

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

ELLIE GONZALEZ, *Applicant*

vs.

**LOS ANGELES UNIFIED SCHOOL DISTRICT, SEDGWICK CLAIMS
MANAGEMENT SERVICES, *Defendants***

**Adjudication Number: ADJ12104893
Los Angeles District Office**

**OPINION AND DECISION
AFTER RECONSIDERATION**

The Appeals Board granted reconsideration to study the factual and legal issues. This is our Decision After Reconsideration.¹

In the Findings and Order of June 28, 2021, the Workers' Compensation Administrative Law Judge ("WCJ") denied applicant's claim of industrial injury caused by disseminated coccidioidomycosis (advanced stage "Valley Fever"). Specifically, the WCJ found that applicant, while employed as an assistant principal by the Los Angeles Unified School District during the period December 2, 2017 through June 15, 2018, did not sustain injury arising out of and occurring in the course of employment to her chest, circulatory system, digestive system, respiratory system, lumbar spine, cervical spine, sexual dysfunction, bilateral upper extremities, right lower extremity, stress, anxiety, depression, and sleep with insomnia.

Applicant filed a timely petition for reconsideration of the WCJ's decision. Applicant contends that the WCJ erred in relying upon the medical opinion of Dr. Zagelbaum, the Panel Qualified Medical Evaluator ("PQME"), because the doctor's opinion is not supported by the facts or law relevant to the latency period of Valley Fever. Applicant further contends that the opinion of Dr. Pietruszka, the primary treating physician ("PTP"), is substantial evidence on the issue of

¹ Commissioner Deidra E. Lowe signed the Opinion and Order Granting Petition for Reconsideration dated September 17, 2021. As Commissioner Lowe is no longer a member of the Appeals Board, a new panel member has been substituted in her place.

Valley Fever’s latency period, that the PTP’s opinion rebuts the PQME’s opinion, and that if the Board finds the record insubstantial, further development of the record should be ordered.

The Board did not receive an answer from defendant.

The WCJ submitted a Report and Recommendation (“Report”).

Based on our review of the record and applicable law, we conclude that there are several unresolved factual and medical issues that require clarification and resolution in order to ensure a just determination of this matter. Therefore, we will rescind the WCJ’s decision and return this matter to the trial level for further proceedings and new decision by the WCJ.

FACTUAL BACKGROUND

The WCJ provides an overview of the relevant facts in Section II of her Report, as follows:

1. The applicant filed an Application for Adjudication on 4-12-19 alleging injury to her 430 Chest, etc., 850 respiratory system, etc., 810 digestive system, etc. and 801 circulatory system “due to exposure to fires and smoke” during the [cumulative] trauma period 12-02-2017 to 6-15-2018.
2. The applicant was previously diagnosed with coccidiomycosis, “Valley Fever” on 7-04-2018 at Kaiser Foundation Hospital where she was hospitalized. Consultant Royce Johnson, M.D. of the Kern Medical Center, which is operated by the Kern County Hospital Authority, concurred with the diagnosis on 10-25-2019, Exhibit 9. Primary Treating Physician Marvin Pietruszka M.D. and Panel Qualified Medical Examiner Gary Zagelbaum M.D. concurred in the diagnosis. The issue at trial was whether the disease [arose] out of and occurred in the course of her employment.
3. The applicant did not testify at trial. No witnesses testified.
4. Applicant introduced medical reports and the transcript of cross-examination of a physician. No direct evidence regarding any fire, smoke or wind conditions at any location on any date was offered. No evidence of the exact location of the applicant’s employment on any given date or time was offered. No evidence of the existence of coccidiomycosis spores at any location at all, including the applicant’s two job sites in the East San Fernando Valley or her home in Riverside County, were offered. No requests were made to take judicial notice of any event, geographic fact, or atmospheric condition.²

² It is unclear what the WCJ means in stating: “No *direct* evidence regarding any fire, smoke or wind conditions at any location on any date was offered.” The WCJ does not refer to any legal authority explaining the difference between “indirect” evidence versus “direct” evidence. In any case, we note that applicant’s description of those types of conditions at the school where she worked is consistent in the histories she gave to various reporting physicians, and this evidence is unrebutted.

