

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

DIANA GUZMAN, *Applicant* 553-15-1471

vs.

**ACTION PROPERTY MANAGEMENT, INC.;
CALIFORNIA INSURANCE COMPANY,
administered by APPLIED RISK SERVICES, INC., *Defendants***

**Adjudication Number: ADJ10841453
Marina del Rey District Office**

**OPINION AND ORDER
GRANTING PETITION FOR
RECONSIDERATION
AND DECISION AFTER
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, and for the reasons stated below, we will grant reconsideration, rescind the WCJ's decision and substitute it with a new Findings and Order, that strikes Findings of Fact number two (2)¹ and admits applicant's Exhibit 1 (Medical report from Gayle Windman, Ph.D., dated March 28, 2022), which the WCJ discusses in the Report. We will otherwise restate the WCJ's findings and order.

The WCJ properly relied upon the opinions of the agreed medical evaluators (AME), who the parties presumably chose because of the AMEs' expertise and neutrality. The WCJ was presented with no good reason to find the AMEs' opinions unpersuasive, and we also find none. (See *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].)

¹ We strike Findings of Fact number 2 as moot given the finding of no injury arising out of and occurring in the course of employment (AOE/COE) in Findings of Fact number one (1).

We agree with the WCJ that there is no duty to develop the record here to save applicant from the lack of due diligence to present evidence in support of the claimed injury of dizziness and psyche. (See Lab. Code, §§ 5502(d)(3) 3202.5; *McDuffie v. Los Angeles County Metropolitan Transit Authority* (2002) 67 Cal.Comp.Cases 138, 141 (Appeals Board en banc); *Lozano v. Workers' Comp. Appeals Bd.* (2002) 67 Cal.Comp.Cases 970 (writ den.).)

For the foregoing reasons,

IT IS ORDERED that reconsideration of the February 29, 2024 Findings and Order is **GRANTED**.

IT IS FURTHER ORDERED as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the February 29, 2024 Findings and Order is **RESCINDED** and **SUBSTITUTED** with a Findings and Order, as provided below.

FINDINGS OF FACT

1. Diana Guzman, while employed on March 9, 2016, as a maintenance technician, occupational group number 380, at Los Angeles, California, by Action Property Management, Inc., did not sustain injury arising out of and occurring in the course of employment of dizziness and psyche.
2. The issue of Labor Code section 3208.3 is moot.
3. Applicant's Exhibit 1 is admitted into evidence.

ORDER

IT IS FURTHER ORDERED that applicant takes nothing further by way of her claim of industrial injury of dizziness and psyche.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ LISA A. SUSSMAN, DEPUTY COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

May 20, 2024

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

**DIANA GUZMAN
LAW OFFICES OF ANDREW L. H. FONG
LAW OFFICES OF JOAN SHEPPARD
EMPLOYMENT DEVELOPMENT DEPARTMENT**

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**

APPLICANT'S OCCUPATION: MAINTENANCE TECHNICIAN GROUP 380

APPLICANT'S DATE OF BIRTH: []

DATE OF INJURY: 03/09/2016

IDENTITY OF PETITIONER: APPLICANT

TIMELINESS: THE PETITION WAS TIMELY

VERIFICATION:

DATE OF ISSUANCE OF FINDINGS AND ORDER: 02/29/2024

PETITIONER'S CONTENTIONS: 1) The WCJ should not have relied on the medical opinion of Panel Qualified Medical Examiner Steven Galarza because;

- a) the history in the report was not accurate and
- b) because the report is not a final report and the WCJ should have developed the record and obtained a final report from Dr. Steven Galarza.

2) The WCJ should have relied upon the medical opinion of Dr. Gail Windman and found that the applicant had suffered a psychological injury arising out of and in the course of her employment.

3) That if the WCJ was unable to rely on the report of Dr. Gail Windman for her failure to review the applicant's medical history, the WCJ should have developed the record with either Dr. Gail Windman.

**II
FACTS**

The applicant, Diana Guzman, sustained injuries arising out of and in the course of employment (AOE/COE) in a fall on 03/09/2016. The claim was accepted and the parties entered into a Stipulation with Request for Award on 12/07/2023 wherein they agreed that Ms. Guzman

sustained 56% permanent disability to the cervical spine, lumbar spine, right knee, jaw, headaches, GERO and constipation.

This Stipulation with Request for Award did not resolve Ms. Guzman's further claim that she sustained injury AOE/COE for dizziness (vertigo) and psyche. The parties proceeded to trial on this disputed issue.

After a testimony from Ms. Guzman and a full review of the medical record, the undersigned determined that the Ms. Guzman did not sustain an injury AOE/COE for her dizziness (vertigo) and psyche.

III DISCUSSION

It is not disputed that Ms. Guzman sustained injuries AOE/COE on 03/09/2016. These injuries included an injury to her jaw. As a result of the injury to her jaw she underwent surgery on 07/22/2020. Ms. Guzman claims that as a result of the jaw surgery she developed dizziness (vertigo). The medical record documents that the claim of dizziness (vertigo) did arise subsequent to the 07/22/2020 surgery and along with dizziness (vertigo) the doctors document further claims of psychological injury arising after the surgery.

The PQME psychiatrist Dr. Steven Galarza (report dated 05/17/2022 exhibit A) determined that Ms. Guzman's psychological symptoms were caused by the dizziness (vertigo). He further concluded that if the dizziness (vertigo) was found to be industrial, then the psychological symptoms would also be industrial.

