHA report, correspondence, and an incident report. In addition, the applicant and one employer witness testified at trial. The parties submitted trial briefs, judicial notice of which had been taken.

a. Medical Reports

i. Reports of QME Michael Bronshvag, M.D.

Joint Exhibit 3 is a report of QME Dr. Bronshvag dated 03/15/2023. In his report, Dr. Bronshvag writes applicant told him that the mechanism of injury was when applicant was exposed to carbon dioxide on the job on 09/28/2022. Applicant was being treated with several medications, and was "challenged with": lung difficulties, shortness of breath and cough, chest pain, high blood pressure, circulatory injuries, damage to kidney, liver, and stomach, muscle weakness, lack of

control with motor limitations, bilateral tinnitus, nervousness, depression, difficulty sleeping, poor appetite and crying spells. Applicant told Dr. Bronshvag he was made ill in the form of "a stroke and a seizure" in September of 2022, by carbon dioxide inhalation while working for the defendant employer. (p. 2.)

Dr. Bronshvag summarized several medical records. He makes the following diagnoses:

- Difficulties in September of 2022, "regarded as encephalopathic and demonstrating pontine hemorrhage with some blood in the fourth ventricle"
- Cerebral and encephalopathic symptoms secondary to brain stem damage
- Previous history of hypertension
  (p. 5.)

Regarding causation, he states:

> I cannot tell you what the carbon dioxide level in the room was…[I]f indeed the room was air tight and carbon dioxide poisoned, and a neurological event occurred in that setting, and that neurological event was a rupture of that blood vessel (arterial-presumably previously diseased to begin with) and the rupture of that blood vessel and the damage to the pons are reasonably attributed to the room that served like a 'bell jar' did for…[experiments done on animals in the 1960s]. [¶] Some further information is required at this time including a CT x-ray study of the head and a psychological evaluation plus a PM&R evaluation…In other words, it is perfectly reasonable to state that the big metal-lined room (like a bell jar), if it was indeed carbon dioxide poisoned, would be a reasonable "causation." Relevant to apportionment, it is reasonable to at least suggest that this claimant had a structural abnormality of a small arterial vessel in his pons which was ruptured by the physiological derangement.
> (p. 6.)

Joint Exhibit 2 is a supplemental report of QME Dr. Bronshvag dated 10/25/2023. In his report, he reviews additional medical records provided to him. (pp. 1-3.) He provides the following "comment":

> Assuming that the…OSHA data do 'not' disprove the exposure level of carbon dioxide, on has to make an estimate as to how high the 'pp-CO2' (partial pressure of carbon dioxide) was during those 22 to 27 minutes [of exposure.]
> …
> Therefore, unless I can be reassured that the claimant's exposure to carbon dioxide during those 22-27 minutes was neither present nor serious, then that pontine hemorrhage (sometimes called a pontine hemorrhagic stroke) was, at least in part, caused by that 22-27 minutes [of] exposure.
> (p. 4.)

Joint Exhibit 1 is a supplemental report of QME Dr. Bronshvag dated 01/19/2024. In his report, he states he was asked by applicant's attorney to confirm whether his opinions stated in his October 2023 supplemental report were based on a "reasonable medical probability." (p. 2.) He provided the following response thereto: "…although it is indicated to state 'based on reasonable medical probability,' the phrase 'reasonable medical probability' is less absolute than my own positive opinion. Therefore, yes, my report was based on reasonable medical probability or more – actually more." (p. 2.)

ii. *Deposition transcript of QME Michael Bronshvag, M.D.*

Joint Exhibit 4 is a deposition transcript of Dr. Bronshvag, dated 09/12/2023. Dr. Bronshvag testified in relevant part that:

> … assuming that…the valves were open for 27 minutes, that [applicant] was exposed to increased levels of carbon dioxide[,]…this is a poisoning. And the fact that this happened – the stroke, hemorrhage happened in close proximity to the poisoning, it's more likely than not that the carbon dioxide was at least a partial factor.
> ...
> If [applicant] was being poisoned with a – at elevated levels of carbon dioxide, for whatever reason – this is a no-fault system – then it's more likely than not that the…poisoning is at least a partial cause of his hemorrhage.
> (pp. 28-29.)