DISCUSSION

As noted at the outset, the WCJ denied applicant's claim of industrial injury by way of Valley Fever. Although the WCJ states in her Report that she did not rely primarily on the latency period between exposure and manifestation of the disease, this is not borne out by the WCJ's Opinion on Decision. Therein it appears that the primary reason for the WCJ's denial of applicant's claim is that the time between her exposure in late December 2017 or early 2018 to wildfire smoke that also may have contained injurious fungal spores, and the emergence of severe disease in June or July 2018, exceeded the latency period proposed by PQME Zagelbaum. The WCJ stated in her Opinion on Decision:

Given the applicant clearly is suffering from Valley Fever, the doctors focused on the information available to them to attempt to extrapolate when an injurious exposure could have occurred bringing latency period into question. Dr. Zagelbaum is credible and persuasive in rejecting the various fires, based on the dates given to him by the parties, due to a three-week latency period, with a first diagnosis in 6-2018, when the applicant first reported symptoms of Valley Fever, Exhibit 1, p. 4, Exhibit AA, Report of Dr. Zagelbaum 12-4-2019 p.174-175.

The applicant gave Dr. Pietruzka a history of exposure to a fire beginning 12-4-2017. She gave Dr. Zagelbaum a history of difficulty breathing, burning of the eyes and cough sometime in December of 2017 for an unknown period, but she did not seek medical treatment and the symptoms were not reported again, Exhibit AA, Report of Gary Zagelbaum 12-4-2019, p. 3. The applicant was seen for medical sequelae of a motor vehicle accident on 2-27-2018, mid-March 2018, 4-01-2018, and 6-26-2018 without reporting any non-orthopedic symptoms, Exhibit AA, Report of Gary Zagelbaum 12-4-2019 p. 3. It was not until the 6-29-2018 Urgent Care visit when she reported nausea, vomiting and shortness of breath lasting for a week, Exhibit AA, Report of Gary Zagelbaum 12-4-2019 p. 3, that she reported internal symptoms. At Kaiser Foundation Hospital with worsening symptoms she tested positive for disseminated coccidioidomycosis, at the beginning of July, supra at p. 4.

Pulmonologist Zagelbaum is clear on cross-examination in response to a hypothetical that it would be outside the realm of established scientific expertise on timing to state that the contaminants of a fire six months previously causally contributed to the fungal infection, Exhibit 2, Deposition of Gary Zagelbaum, p. 24:20 - p. 25:2. Dr. Zagelbaum is asked at the deposition of 2-9-2021 where the applicant inhaled the spore. He responds: "Where she inhaled it, yeah. And I don't know where that happened right now. It hasn't been established that it came from environmental conditions at work or the Thomas Fire.", Exhibit 2, Deposition of Gary Zagelbaum, p. 31:20 - p. 32:1. Dr. Zagelbaum is a board-certified pulmonologist, who has participated frequently in the management and care of

cocci related health problems over many years of training and practice, Deposition supra at p. 16:16-25.

[...]

Dr. Pietruszka differs from Dr. Zagelbaum in that he contends disseminated coccidioidomycosis occurs within 6 months of the primary exposure, Exhibit 3, Report of Marvin Pietruszka 3-2-2021 p. 13. Dr. Pietruszka bases his entire argument on one single article which is not attached or quoted, but listed in the footnotes as from *Reviews of the Medical Institute of Sao Paola*. No location of the medical institute is offered, no evidence of the author's expertise and no evidence of the medical institute's experience with this disease in California are offered. This lone footnote without support is not credible or persuasive.

To the contrary, Kern County Medical Center infectious disease consultant Royce Johnson M.D.'s report of 10-25-2019, Exhibit 9 [...] finds that disease onset was May 2018 thus not tied to any fire anywhere, Exhibit 9, p. 3 paragraph 1:

“IMPRESSION: 1. Coccidioidomycosis, pulmonary, severe, with an onset conceivably in May 2018, I doubt earlier, that was severe by 07/04/2018, when she was admitted to the hospital with acute respiratory distress syndrome [...]

... [Dr. Johnson's] opinion of onset in May, 2018 tracks with the shorter latency period of Dr. Zagelbaum finding about 3 weeks prior to June 2018.

