

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

MARANDA SMITH, *Applicant*

vs.

**CENTENE CORPORATION, AMERICAN ZURICH INSURANCE COMPANY,
administered by GALLAGHER BASSETT SERVICES, INC., *Defendants***

**Adjudication Number: ADJ15495990
Sacramento District Office**

**OPINION AND ORDER
DENYING PETITION
FOR RECONSIDERATION**

Applicant seeks reconsideration of the Findings and Order (F&O), issued by the workers' compensation administrative law judge (WCJ) on April 4, 2024, wherein the WCJ found in pertinent part that during the period ending April 23, 2021, applicant did not sustain a cumulative trauma injury arising out of and in the course of employment (AOE/COE) to the head (in the form of headaches), the back, or to the neck, and thus ordered that applicant take nothing.

Applicant contends that the opinion of orthopedic Agreed Medical Evaluator (AME) James B. Stark, M.D. is not substantial medical evidence. Applicant also requests that she be given an orthopedic evaluation by a different doctor.

We received an Answer from defendant. The WCJ issued a Report and Recommendation on Petition for Reconsideration (Report) recommending that applicant's Petition be denied.

We have considered the allegations in applicant's Petitions, the Answer, and the contents of the Report with respect thereto. Based on our review of the record, for the reasons stated in the WCJ's Report, which is adopted and incorporated herein, and for the reasons discussed below, we will deny reconsideration.

To be substantial evidence, a medical opinion must be well-reasoned, based on an adequate history and examination, and it must disclose a solid underlying basis for the opinion. (*Escobedo v. Marshalls* (2005) 70 Cal.Comp.Cases 604 (Appeals Bd. en banc); see also *E.L. Yeager Construction v. Workers' Comp. Appeals Bd. (Gatten)* (2006) 145 Cal.App.4th 922, 928 [71 Cal.Comp.Cases 1687].) A medical report must also set forth the reasoning behind the physician's

opinion and not merely their conclusions in order to be substantial evidence. (*Heggin v. Workmen's Comp. Appeals Bd.* (1971) 4 Cal.3d 162 [36 Cal.Comp.Cases 93]; *Granado v. Workmen's Comp. Appeals Bd.* (1970) 69 Cal.2d 399 [33 Cal.Comp.Cases 647]; *Escobedo, supra.*)

Here, Dr. Stark took applicant's medical history, examined applicant, reviewed extensive medical records and diagnostic reports, reviewed testimony, provided the underlying basis for his opinions, and set forth the reasoning behind his opinions. (Exhibit A, Dr. Stark's AME report dated September 10, 2022; Exhibit B, Dr. Stark's AME report dated November 23, 2023.)

As an AME, Dr. Stark was presumably chosen by the parties because of his expertise and neutrality. Therefore, his opinion should ordinarily be followed unless there is a good reason to find that opinion unpersuasive. (*Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775, 782 [51 Cal.Comp.Cases 114].) Based on the record, we will not disturb the WCJ's findings and determinations, including the substantiality of the medical reports of orthopedic AME Dr. Stark or the AME in neurology Pramila R. Gupta, M.D. dated June 12, 2023.

Accordingly, we deny applicant's petition for reconsideration.

For the foregoing reasons,

IT IS ORDERED that applicant's Petition for Reconsideration is **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD

/s/ JOSÉ H. RAZO, COMMISSIONER

I CONCUR,

/s/ CRAIG SNELLINGS, COMMISSIONER

/s/ KATHERINE A. ZALEWSKI, CHAIR



DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

JUNE 24, 2024

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

**MARANDA SMITH
MASTAGNI HOLSTEDT, A.P.C.
COLEMAN CHAVEZ & ASSOCIATES LLP**

JB/pm

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

**REPORT AND RECOMMENDATION ON PETITION
FOR RECONSIDERATION**

INTRODUCTION

Issue:	Applicant disagrees with the F&A claiming doctor inappropriately considered “psychological” factors.
Date of Order:	April 4, 2024
Petitioner:	Applicant
Timeliness of Petition:	Timely
Verification of Petition:	Verified

PETITIONER’S CONTENTION(S)

Petitioner contends that a new QME should be provided.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Applicant claimed an industrial injury and was evaluated by an AME. The AME determined that the medical evidence and the presentation by Applicant¹ do not support the finding of an industrial injury. Applicant does not agree with this conclusion yet provided no evidence, credible or otherwise, to support the position.

DISCUSSION

A Petition for Reconsideration may only be taken from a “final” order, decision, or award. (Lab. Code, §§ 5900(a), 5902, 5903.) Threshold issues include injury AOE/COE, jurisdiction, the existence of an employment relationship, and statute of limitations issues. (See *Capital Builders Hardware, Inc. v. Workers’ Comp. Appeals Bd. (Gaona)* (2016) 5 Cal.App.5th 658, 662 [81 Cal.Comp.Cases 1122].) The F&A in this case is a final order subject to reconsideration.