He testified that at what level a healthy vessel would rupture versus a diseased vessel when an individual's carbon dioxide levels is something that has not been studied a lot. "[Y]ou'll never know whether the vessel that ruptured was normal or was already diseased." (p. 18.)

iii. *Other medical reports*

Defendant's Exhibit A is a report of Zi C. Wang, M.D., dated 02/09/2023. In his report, Dr. Wang states he saw applicant the day after he was first admitted to the hospital on 09/29/2022, for a vascular neurology evaluation. He states:

> …[applicant] presented to the emergency department with sudden onset of headache, nausea, vomiting and dizziness, then rapid loss of awareness due to a pontine hemorrhage with intraventricular extensive. The etiology of his hemorrhage is most likely due to a hypertensive etiology that contributed to progressive small vessel disease, then rupture of a pontine perforating artery. His risk factors included his long standing hypertension that was felt to be poorly controlled.
> (p. 2.)

Defendant's Exhibit B is medical records from Memorial Medical Center; defendant's Exhibit D is a report of Dikran Bairamian, M.D., dated 09/29/2022 from the same set of records as Defendant's Exhibit B. Applicant was brought via ambulance to the Emergency Department on 09/28/2022. The records state in relevant part:

> [Applicant] was at his neurologic baseline yesterday afternoon. He works at a meat processing/machinery cleaning facility and was found unresponsive and unconscious by his colleagues at the facility. He had complained to someone that he felt dizzy and had a sudden onset of headache, then proceed[ed] to have nausea and 2 episodes of emesis prior to becoming unresponsive. Initially there was some concern about possible toxic exposure…On arrival to the ED, patient was rapidly intubated for poor mental status and for protection of airway. His presenting BP was 161 systolics. His CT head subsequently demonstrated acute pontine intraparenchymal hemorrhage for which neurosurgery was consulted.
> (p. 38.)

An additional "HPI" states:

> Patient was cleaning machienery when he presumably forgot to shut off a valve that would stop releasing the carbon dioxide. He was exposed for 15 minutes total. Subsequently, the patient was noted to be dizzy with a headache, altered, confused, weak, and nauseated; patient vomited twice. 'Green saliva' noted from the patient. No LOC reported. Patient complained of difficulty hearing and even talking.
> (p. 20.)

iv. *Incident Report*

Defendant's Exhibit C is an incident report dated 10/20/2022 from the City of Modesto Fire Department. The report states the dispatch date and time were 19:17:41 on Wednesday, September 28, 2022. (p. 3.) The report states in pertinent apart:

> While talking to the onsite manager it was discovered that the employee was cleaning some equipment and it was thought that he was overcome by CO. Not knowing if there was an isolated issue or a widespread leak we evacuated the building and started a hazmat response.
> …
> Once all additional units were on scene we made entry and confirmed the machine was shut down properly. We checked the building with multiple gas monitors and found no readings beyond the business's normal limits. The building was then turned back over to the manager on scene.
> (pp. 5-6.)

v. *OSHA Report*

Joint Exhibit 5 is subpoenaed records of Cal OSHA Modesto District Office. In the report, the notes regarding the inspection state that applicant was working in the room alone. At 5:55 p.m., applicant was checking what cleanup was needed. He told Fabian he did not feel well. Esperanza and Jimmy stayed with Daniel. It further notes:

> He wasn't cleaning with CO2. The IQF machine wasn't operation, the IQF was cleaned prior to break and closed up. Exhaust was left on and the CO2 was turned off. Blower left on, Co2 line turned off prior to break. [Applicant] just had to close hood and turn off exhaust. Then he wiped down sealing machine and cleaned up cardboard. CO2 alarm did not go off during that time
> …
> What was the concentration of CO2 at the time of the accident? (PEL 5,000ppm, STEL 30,000ppm)[.] The monitor read 0.13%=1300ppm at the time [applicant] left. 5,000ppm is the alarm halfway point, at 10,000ppm they evacuate.
> …
> Where is the CO2 sensor in relation to the work? Approximately 4pm [applicant] was working at the loading part of IQF – at the wall where the wall-mounted CO2 alarm is mounted. There is also a handheld unit at the center of the IQF machine. The handheld meter is calibrated with fresh air daily. No other bump test is done. The readings are compared to the wall mount unit. The handheld meters only last about 6 months.
> (pp. 15-18.)

