

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

LAURIE FIELDS, *Applicant*

vs.

**THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,
*permissibly self-insured, Defendant***

Adjudication Number: ADJ14660179

Oakland District Office

**OPINION AND ORDER
GRANTING RECONSIDERATION
AND DECISION
AFTER RECONSIDERATION**

Applicant, in pro per, seeks reconsideration of the Findings and Order (F&O) issued on April 23, 2024, by the workers' compensation administrative law judge (WCJ). The WCJ found that applicant failed to sustain her burden of proof as to injury arising out of and occurring in the course of employment and ordered that applicant take nothing further on her claim.

Applicant contends that the WCJ erred because the evidence establishes industrial injury through exposure to mold and that the qualified medical evaluator's (QME's) reporting, upon which the WCJ relied, does not constitute substantial medical evidence.

We have received an Answer from defendant. The WCJ filed a Report and Recommendation on Petition for Reconsideration (Report) recommending that we deny reconsideration.

We have considered the allegations of the Petition for Reconsideration, the Answer, and the contents of the WCJ's Report. Based on our review of the record and for the reasons discussed below we will grant applicant's petition for reconsideration and as our Decision After Reconsideration we will rescind the April 23, 2024 F&O, appoint a regular physician pursuant to Labor Code section 5701, and return this matter to the trial level for further proceedings consistent with this opinion.

FACTS

Applicant was employed as a clinical professor in psychiatry when she claims to have sustained industrial injury to multiple body systems through mold exposure during the cumulative period ending on July 1, 2020. (Minutes of Hearing and Summary of Evidence (MOH/SOE), March 20, 2024, p. 2, lines 11-18.)

The employer received applicant's DWC-1 claim form on April 14, 2021. (Applicant's Exhibit 11.) The employer denied applicant's claim on August 25, 2021, which was 133 days later. (Defendant's Exhibit C.)

1. History of Mold Exposure

Applicant testified to working in a building with ongoing water intrusion problems lasting years. (MOH/SOE, *supra* at p. 5, lines 12-21.) Applicant provided an email from an administrative officer to the staff, which stated, in pertinent part:

Dear Colleagues:

We came in this morning to water in your rooms again. The amount of and where the most water has pooled has varied from last time. I have had an extraordinarily direct and rather unpleasant (for him) conversation with the building manager. I noted that

- This was completely unacceptable.
- Has been going on for years.

* * *

While my apologies mean very little while water is standing in your offices, I can only tell you how sorry I am that this is ongoing. I have raised this at the highest level of both the building company and UC Real Estate. I truly do believe that the building group is working in good faith to resolve it. However, the bottom line is that it remains unresolved. You have water in your offices, and it's upsetting. I can only assure you that I am doing my best to get this resolved.

(Applicant's Exhibit 3.)

In 2019, workers scraped away moldy paint and then painted over the molded areas. (MOH/SOE, supra at p. 5, lines 27-28.) Defendant had the building evaluated by an industrial hygienist after receiving complaints of mold. (Applicant's Exhibit 5.) The industrial hygienist noted:

Staff reported the walls in the most affected offices in the NW corner had been scraped and repainted while occupied, with no attempts at containment. Visible microbial growth was observed behind the sink in the kitchen, and under a pipe near Room 148. Water staining and damage was observed in the kitchen area, on the and walls near the NW and SE corners of the suite.

(*Id.*)

Applicant privately collected samples from her office and had them sent to a laboratory for testing, which found the following:

Mycometrics lab microbiologist indicated significant concerns about levels of the following toxic molds in the building, with heightened concern for the bolded items due to the dangerous toxins they produce and/or their high levels in the office:

- o **Aspergillus niger** at 12 significantly elevated above cutoff of 10
- o **Aspergillus penicilloides** at 26, also significantly elevated over cutoff of 10
- o **Aspergillus versicolor** at 40, well over cutoff of 10
- o **Aurobasidium pullalans** at 1400, over cutoff 100
- o **Chaetomium globosum** at 21, over cutoff 5 (dangerous at any level over cutoff)
- o **Stachybotrys chartarum** at 3 - noted even one spore is considered concerning in dust samples because it will not usually show up without using swab sampling method
- o **Wallemia sebi** at 310, cutoff 100

(Applicant's Exhibit 4.)

2. Medical Evidence

Applicant was evaluated by internal medicine QME Kathryn Raphael, M.D., who issued four reports in evidence. (Joint Exhibits 101 through 104.) Dr. Raphael took a history of applicant being exposed to mold. (Joint Exhibit 102, p. 60.) Dr. Raphael took a history wherein applicant complained of chest tightness and cough. (See generally, Joint Exhibit 102.) Dr. Raphael dismissed the testing results taken by applicant because, in part, applicant is not an industrial hygienist. (*Id.* at p. 61.)

