

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

**OPRAH REEVES, *Applicant***

**vs.**

**STANFORD HEALTH CARE and SAFETY NATIONAL CASUALTY,  
*Adjusted by TRISTAR, Defendants***

**Adjudication Number: ADJ15944737  
Oakland 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 and the Opinion on Decision 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 and the Opinion on Decision, both of which we adopt and incorporate, and for the reasons stated below, we will deny reconsideration.

The employee bears the initial burden of proving injury arising out of and in the course of employment (AOE/COE) by a preponderance of the evidence. (Lab. Code, § 5705; *South Coast Framing v. Workers' Comp. Appeals Bd. (Clark)* (2015) 61 Cal.4th 291, 297-298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3202.5, 3600(a).) Moreover, it is well established that decisions by the Appeals Board must be supported by substantial evidence. (Lab. Code, §§ 5903, 5952(d); *Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal.3d 274 [39 Cal.Comp.Cases 310]; *Garza v. Workmen's Comp. Appeals Bd.* (1970) 3 Cal.3d 312 [35 Cal.Comp.Cases 500]; *LeVesque v. Workmen's Comp. Appeals Bd.* (1970) 1 Cal.3d 627 [35 Cal.Comp.Cases 16].) "The term 'substantial evidence' means evidence which, if true, has probative force on the issues. It is more than a mere scintilla, and means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion...It must be reasonable in nature, credible, and of solid value." (*Braewood Convalescent Hospital v. Workers' Comp. Appeals Bd. (Bolton)* (1983) 34 Cal.3d 159, 164 [48 Cal.Comp.Cases 566], emphasis removed and citations omitted.) Medical evidence is

required if there is an issue regarding the compensability of the claim. (Lab. Code, §§ 4060(c)(d), 4061(i), 4062.3(l).)

In this case, we agree with the WCJ that applicant did not meet the burden of proof through substantial medical evidence in the record that she sustained industrial injury as claimed. The WCJ properly relied upon the opinion of the agreed medical evaluator (AME), who the parties presumably chose because of the AME's expertise and neutrality. The WCJ was presented with no good reason to find the AME's opinion 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].)

Finally, we note that while applicant alleges bias and inappropriate contact on the part of the AME, applicant does not make a sufficient offer of proof to meet the evidentiary requirements of good cause to discontinue the AME pursuant to Administrative Director Rule 40. Applicant as the moving party bears the burden of proving by a preponderance of the evidence that grounds for discontinuation exists. (Lab. Code, §§ 3202.5, 5705.) We find no such evidence in the record. In addition, 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/ JOSEPH V. CAPURRO, COMMISSIONER**

**I CONCUR,**

**/s/ KATHERINE A. ZALEWSKI, CHAIR**

**/s/ KATHERINE WILLIAMS DODD, COMMISSIONER**



**DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

**JUNE 7, 2024**

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

**OPRAH REEVES  
LAUGHLIN, FALBO, LEVY & MORESI**

**PAG/cs**

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

## I.

### INTRODUCTION

- |                             |   |
|-----------------------------|---|
| 1. Applicant's Occupation:  | ICU secretary   |
| Applicant's Age:            | 61 years at date of injury  |
| Date of alleged Injury:     | February 7, 2022  |
| Parts of Body Inured:       | Respiratory   |
| 2. Identity of Petitioner:  | Applicant   |
| Timeliness:                 | Petition is timely filed  |
| Verification:               | Petition is verified  |
| Date of Findings and Award  | March 21, 2024 and amended March 22, 2024   |
| 4. Applicant's Contentions: | 1) Conflict of Interest between WCJ Miller and AME Dr. Greenberg existed resulting in favoritism<br>2) WCJ Finnegan is not a trained medical physician, neurologist, or neurosurgeon, OSHA Environmental Hygienist or architect/structural building site engineer |

## II.

### STATEMENT OF THE CASE AND FACTS

On February 7, 2022, applicant alleged injury to her respiratory system after smoke allegedly filled up a patient lounge that she went to during her break. On March 21, 2022, Applicant obtained representation and filed a workers compensation claim. On May 3, 2022, the parties agreed to utilize Dr. Andrew McClintock Greenberg as an agreed medical examiner (hereinafter AME). Dr. Greenberg evaluated Ms. Reeves and issued the September 28, 2022 report (Exhibit A). Dr. Greenberg deferred causation pending an investigation and statements from coworkers. On June 14, 2023, Dr. Greenberg issued a reporting finding no industrial causation.