The notes go on to state that applicant exited the room at 5:44 p.m. and reentered the room at 5:55 p.m. dressed in uniform. He started cleaning the IQF machine at 5:59 p.m. The crew had left. Micha was still there and checked the CO2 levels at 5:48 p.m. There were no witnesses to the incident. A doctor from the hospital called Esperanza for "the scenario" and she told the doctor it "could have been a CO2 exposure." A witness Thomas stated there is "video of the injured having stress before the machine was opened for clean out. There were three other people working in the area that were not affected. [Applicant] had a stroke. Hazmat was on scene and said the employer had done everything right." Applicant was a heavy smoker and had a heart attack a few months before. The employer thinks this is the cause of the stroke. *(Id.*)

Under "When did the supervisor last check the EE's progress", the report states:

> [Applicant] cleaned 5:59p.m.-6:13p.m., and exited until 6:24p.m. He was stationing carts and walked back into the room. He didn't look the same as when he left. He stumbled a few times carrying a tub that weighed only 2 lbs. He started breaking down cardboard, looking around, shaking [his] head and then flagged down Fabian. 10-15 min[utes] prior another supervisor would have checked.

(*Id.*)

The surveillance video summary states:

> …[Applicant] is not obese. At clock time 17:44 IQF hood was opened and only one CO2 valve was closed. The ventilation on the hood had to be off on the IQF because it is physically impossible to have the hood open with the ventilation on. At 18.00 clock time, [applicant] came back into the room and turned off the second CO2 valve ad the fan on the back wall for room ventilation. At 18:04 [applicant] turned the ventilation back on to the IQF. At 18:05 [applicant] started swearing. At 18:06 he noticed an odor and turned on the fan on the back wall. [Applicant] left the room at 18:27. The gas was running for 22 min[utes] with only the wall ventilation. [Applicant] was exposed for 27 minutes.
> (pp. 15-18.)

Applicant thought the incident occurred because "Francisco left valve on, ventilation on. I inhaled CO2 under hood of machine." (p. 30.)

OSHA cited the employer for failing to document training on the IQF machine and hazard communication plan for the injured employee, and for failing to describe employee training in their hazard communication plan. (pp. 46-47.)

Also in the report is an information sheet from "Medical News Today" that states: "Hypercapnia, also called hypercarbia, is when there is too much carbon dioxide in the blood. It happens when not enough carbon dioxide leaves the lungs. Typically, at the same time, there is not enough oxygen entering the lungs." (p. 111.) There is a long list of possible causes of hypercapnia. (pp. 105-108.)

b. *Witness Testimony*

1. *Applicant*

On September 28, 2022, at the end of the day after 5:45 p.m., he was cleaning out the IQF machine and getting ready to go home. As he was cleaning, he noticed the machine valve was turned up. He was feeling dizzy and tired, and his vision was "going out". He was feeling sluggish. As he noticed the symptoms, he looked at the machine and he noticed the valve was up on the machine, so he had to turn the valve off.

An IQF machine is a machine that freezes chicken. There is some a hood that he has to open to clean the machine. When the hood is open, the ventilation is turned off. At this point in time he started to feel dizzy. Other than feeling dizzy, he started to feel other symptoms: tightness in his upper body and his joints were getting kind of stiff like muscle cramps.

There was a valve open. It is a valve that releases gas to freeze the chicken. It is a freezing gas called CO2 that sprays out of the machine; it sprays out of the vents that spray into the chicken to freeze it onto the conveyor belt.

He knew the valve was open because he started feeling dizzy and the room was spinning like he was drunk. He was wondering why, so he walked to the side of the machine, and looked over at the valve and rushed over to the machine to shut it off. He was two to three feet from where the CO2 was released.

The effect of closing the hood would be to activate the vent. When the hood was open, the machine was spraying out gas. He pressed the button to close the hood down to open the vent and make the gas leave. That is the only way to make the gas leave. When he was cleaning the machine, he heard a hissing sound like something spraying. He thinks it was CO2. He concluded that was right.

He was trained in that the label on the machine says that if you feel these symptoms, to let your supervisor know right away. He did that. There are handheld testing devices that he and other coworkers use in this workspace. It is a safety device that lets you know the levels in the room. If they are too high, it is CO2 gas, and you have to leave the room. It is a CO2 testing device.

After he was feeling these symptoms, he looked at the wall, his eyes were in and out and he could not see the reading. He walked around the machine and looked at the handheld device but he could not see it or focus so he put it in a box. He could not see so he let his supervisor know.

Once he notified the supervisor, the levels would have been lower since the ventilation system had been activated. He went to turn on the ceiling vent to blow out and suck out the air. It blows it outside. He shut the door to the machine and had the ceiling fan suck out the air because he did not want anyone else to smell the gas. He let the supervisor know because he felt like he was going to faint.