Dr. Raphael went through all of applicant's medical complaints and concluded that each of them were not cause by exposure to mold. (*Id.* at pp. 61-64.)

Dr. Raphael expressly requested a consultation with a psychologist or cognitive psychologist, but no such reporting appears to have been obtained. (*Id.* at p. 66.)

Applicant provided reporting from her primary treating physician, who found industrial causation as follows:

On 5/7/19 Dr. Laurie Fields presented after severe respiratory infection with new onset Mast Cell Activation Syndrome (MCAS) for series of visits through 8/25/21. The cause of her MCAS was unclear initially but usually this starts after an infection. Her symptoms included, concerning [and] new cognitive and neurological complaints.

At her next appointments, she mentioned that her office had flooded at work. She mentioned that improper mold remediation caused massive exposure and acute lung infection. I ordered mold antibody IgG serum tests, urine mycotoxin tests, and advised her to do ERMI environmental mold testing of her home and office. Her pulmonologist did a lung CT scan.

Tests and CT scan supported Dx of aspergillosis, although UCSF doctors refused to include IgG test results until June 2022, when at that time they finally made aspergillosis Dx. I diagnosed mold exposure, lung nodules, mycotoxin elevation, MCAS, CIRS.

She was extremely ill and required ongoing treatment and monitoring of masses in her lungs and her severely elevated mycotoxins. UCSF pulmonologists continued to monitor her lung masses but did not know how to address the systemic issues caused by the mycotoxins. I treated her for the systemic issues and put her on a detox program to lower the mycotoxic burden.

At her appointment on 10/24/19, after the pulmonologists identified lung nodules, Dr. Fields was placed on disability from work with medical restrictions that limited her working. As a result of this, she has been unable to return to regular employment and was forced to retire over 10 years early.

In my opinion it is medically probable that workplace mold exposure caused by the :flooding of Dr. Fields' office and poor remediation has caused her acute respiratory fungal infection, pulmonary aspergillosis, and severe multi-systemic MCAS symptoms that first appeared at that time. This opinion is based on:

- a. serum mold IgG antibody tests in 2019 confirming extensive aspergillus exposure
- b. urine tests showing mycotoxins from aspergillus in her body at high levels
- c. environmental mold ERMI test showing high levels of aspergillus mold in the office
- d. timeline of severe acute respiratory infection starting within a week of the remediation
- e. timeline of radiologic findings of new lung nodules and mucous plugs appearing within several months of the remediation, after many months of infection, when there were none prior

Mold was also found on testing at her home, and there may have been some contribution of this to her illness. However, the onset of severe symptoms was right after the remediation at work, while she had been living in the apartment for several years, without noticing water damage at home. Additionally, it is likely that the mold at home was due to cross-contamination as she had taken items home after her office was flooded.

I also believe it is medically probable that chronic mold exposure in the workplace over a period of time was a primary cause of Dr. Fields' compromised immunity that permitted the aspergillus spores to colonize in her lungs when the mold was remediated.

- f. The mycotoxin mycophenolic acid I found on testing Dr. Fields in 2019 is a strong immune suppressant, and her levels were very high.
- g. There is now extensive research documenting multiple ways that mold exposure impacts immune function, causing autoimmunity as well as hematologic problems in humans.
- h. Immunologists, hematologists, and endocrinologists that saw Laurie over the years ruled out all possible causes they could think of for her suppressed immunity, three autoimmune conditions, and hematologic problems.

In addition, I believe the chronic mold exposure at work over the 15 years more likely than not caused the development of her gastrointestinal, severe bone density problems, endocrine, autoimmune, hematological, dermatological, and cognitive/neurological problems, in addition to the chronic respiratory problems. Like many patients, Laurie may have had an existing vulnerability to respiratory reactions and toxins in the environment.

(Applicant's Exhibit 1, pp. 1-2.)

Upon reviewing Dr. McDougall's reporting, the QME responded as follows: "The information provided by Dr. McDougall is not new and does not change my medical opinion that the listed conditions of the applicant are nonindustrial in causation." (Joint Exhibit 103, p. 2.)

DISCUSSION

To constitute substantial evidence ". . . a medical opinion must 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." (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604, 621 (Appeals Board en banc).) "When the foundation of an expert's testimony is determined to be inadequate as a matter of law, we are not bound by an apparent conflict in the evidence created by his bare conclusions." (*People v. Bassett* (1968) 69 Cal.2d 122, 139.)