The Petition for Reconsideration does not allege that the order, decision, or award was procured by fraud. Nothing in the Petition for Reconsideration claims that the evidence does not justify the Findings of Fact or that the WCJ exceeded any statutory authority. Applicant simply disagrees with the AME and claims that the AME was biased. However, Applicant provided no evidence, credible or otherwise, to support the contention.

The basic California statutory requirement is that to be compensable, an injury must arise out of and in the course of the employment (See Labor Code, Section 3600). The phrase “arising out of employment” is the causal element and refers to the origin of the accident. That is, the employment must be said to be the cause of the injury. 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. This has been referred to as proximate cause and

¹ The phrase “Psychological and/or motivational factors” as used by the AME appears to be a gentle way of saying lying or malingering

only requires that the work incident be a contributing cause of the injury. The employment need not be the sole, exclusive, significant, or material factor in causing the injury. Causation is interpreted in the broadest possible manner to extend benefits. Normally, if an employee's injuries meet the general requirement that they arise out of the employment, then the injuries will also be proximately caused by the employment. The employment need not be the sole cause of the injury; it need only be a substantial contributing cause. All that is needed is proof of a reasonable probability. An employer takes an employee as it finds them. If disability results from the acceleration, aggravation, or "lighting up" of a pre-existing condition, then the injury is industrially compensable.

Based upon the AME report of Pramila R. Gupta, M.D. dated June 12, 2023, I find that Applicant did not sustain a cumulative trauma injury to the head which arose out of and in occurred the course of employment with Centene Corporation. Specifically, Dr. Gupta found as follows:

I have been asked to evaluate the examinee from a neurological perspective and from the examinee's alleged claim for the brain problems, as she testified in her deposition.

From the examinee's history and medical records, it is quite evident that the examinee has significant migraine headaches, which have been well documented in the medical records, although the examinee did not provide full details in her deposition and had difficulty recalling. She has been tried on anti-migrainous medications. Then, the examinee has developed superimposed muscle contraction headaches. In my opinion, the examinee's migraine headaches are not caused or aggravated by the examinee's work activities. The muscle contraction/tension headaches are most likely due to a cervical spine condition as well as in part, they may also be due to heightened emotional state, which has been noted in the medical records as having anxiety. It was also noted that the examinee had a prior history of some head injury due to the fall, but there was no clear indication that the examinee had any ongoing headaches after these incidents.

The examinee has claimed having brain injury, but she does not have any indication of brain injury, except having headaches.

(See Defendants' Exhibit C, Page 44)

With respect to Applicant's back injury allegations, I find that Applicant did not sustain an industrially compensable injury to the back. Specifically, Dr. Stark found as follows:

There is no indication that the low back was injured while working.

(See Defendant's Exhibit A, Page 7)

When discussing the cervical spine, Dr. Stark's opinion is quite clear. The allegations of Applicant are neither supported either by contemporaneous treatment records nor found to exist by Dr. Stark. Specifically, Dr. Stark states:

Under usual circumstances, I would recognize the diagnosis of cervical spondylosis aggravated by prolonged maintenance of the neck in a single position such as at the computer. In this particular case however, there are multiple examination findings indicative of psychological and/or motivational factors confounding this examination.

In my judgment, Ms. Smith should be recognized as a chronic pain patient. She appears to be overwhelmed by seemingly neurologic and musculoskeletal complaints without a well-defined underlying organic substrate explaining her multiple limitations.

(See Defendant's Exhibit A, Page 7)

In addition to the foregoing, Dr. Stark issued a supplemental report dated November 23, 2023. In that report Dr. Stark stated:

I provided a September 10, 2022 report, discussing my findings and opinions. In that report, I indicated, following review of the extensive medical file, that there has not been consideration of industrial causation of Ms. Smith's symptoms. There has not been a single Doctor's First Report of Occupational Injury related her complaints to work activities.

On examination, I noted findings which lead me to conclude that psychological and/or motivational factors were involved in her presentation.

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Following a review of the additional data, previously stated opinions, as contained in my September 10, 2022 report agreed medical examination report, are unchanged.

(See Defendant's Exhibit B, Pages 1 and 2)

While Applicant has alleged bias on the part of Dr Stark, Applicant presented no evidence, credible or otherwise, to support this contention.

Applicant presented no evidence that Dr. Stark did not review all relevant medical records including the MRI referenced in the amended Petition for reconsideration.

CONCLUSION

Dr. Stark's reports are based on reasonable medical probability. The reports are not speculative. The reports are based on pertinent facts as well as an adequate history and examination. The reports also state the reasons for the conclusions reached. As such, Dr. Stark's reports constitute substantial evidence and are being relied upon to support the finding that Applicant has not sustained an industrial compensable injury to the head, back, or neck as a result of the employment with Centene Corporation. While Applicant might not agree with the conclusions, the reports are substantial evidence and were properly relied upon.

RECOMMENDATION

Based on the foregoing, it is respectfully recommended that the Petition for Reconsideration be denied.

Dated: April 24, 2024

Peter M. Wilkens
WORKERS' COMPENSATION JUDGE