He was experiencing blurred vision. He attempted to read it but could not. He told his supervisor that he was feeling funny, could not stand up, was losing balance, and was feeling vertigo. His supervisor told him go have a seat in the break room. He was shaking and could not breathe and had to go outside. They had to go help him because he could not walk.

He told them to call his wife. She came and he was throwing up and she said to call the ambulance.

The Cal/OSHA timeline stated he returned to that room and began cleaning at approximately 5:59 p.m. That is right to the best of his recollection. He stayed there working for 27 minutes with the gas running for 22 minutes. He does not remember how long he was working. He tried to close the vent to let the gas out. He remembers going around to shut the hydraulic door vent. He went around to shut the door to the machine; he had to shut the door. He had to push a button to shut the hydraulic machine down. As the machine went down, he had to open the vent to let the gas out. There is no other way the gas will go out unless you shut the machine door. Upon noticing the valve was open and experiencing these symptoms, he shut the vent to get the gas out of the area.

There was a previous incident where gas was released and employees had to evacuate near September 28, 2022. The safety guy comes around and checks the handheld device and checks the readings every hour. Sometimes they check the wall machine which is another device on the wall. An alarm goes off to let you know the reading is too high. Sometimes the wall device does not work so they use the handheld device instead. Sometimes they have everyone evacuate the room while it airs out. He had to evacuate on a previous occasion.

The Cal/OSHA report says 5:48 p.m. was the last reading. He was working starting at 5:59 p.m. He does not know if any readings had been taken during that time in between because he was on break.

There is a wall meter that also reads the CO2 level. It is set to have an alarm go off when the reading is too high. The wall alarm did not go off. He was not able to get a reading from the handheld monitor either.

He has a history of cigarette smoking. He has been smoking for about a year. He was smoking about every break: the first break, lunch break, last break and then when he would go home. He smoked about five cigarettes a day. He did not have a history of hypertension before September 28, 2022, that he knew of. He does not know what hypertension is. He does not know if he was prescribed medication for it.

He does not know how long it took before the ambulance was called on September 28, 2022. He reported lightheadedness and dizziness to supervisor, to Favian Maldonado. He is the one that removed him from the IQF facility. He was not in the room with him.

2. Esperanza Ramirez

She has been working for the employer for ten years in November. Her current position is director of operations. Her job duties as a director of operations include collaborating with different managers to make sure they are meeting production demands and safety protocols. Her job duties include operation of the IQF machine. The IQF machine is a machine that quick freezes chicken parts, meat parts and chicken breasts. It works by loading and unloading conveyor belt boxing using CO2.

In the facility itself there is IQF CO2 exposure in that particular room. The levels are checked every 30 minutes, about 20 to 30 minutes prior to starting production, then every 30 minutes, and 30 minutes before the end of shift. CO2 levels are read by a wall-mounted sensor and a handheld monitor. The wall sensor has an alarm. There are two alarm parameters: one is a halfway point at 5,000 parts per million and the secondary is at 10,000 parts per million. At 5,000 parts per million, that would still be considered safe at that point. The procedure when the initial 5,000 parts per million alarm goes off is to begin to investigate why the levels go to the halfway mark. They can find themselves anywhere from 2,500 to 3,000 parts per million on a normal production run using that machine. If alarm goes off at that point, there is no evacuation.

She has never known the alarm to not go off or to malfunction when the CO2 level reaches 5,000 parts per million. When levels reach 10,000 parts per million, the room is unsafe for eight hours according to OHSA. The evacuation procedure is evacuate the entire department, to put them outside. They then contact their maintenance department. They shut down the operations and begin the root cause analysis of finding out how they got to that level, especially when they have an alarm at the halfway point. They then usually find a root cause; one that she has seen before is a breaker tripped, which turns off the exhaust that helps evacuate the gases in that room.

The room was evacuated in other instances in her time at Compass Foods one other time. She was present at the facility on September 28, 2022. She did not see the incident with applicant as it occurred. She was radioed by another coworker that they were going to take applicant outside because there was a potential exposure. She assisted her coworker Favian with taking applicant outside. That was the first time she became aware of this incident. It was somewhere between 5:00 p.m. and 6:00 p.m.

After she received notice of incident, the next step was she went outside with applicant and sat with him on the bench and spoke to him about his breathing. The best practice with someone

who may have been exposed is to take them out to fresh air. She called his wife first and then called an ambulance.