Substantial justice is "[j]ustice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits." (Black's Law Dictionary (7th ed. 1999).)

The WCJ and the Appeals Board have a duty to further develop the record where there is insufficient evidence on an issue. (*McClune v. Workers' Comp. Appeals Bd.* (1998) 62 Cal.App.4th 1117, 1121-1122 [63 Cal.Comp.Cases 261].) The Appeals Board has a constitutional mandate to "ensure substantial justice in all cases." (*Kuykendall v. Workers' Comp. Appeals Bd.* (2000) 79 Cal.App.4th 396, 403 [65 Cal.Comp.Cases 264].) The Board may not leave matters undeveloped where it is clear that additional discovery is needed. (*Id.* at p. 404.) The preferred procedure is to allow supplementation of the medical record by the physicians who have already reported in the case. (*McDuffie v. Los Angeles County Metropolitan Transit Authority* (2003) 67 Cal.Comp.Cases 138 (Appeals Board en banc).) However, where it appears that further

development of the record with the current examiner would not be fruitful, the Appeals Board may appoint a regular physician to examine applicant pursuant to Labor Code section 5701.

When applicant claims a physical injury, applicant has the initial burden of proving industrial causation by showing the employment was a **contributing cause**. (*South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302; § 5705.) Applicant must prove by a preponderance of the evidence that an injury occurred AOE/COE. (Lab. Code §§ 3202.5; 3600(a).)

The requirement of Labor Code section 3600 is twofold. On the one hand, the injury must occur in the course of the employment. This concept ordinarily refers to the time, place, and circumstances under which the injury occurs. On the other hand, the statute requires that an injury arise out of the employment. It has long been settled that for an injury to arise out of the employment it must occur by reason of a condition or incident of the employment. That is, the employment and the injury must be linked in some causal fashion. (*Clark*, 61 Cal.4th at 297 (internal citations and quotations omitted).)

* * *

The statutory proximate cause language [of section 3600] has been held to be less restrictive than that used in tort law, because of the statutory policy set forth in the Labor Code favoring awards of employee benefits. In general, for the purposes of the causation requirement in workers' compensation, it is sufficient if the connection between work and the injury be a contributing cause of the injury.

(*Clark, supra* at 298 (internal citations and quotations omitted).)

A grant of reconsideration has the effect of causing "the whole subject matter [to be] reopened for further consideration and determination" (*Great Western Power Co. v. Industrial Acc. Com. (Savercool)* (1923) 191 Cal. 724, 729 [10 I.A.C. 322]) and of "[throwing] the entire record open for review." (*State Comp. Ins. Fund v. Industrial Acc. Com. (George)* (1954) 125 Cal.App.2d 201, 203 [19 Cal.Comp.Cases 98].) Thus, once reconsideration has been granted, the Appeals Board has the full power to make new and different findings on issues presented for determination at the trial level, even with respect to issues not raised in the petition for reconsideration before it.

Before addressing the merits of applicant's petition for reconsideration a few issues must be addressed that were not raised by the parties.

The first issue is that it appears that applicant may have filed a separate claim for injury in 2019 as defendant issued a denial letter in 2019. (Defendant's Exhibit A.) It further appears that the reporting of the primary treating physician, if followed, may support two claims of injury: a specific injury in 2019 during the mold remediation project, and a separate cumulative injury. Dr. McDougall finds both an "acute respiratory fungal infection" and contribution from "chronic mold exposure over time." If applicant has sustained two injuries, the second injury must be pled.

Labor Code, section 3208.2 contains the anti-merger provision of workers' compensation, which states:

When disability, need for medical treatment, or death results from the combined effects of two or more injuries, either specific, cumulative, or both, all questions of fact and law shall be separately determined with respect to each such injury, including, but not limited to, the apportionment between such injuries of liability for disability benefits, the cost of medical treatment, and any death benefit.

(§ 3208.2.)

Upon return, if the evidence establishes that applicant sustained two separate dates of injury, a second claim must be pled and assigned its own case number for adjudication. The WCJ may then consider consolidating the cases for hearing.

Next, and although it was not raised as an issue for trial, the evidence indicates that applicant's cumulative trauma claim may be presumptively accepted. Defendant's denial of the cumulative trauma claim appears to have issued beyond 90 days. "If liability is not rejected within 90 days after the date the claim form is filed under Section 5401, the injury shall be presumed compensable under this division." (§ 5402(b)(1).) This issue should be addressed upon return.