Ms. Guzman was examined by Agreed Medical Examiner (AME) David Scharf MD (neurologist), AME Andrew Berman MD (otorhinolaryngologist), and AME Burton Sobelman DDS (dentistry / temporomandibular joint orthopedics). All three Agreed Medical Examiners were unable to find any causal relationship between the applicant's 07/22/2020 jaw surgery and her claims of dizziness (vertigo). They found no physiological basis for her to develop dizziness (vertigo) as a result of the type of jaw surgery performed on 07/22/2020. As such, it was determined that the applicant's claim of dizziness (vertigo) was non-industrial. Because the dizziness (vertigo) was non-industrial and the psychological symptoms arose from the dizziness (vertigo), the psychological symptoms were also determined to be non-industrial.

The Petitioner contends that this WCJ should not have relied on the medical opinion of Panel Qualified Medical Examiner Steven Galarza (report dated 05/17/2022 exhibit A) because the history in the report was not accurate. The Petitioner claims that the psychological symptoms did not arise because of the dizziness (vertigo) from her 07/22/2020 jaw surgery. Instead, she claims that the psychological symptoms pre-dated her jaw surgery. However, the petitioner does not cite any medical evidence generated prior to her jaw surgery that documents any psychological symptoms. The undersigned reviewed all medical evidence including the extensive record reviews performed by all physicians and could find no mention of any psychological symptoms that predate the jaw surgery or the dizziness (vertigo) symptoms. Thus, the medical record does not support

the applicant's claim that her psychological symptoms arose from anything other than her non-industrial dizziness (vertigo) symptoms.

It is further noted that if the history reported by Dr. Galarza was not accurate, there was ample opportunity for the petitioner to submit supporting evidence to the doctor and obtain a supplemental report from him. There is no evidence that any effort was made to correct the alleged inaccurate history.

The Petitioner further contends that this WCJ should not have relied on the medical opinion of Panel Qualified Medical Examiner Steven Galarza (report dated 05/17/2022 exhibit A) because the report is not a final report. Petitioner claims that the WCJ should have developed the record and obtained a final report from Dr. Steven Galarza.

Whether or not the report from PQME Steven Galarza is a final report is not relevant to the issue of causation AOE/COE. As injury AOE/COE was the trial issue and the causation opinion provided by Dr. Galarza in his 05/17/2022 (exhibit A) is a complete opinion on that issue, there is no basis on which it would be necessary to obtain any further opinion from Dr. Galarza.

Petitioner next argues that this WCJ should have relied upon the medical opinion of Dr. Gail Windman (exhibit 1) and found that the applicant had suffered a psychological injury arising out of and in the course of her employment. As stated in the Opinion on Decision, the undersigned did not find the medical opinion of Dr. Gail Windman to be a substantial medical opinion. Dr. Windman did not review ANY medical records related to the applicant's injury. Given the substantial medical records that exist in this case, Dr. Wreviewas obligated to reviewed this history in order to come to an informed and substantial medical opinion regarding causation of the applicant's alleged psychological symptoms.

Instead, Dr. Windman relies solely on the history given to her by the applicant. The applicant reported to Dr. Windman that her psychological symptoms arose from her orthopedic injuries and not from her dizziness (vertigo) symptoms. As stated above, the medical records do not support this alleged history. Therefore, because Dr. Windham reviewed NO medical records and because she relied on a self-reported medical history which is not consistent with the medical records, Dr. Windham's opinions are not substantial medical evidence and cannot be relied upon.

Applicant contends that if the WCJ was unable to rely on the report of Dr. Gail Windman due to her failure to review the applicant's medical history, the WCJ should have developed the record. However, the burden of proof regarding injury AOE/COE rests with the applicant. It was the applicant who procured the opinion of Dr. Windman and there is nothing to indicate that there wasn't ample opportunity for the applicant to provide Dr. Windham with the applicant's complete medical records. The applicant chose not to provide these records to Dr. Windman.

Where there is insufficient evidence presented to the WCJ to decide an issue, the WCJ has the authority to develop the record. However, the ability to further develop the record is not to be used to rescue a party that does not present evidence sufficient to meet their burden of proof. Development of the record under these circumstances would violate Labor Code Section 5502(d)(3).¹

There is sufficient evidence presented in this case on the issue of injury AOE/COE as to the claim of psychological injury. There is a complete and substantial opinion provided by PQME Steven Galarza that the applicants psychological symptoms arose from her dizziness (vertigo) and that the psychological symptoms are industrial only if the dizziness (vertigo) is industrial. There are three substantial medical opinions from AMEs who cannot find any physiological basis for the applicant's dizziness (vertigo) to arise from the jaw surgery that she had on an industrial basis. Therefore, because the dizziness (vertigo) is non-industrial, and the psychological symptoms arise from non-industrial dizziness (vertigo) the psychological symptoms are also non-industrial.

Applicant had the opportunity to correct any perceived defect in the medical history provided by PQME Galarza and did not do so. The report from Dr. Galarza does not require further development as the trial issue of injury AOE/COE is completely addressed by his 05/17/2022 report. The applicant claims that her psychological symptoms predated her jaw surgery but does not cite to any evidence or any part of the medical record that would support that claim. The medical record actually supports the opposite proposition that the psychological symptoms developed only after.

DATE: 3/25/2024

Martha Gaines
WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE

¹ Reed v. WCAB (2013) 78 CCC 539 (writ denied) (WCAB did not have a duty to further develop the record on the issue of AOE/COE to various body parts because the Applicant had had the opportunity to do the necessary discovery but did not do so.