She does not recall the specific time she met applicant outside. She was not present with him in the workspace when he was cleaning the machine. She was not there to witness whether the valve was open or closed. She was not there to witness hissing. Her role in this seems to occur after the incident.

It was about 15 minutes after she took applicant outside before she called 911. Both paramedics and the fire department arrived. The fire department was present with a hazmat team. At the time, she was dealing with both the fire department and the hazmat team.

The hazmat team was able to clear the facility for reentry. Neither of the alarms went off on September 28, 2022. As far as she was aware, the wall-mounted device was functioning. The fire department checked it. They verified the wall-mounted device and the handheld device that record the levels of CO2 in that department.

There was a subsequent OSHA investigation. She was the person dealing with OSHA on that investigation. The result of the investigation was to see if they had any gaps in their procedures to maintain and monitor the CO2 levels. OSHA did make a suggestion called a hazard analysis program for production lines. They did complete those corrective actions and submitted it back to the OSHA investigator. They determined that they did not have any hazards that particular time, nor at their visits after this incident.

They also use a handheld device. The purpose is to have another supporting device that they can use as a reference to the wall mount. It is about 20 to 30 feet between the wall mount and where applicant was working.

According to the OSHA log, there was no handheld test after 5:58 p.m. that day. That was the end of production that day. We do not know what the level of CO2 was the day he was working. The last reading was taken shortly before he went in there to clean. He started cleaning at 5:59 p.m., and the last reading was 5:48 p.m. We do not know what the level of CO2 was in that room where he was cleaning, while he was cleaning.

That alarm did not go off that day.

3. *Decision*

I found that applicant had met his burden of proving injury AOE/COE by a preponderance of the evidence.

4. Contentions on reconsideration

In its petition for reconsideration, defendant contends this WCJ erred in relying on Dr. Bronshvag's reports and deposition testimony because they were not based on substantial medical evidence, and are based on speculation and surmise. Defendant further contends there is insufficient evidence to establish that there was a sufficiently increased level of carbon dioxide in the room where applicant was working to establish industrial causation of the pontine hemorrhage.

DISCUSSION

Applicant bears the burden of proving injury AOE/COE by a preponderance of the evidence. (South Coast Framing v. Workers' Comp. Appeals Bd. (Clark) (2015) 61 Cal.4th 291, 297-298, 302; Lab. Code, §§ 3600(a); 3202.5.) It is sufficient to show that work was a contributing cause of the injury. (See Clark, supra, 61 Cal.4th at p. 298.) Applicant need only show that industrial causation was "not zero" to show sufficient contribution from work exposure for the claim to be compensable. (Clark, supra, 61 Cal.4th at p. 303.) The burden of proof "manifestly does not require the applicant to prove causation by scientific certainty." (Rosas v. Workers' Comp. Appeals Bd. (1993) 16 Cal.App.4th 1692, 1701.) It has also long been established that "all reasonable doubts as to whether an injury is compensable are to be resolved in favor of the employee." (Guerra v. Workers' Comp. Appeals Bd. (2016) 246 Cal.App.4th 1301, 1310 see also Garza v. Workmen's Comp. Appeals Bd. (1970) 3 Cal.3d 312 at p. 317; Lab. Code, § 3202.) Under LC 3202.5, preponderance of the evidence means that evidence, when weighted with that opposed to it, has more convincing force and the greater probability of truth. (Lab. Code, § 3202.5).

Generally, an employee must present substantial medical evidence to establish industrial causation. (See Barajas v. Vessey & Co., Inc., 2015 Cal. Wrk. Comp. P.D. LEXIS 652; Thomas v. WCAB (2015) 80 CCC 1507 (writ denied). The employee must establish industrial causation by a "reasonable probability." (McAllister v. WCAB (1968) 33 CCC 660, 662.) If a reasonable probability is shown, the claim could be upheld even though the exact causal mechanism is unclear or even unknown. (Federal Insurance Co. v. WCAB (Doe) (1995) 60 CCC 422 (writ denied).)