Turning to the merits of the case at bar, the alleged injury in this matter is cumulative injury via mold exposure. The fact that applicant was industrially exposed to mold, on the present record, appears to be undisputed. Applicant produced evidence showing years of water intrusion into her workspace with photos depicting mold and samples taken by applicant showing mold in the workplace. Defendant produced no evidence to rebut applicant's evidence.

Applicant has alleged a host of cognitive and physical complaints, including respiratory complaints because of mold exposure. **Applicant was diagnosed with aspergillosis**, which according to applicant's primary treating physician is caused by mold exposure.

The WCJ dismissed the reporting of applicant’s primary treating physician because it “was obtained outside the workers’ compensation arena[.]” (Report, p. 6.)

Labor Code Section 4062.3 provides in relevant part, as follows:

(a) Any party may provide to the qualified medical evaluator selected from a panel any of the following information:

(1) Records prepared or maintained by the employee's treating physician or physicians.

(2) Medical and nonmedical records relevant to determination of the medical issue.

(§ 4062.3(a).)

The California Supreme Court has analyzed the admissibility of medical reports in workers' compensation proceedings and opined in pertinent part:

[T]he comprehensive medical evaluation process set out in section 4060 et seq. for the purpose of resolving disputes over compensability does not limit the admissibility of medical reports Under section 4064, subdivision (d), “no party is prohibited from obtaining any medical evaluation or consultation at the party's own expense,” and “[a]ll comprehensive medical evaluations obtained by any party shall be admissible in any proceeding before the appeals board ...” except as provided in specified statutes. The Board is, in general, broadly authorized to consider “[r]eports of attending or examining physicians.” (§ 5703, subd. (a).) These provisions do not suggest an overarching legislative intent to limit the Board's consideration of medical evidence.

(*Valdez v. Workers' Comp. Appeals Bd.* (2013) 57 Cal. 4th 1231, 1239 [164 Cal. Rptr. 3d 184, 312 P.3d 102, 78 Cal. Comp. Cases 1209].)

As acknowledged by the Court in *Valdez*, sections 4060, 4064(d) and 5703 suggest an expansive rather than limiting approach by the Legislature regarding the admissibility of medical evidence. Accordingly, the primary treating physician’s reports, which were properly admitted into evidence, are to be given the same weight as the QME’s reporting.

The QME's reporting does not constitute substantial medical evidence. The QME appears dismissive of applicant's claim. The QME dismissed the results of the only mold testing conducted in this matter. **The QME does not discuss the fact that applicant was diagnosed with an active mold infection in her lung and provided no opinion on whether applicant's aspergillosis was industrial.** Next, the QME's opinions on causation are cursory and appear to have analyzed applicant's injuries under the rubric of predominant causation, when the appropriate standard is contributory causation. The mold need not be the direct cause of applicant's complaints; it is sufficient if mold exposure contributed to aggravate or exacerbate her complaints. Based upon the deficiencies in the QME's reporting, the QMEs opinions do not constitute substantial medical evidence. It would further appear that development of the record in this matter would best be accomplished through appointment of a regular physician.

Accordingly, we will grant applicant's petition for reconsideration and as our Decision After Reconsideration we will rescind the April 23, 2024 F&O, appoint a regular physician pursuant to Labor Code section 5701, and return this matter to the trial level for further proceedings consistent with this opinion.

For the foregoing reasons,

IT IS ORDERED that applicant's petition for reconsideration of the Findings and Order issued on April 23, 2024, is **GRANTED**.

IT IS FURTHER ORDERED that as the Decision After Reconsideration of the Workers' Compensation Appeals Board that the Findings and Order issued on April 23, 2024, is **RESCINDED**.

IT IS FURTHER ORDERED that pursuant to Labor Code section 5701, Richard Levy, M.D., is appointed as a regular physician to complete the reporting in this matter. The parties shall use all applicable statutes and regulations that apply to qualified medical evaluators in setting the appointment, providing information to, and communicating with Dr. Levy. Any further orders necessary to effectuate this order shall be decided at the trial level. This includes the power to order a substitute doctor under section 5701 if Dr. Levy is not available or otherwise does not accept the appointment.

IT IS FURTHER ORDERED this matter is **RETURNED** to the trial level for further proceedings consistent with this decision.

WORKERS' COMPENSATION APPEALS BOARD

/s/ CRAIG SNELLINGS, COMMISSIONER

I CONCUR,

/s/ JOSÉ H. RAZO, COMMISSIONER

/s/ JOSEPH V. CAPURRO, COMMISSIONER



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

July 15, 2024

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

**LAURIE FIELDS, IN PRO PER
LAUGHLIN, FALBO, LEVY & MORESI**

EDL/mc

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