The foregoing discussion in the WCJ's Opinion on Decision contradicts the statement the WCJ's Report that she did not rely on the latency period of Valley Fever to deny applicant's claim of industrial disease. This raises due process concerns, as the WCJ's approach forces applicant to contend with a moving target upon reconsideration. (See *Gangwish v. Workers' Comp. Appeals Bd.* (2001) 89 Cal.App.4th 1284, 1295 [66 Cal.Comp.Cases 584]; *Rucker v. Workers' Comp. Appeals Bd.* (2000) 82 Cal.App.4th 151, 157 [65 Cal.Comp.Cases 805]. See also, *Urlwin v. Workers' Comp. Appeals Bd.* (1981) 126 Cal.App.3d 466 [46 Cal.Comp.Cases 1276].)

More importantly, we note that various aspects of the analysis of industrial causation within the WCJ's Report seem to reflect a misunderstanding of applicant's burden of proof. On page five, the WCJ states that the record shows a “lack of factual foundation” to support applicant's claim. For instance, the WCJ states that “there was no evidence that the applicant was exposed to any danger at work greater than at her residence in Riverside County.” This is not a relevant consideration, because applicant only needs to demonstrate that it is plausible she was exposed to the fungal spores that cause Valley Fever at work; she had no burden to establish that this danger

was “greater than at her residence in Riverside County.” (See *South Coast Framing v. Workers’ Comp. Appeals Bd.* (2015) 61 Cal.4th 291 (80 Cal.Comp.Cases 489) [affirming industrial injury where employment is a contributing cause of the injury]; *Guerra v. Workers’ Comp. Appeals Bd. (Rodas)* (2016) 246 Cal.App.4th 1301 (81 Cal.Comp.Cases 324) [same].)

In her Report, the WCJ also suggests that applicant was required to testify under oath to establish that she was exposed to wildfire smoke while she was at work. Again, the WCJ refers to no legal authority in support of this premise. Further, it is contradicted by the fact that applicant was consistent in reporting to various evaluating physicians that she was exposed to wildfire at work. In a report dated October 25, 2019, Dr. Johnson recorded that in early December 2017, applicant “had very substantial exposure over the succeeding days to the Thomas Creek fire, with substantial respiratory discomfort, eye discomfort and wheezing.” (Exhibit 9, p. 1.) In a report dated December 2, 2019, PQME Zagelbaum recorded a “history of present illness,” according to which applicant reported that in December 2017 she was involved in school activities to help in the school management of issues related to the Thomas Fire. At that time, she spent time out of the school building in Sylmar and encountered exposure to pungent odors and black smoke, and she experienced a variety of symptoms which over time included difficulty breathing, burning of her eyes, and cough. Applicant also reported to Dr. Zagelbaum that she had a cough productive of thick phlegm, burning of her eyes, and shortness of breath, but she did not seek medical attention at the time. (Joint exhibit AA, pp. 2-3.) Similarly, in a report dated March 2, 2021, Dr. Pietruszka reported that when applicant began working for LAUSD as an assistant principal for a school in the Sylmar area, there were fires involving the Creek fire and Sylmar fires that started on December 4, 2017, adjacent to the school facility at Morningside Elementary School.³ Applicant began to have generalized symptoms including eye irritation, cough, nausea and vomiting, which progressed until around December 15, 2017. Applicant also reported to the doctor that after she returned from the school’s winter break in January 2018, her symptoms began to worsen. Dr. Pietruszka also reported that applicant was instructed to assist with the closure of the school during the wildfires of late 2017 and early 2018, that she worked outside of the school building during that time, and that she could see the nearby fires and was exposed to smoke and soot. Dr.

³ In her Report, the WCJ finds it significant that applicant apparently confused the names of the wildfires, e.g., the Thomas Creek fire versus the Sylmar fire. We disagree, because applicant’s narrative of being exposed to wildfire smoke is consistent in the reports of several different medical evaluators. To the extent applicant confused the names of the wildfires, we believe it is insignificant.

Pietruszka further reported that applicant recalled breathing in the smoke, and experiencing cough and difficulty breathing, but she did not seek medical treatment and was able to continue working. (Exhibit 3, p. 2.) Given the consistency of the history narrated by applicant in the medical reports described above, we disagree with the statement in the WCJ's Report that "applicant failed to prove a fire occurred in the vicinity of the applicant at work."