Here, it is unknown what the level of carbon dioxide was in the enclosed room when applicant began feeling dizzy, nauseated and unwell. It is also unknown if applicant's brain vessel that ruptured was normal or was already diseased when applicant sustained the pontine hemorrhage. What does appear to be undisputed and unrebutted in the evidentiary record here is:

that applicant was at his neurologic baseline when he began cleaning in the IQF room at 5:59 p.m. on September 28, 2022, and that he began feeling unwell while enclosed in the room. Applicant testified:

> He knew the valve was open because he started feeling dizzy and the room was spinning like he was drunk. He was wondering why, so he walked to the side of the machine, and looked over at the valve and rushed over to the machine to shut it off. He was two to three feet from where the CO2 was released.
>
> The effect of closing the hood would be to activate the vent. When the hood was open, the machine was spraying out gas. He pressed the button to close the hood down to open the vent and make the gas leave. That is the only way to make the gas leave. When he was cleaning the machine, he heard a hissing sound like something spraying. He thinks it was CO2. He concluded that was right.
> (06/18/2024, MOH, p. 6.)

We also know that applicant was objectively ill; he felt the symptoms and was then taken and admitted to the hospital where he was diagnosed with having suffered a pontine hemorrhage. Even his supervisor Esperanza Ramirez reported to OSHA and testified that she thought applicant had been exposed to carbon dioxide. When she learned he was not feeling well, she followed the protocol for caring someone post-carbon dioxide exposure; she testified, "[t]he best practice with someone who may have been exposed is to take them out to fresh air." (MOH, p. 8.)

Applicant very well could have been exposed to high levels of carbon dioxide for the 22-27 minutes he was enclosed in the room. He testified that he heard hissing, and that he rushed to close a valve that should not have been open. While there is evidence in the record that both the wall mount and the handheld devices were not malfunctioning, applicant testified that devices had malfunctioned previously in that the alarm did not go on when the levels were high enough for it to sound. Additionally, the wall-mounted device was 20-30 feet away from where applicant was working. I found applicant's unrebutted testimony to be credible. Furthermore, the OSHA report states applicant stated Francisco left the valve on. The hospital reports state applicant stated applicant forgot to turn off the valve. Regardless of why, applicant's accounts are consistent that the valve was open at the time of the alleged exposure.

Dr. Bronshvag determined that it was reasonably probable that carbon dioxide exposure contributed to applicant's injury. He explained his analysis including that once the levels of carbon dioxide double in the body, that could cause rupture of a blood vessel.

The causal connection between the employment and the injury 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, 733-734.) While there is mention of applicant's preexisting and even poorly controlled cardiac conditions in the evidence, which defendant contends would have caused the stroke, this argument pertains to apportionment, not AOE/COE. An employee is entitled to Workers' Compensation benefits if the industrial injury merely accelerates, aggravates, or "lights up" a preexisting disease. (Clark, supra, 61 Cal.4th at p. 300.) In addition, the employee's physical condition is irrelevant to the causation analysis. (Duthie v. WCAB (1978) 86 CA3d 721, 727.) Therefore, even if applicant's hypertension put him at a greater risk of suffering this injury, that does not refute that applicant's exposure to carbon dioxide between 22 and 27 minutes was a reasonably probable contributory cause of his stroke.

In its petition, defendant cites to cases pertaining to Valley Fever and sarcoidosis. Those cases address the occupational disease doctrine, which is distinguishable from the facts here. Here, the alleged exposure was a one-time event, not latent and over time. (General Foundry Service v. WCAB (Jackson) (1986) 51 CCC 375).

The QME Dr. Bronshvag found that it was reasonably probable that exposure to carbon dioxide was a contributory cause of applicant's injury. There is evidence that applicant was exposed to carbon dioxide at a level high enough to cause hypercapnia for a period of 22-27 minutes. There is substantial medical evidence in the record here to support a finding of AOE/COE. I was persuaded that applicant met his burden of proving AOE/COE by a preponderance of the evidence. While the report from Dr. Wang states the hemorrhage is "most likely due to a hypertensive etiology that contributed to progressive small vessel disease, then rupture of a pontine perforating artery […] His risk factors included his long standing hypertension that was felt to be poorly controlled", I find Dr. Bronshvag's reporting to be more persuasive. The report of Dr. Wang does not state what reports the doctor considered in arriving at that conclusion; it does not consider whether carbon dioxide poisoning is at least a contributory factor – greater than zero – of applicant's injury. 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.)

Accordingly, I found applicant's injury to his brain, ear and chest to be industrially compensable, and all other issues deferred with WCAB jurisdiction reserved.

RECOMMENDATION

For the foregoing reasons, I recommend that defendant's Petition for Reconsideration, filed herein on September 19, 2024, be denied. This matter is being transmitted to the Appeals Board on the service date indicated below my signature.