The WCJ also states that applicant failed to prove "that smoke of any density, wind of any velocity, or spores of any kind reached the vicinity at any distance, of the applicant while she was working," that "there was no evidence of the amount of time the applicant spent outdoors or the exact dates when the fire was in a position to expose the applicant," and that applicant did not "estimate the distance from her...where exactly she was and for how long" nor "describe the strength of the wind, or the density of the smoke." To the extent the WCJ relied on these factors to deny applicant's claim, we are persuaded the WCJ erred because injured workers are neither qualified nor required to provide expert scientific testimony. Moreover, applicant's burden of proving she was exposed to wildfire smoke and fungal spores is one of reasonable probability, not scientific certainty. (*McAllister v. Workmen's Comp. App. Bd.* (1968) 69 Cal.2d 408, 413 [33 Cal.Comp.Cases 660]. See also, *Guerra v. Workers' Comp. Appeals Bd. (Rodas)* (2016) 246 Cal.App.4th 1301, 1307-1308 [81 Cal.Comp.Cases 324], quoting *Pac. Emp. Ins. Co. v. Ind. Acc. Com.* (1942) 19 Cal.2d 622, 629: "Circumstantial evidence is sufficient to support an award of the [WCAB], and it may be based upon the reasonable inferences that arise from the reasonable probabilities flowing from the evidence; neither absolute certainty nor demonstration is required.")

Nonetheless, we are persuaded that the record requires further development as to whether applicant, in being exposed to wildfire smoke, also was exposed to the fungal spores that cause Valley Fever. In this regard, we also note that there is a lack of evidence as to whether there were any construction or remediation activities being conducted around applicant's school, and there is a lack of information – even of a general nature - about Valley Fever in the area of applicant's school following the wildfires.

We also conclude that the record requires further development on the issue of the latency period of Valley Fever. On page eleven of Dr. Zagelbaum's February 9, 2021 deposition, the doctor testified that there could be a "loose" latency period of up to 30 days between exposure to the fungal pathogen and emergence of an infection. On page thirteen, Dr. Zagelbaum called it "medically improbable" that it is "chronologically feasible" that "inhalation of the fungus...caused

[applicant's] infection of June 2018 [due] to an event [Thomas Fire] that occurred six months earlier." On page twenty-one of his deposition, however, Dr. Zagelbaum admitted that he had seen articles "reporting that there have been a significant increase in the development of [Valley Fever] in California as a result of significant wildfires in the State of California[.]" (Exhibit 2, Zagelbaum deposition of 2/9/21.)

On page 28 of Dr. Zagelbaum's deposition, after applicant's attorney claimed that there are "significant articles that indicate that there is a significant increase in the exposure to cocci in the state of California as well as Arizona, but more so in California, as a result of the fires," the doctor responded:

A. So medicine and QME evaluations, as I see it, [comprise] a dynamic rather than a static process. If I'm presented with new scientific information, I'm always taking that into consideration. That's why I read every day, or review. It's not something, well, I have this fixed belief and -- so, you know, we're learning about a pandemic, new theories every single day, and I'm always open to a flow of knowledge, and I appreciate it. I appreciate the opportunity to expand my fund of knowledge on any subject particularly in areas like this. Perhaps there is something, which you describe as substantial, which needs to be taken into consideration that I haven't seen. That's certainly possible.

(Exhibit 2, Zagelbaum deposition of 2/9/21, p. 28:6-19.)

Although Dr. Zagelbaum admitted it is certainly possible that the articles or studies mentioned by applicant's attorney "need to be taken into consideration," the doctor was not provided the opportunity to review or comment upon any such information. In the WCJ's Report, there is no explanation for this omission.

At page 16:20-25 of his deposition, Dr. Zagelbaum testified that as a practicing pulmonologist, he has many years of experience treating patients with Valley Fever, and that a large majority of such cases remain asymptomatic without need for medical care, with such cases being treated like the flu. Yet Dr. Zagelbaum also testified that he has frequently participated in Valley Fever cases that do in fact become severe and require antifungal therapy. The contradictory nature of this testimony requires clarification by Dr. Zagelbaum. On one hand, if the doctor is referring to asymptomatic cases that eventually become symptomatic, this is the kind of case that resembles the progression of applicant's disease here – although she had flu-like symptoms early in 2018, she kept working and did not seek treatment. On the other hand, Dr. Zagelbaum may

have been referring to cases which are *not* initially treated like the flu, which may support the relatively short latency period proposed by the doctor.

We further note that Dr. Zagelbaum and Dr. Pietruszka disagreed about the latency period, with Dr. Pietruszka proposing a longer latency period that would account for applicant's alleged exposure to fungal spores in late 2017 or early 2018 with a delay in the emergence of severe symptoms of Valley Fever in June 2018. However, Dr. Zagelbaum never reviewed or commented upon Dr. Pietruszka's reports because they were obtained after Dr. Zagelbaum already had formulated his medical opinion. In order to complete the medical record, and in addition to the issues discussed above, Dr. Zagelbaum should be given the opportunity to review and comment upon Dr. Pietruszka's reports.

In summary, we conclude that further development of the record is required on two issues. First, there is a need for more evidence concerning whether applicant was exposed to fungal spores in the air where she worked, in conjunction with or in addition to smoke from wildfires. This need for more evidence may include the need for an expert in a field such as air quality, but we leave the choice of appropriate specialty to the discretion of the WCJ. (*Peter Kiewit Sons v. Industrial Acc. Com.* (1965) 234 Cal.App.2d 831, 838-839 (30 Cal.Comp.Cases 188) [expert opinion is required where the truth is occult and can be found only by resorting to the sciences].)

Secondly, there is a need for supplemental medical opinion to address the latency period of Valley Fever. Dr. Pietruszka reported that applicant had symptoms of cough and nausea when she returned to work in January 2018, and she evidently showed more symptoms of Valley Fever when she saw Dr. Shervin on May 14, 2018. Dr. Pietruszka stated that disseminated coccidioidomycosis is known to occur within six months of the primary infection, with primary infections having a latency period of ten to thirty days, and that applicant was likely exposed to Valley Fever between December 2017 and early May 2018. (Exhibit 3, pp. 12-17.) Although Dr. Zagelbaum noted that it only takes inhalation of a single fungal spore to cause Valley Fever, it takes two to three weeks after inhalation of a spore before symptoms of infection begin to emerge. As noted before, Dr. Zagelbaum also opined that it was improbable, given his view of the latency period, that exposure to wildfire smoke or other inhalants by applicant in December 2017 or early January 2018 "causally contributed" to her Valley Fever and eventual hospitalization in July 2018. (Joint exhibit AA, pp. 173-175.)

We are aware that the presence of conflicting medical opinions on an issue like latency may not justify further development of the medical record in every case. (*Place v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 372, 378-379 [35 Cal.Comp.Cases 525].) In this case, however, it appears that there is a wide divergence of medical opinion concerning the latency period of Valley Fever. In that regard, we note that in *Cruz v. Hall Mgmt. Corp.* (2019) 2019 Cal. Wrk. Comp. P.D. LEXIS 29, the deceased worker's Valley Fever was found to be industrial where he evidently was exposed to the disease in September 2010 but the diagnosis of disseminated coccidioidomycosis was not confirmed until late January 2011; this chronology roughly resembles the progression of applicant's disease in this case. Further, the PQME in *Cruz* opined that although most episodes of disseminated coccidioidomycosis become manifest weeks to months after infection, manifestation may occur years after exposure due to latent disease, in unusual cases.

Here, the lack of medical consensus on latency, and the need to re-evaluate the issue of latency in the context of the particular facts of this case, persuade us that further development of the record is required on the two issues discussed in this opinion. (*Hamilton v. Lockheed Corporation* (2001) 66 Cal.Comp.Cases 473 [Appeals Board en banc].) It should be noted that we express no final opinion concerning whether or not applicant's Valley Fever arose out of and occurred in the course of employment. When the WCJ issues a new decision, any aggrieved party may seek reconsideration as provided in Labor Code sections 5900 *et seq.*

For the foregoing reasons,

IT IS ORDERED, as the Decision After Reconsideration of the Workers' Compensation Appeals Board, that the Findings and Order of June 28, 2021 is **RESCINDED**, and this case is **RETURNED** to the trial level for further proceedings and new decision by the WCJ, consistent with this opinion.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSEPH V. CAPURRO, COMMISSIONER

I CONCUR,

/s/ ANNE SCHMITZ, DEPUTY COMMISSIONER

/s/ CRAIG SNELLINGS, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

February 12, 2024

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

**ELLIE GONZALEZ
GRAIWER & KAPLAN, LLP
LAUGHLIN, FALBO, LEVY & MORESI LLP**

JTL/ara

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