On September 7, 2023, Defendant filed a declaration of readiness to proceed. There was no objection. At the November 7, 2023 priority conference, while applicant was represented, the matter was set for trial on January 17, 2024 in front of Judge Miller. Discovery was closed. On December 4, 2023, Applicant dismissed her counsel.

On December 18, 2023, applicant requested the trial be taken off calendar for further discovery and to obtain new counsel. On December 26, 2023, WCJ Miller notated the trial would remain on calendar. On January 2, 2024, Applicant again requested the trial be taken off calendar. On January 8, 2024, Ms. Reeves reiterated her request for the January 17 trial to be taken off calendar.

On January 12, 2024, the parties had an informal discussion with Judge Miller the trial was continued and the matter set in front of myself for March 6, 2024 after Judge Miller recused himself. On February 27, 2024, Ms. Reeves requested the trial be taken off calendar. The request was denied.

On March 6, 2024, prior to going forward with the trial the parties had informal settlement discussions and were unable to come to an agreement and the matter was submitted.

The undersigned found applicant did not sustain her burden of proof regarding causation. The applicant has timely petitioned for reconsideration. At the time filing the report and recommendation, defendant has not filed a response.

### **III.**

#### **DISCUSSION**

##### **1) CONFLICT OF INTEREST BETWEEN WCJ MILLER AND AME DR. GREENBERG EXISTED RESULTING IN FAVORITISM**

WCJ Miller became the assigned trial judge when the case was set in front of him for an expedited hearing on May 5, 2022. At that time, applicant was represented by counsel and the parties agreed on Dr. Greenberg as an Agreed Medical Examiner, applicant was evaluated, and the case was set for a priority conference in front of Judge Miller. There was no objection to the declaration of readiness to proceed and the matter was set for trial in front of Judge Miller. After the hearing, applicant relieved her counsel of record and became in pro per. In January 2024, WCJ Miller recused himself and continued the trial to be in front of the undersigned. The undersigned has not communicated with WCJ Miller regarding the case or his opinion on Dr. Greenberg; however, the January 12, 2024 minutes of hearing for the reassignment and recusal indicate that it was a recent discovery. The undersigned cannot comment on any of applicant's claims between WCJ Miller and Dr. Greenberg as I was not a party to them. However, no evidence was presented to indicate that WCJ Miller or Dr. Greenberg communicated regarding applicant's case nor was that an issue for trial.

The opinions of an AME are entitled to substantial weight absent a showing that they are based on an incorrect factual history or legal theory, or are otherwise unpersuasive in light of the entire record. (See, e.g., *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775 [51 Cal.Comp.Cases 114]; *Siqueiros v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 150 (writ denied).)

Here, the undersigned evaluated Dr. Greenberg's reports on what was contained within the reports and the analysis presented. Dr. Greenberg's reports were substantial medical evidence as they addressed causation, reviewed the medical and relevant statements and utilized them to come up with an opinion on causation. Disagreeing with the conclusion of the AME does not invalidate the doctor's opinion or make it substantial medical evidence.

## **2) WCJ Finnegan is not a trained medical physician, neurologist, or neurosurgeon, OSHA Environmental Hygienist, Architect or Site Engineer**

Applicant is correct in that the undersigned is not a medical profession, OSHA Environmental Hygienist, architect, or site engineer. However, it is a workers' compensation judge's job to evaluate the evidence presented, determine credibility, and issue findings. It is well settled that medical issues can only be proven by expert medical opinion, and that lay testimony alone, no matter how persuasive it might otherwise be, is not sufficient to determine such issues. *Brannon v. Workers' Comp. Appeals Bd.* (1997) 62 Cal.Comp.Cases 333 (writ denied); *Peter Kiewit Sons v. Industrial Acc. Com. (McLaughlin)* (1965) 234 Cal.App.2d 831 [30 Cal.Comp.Cases 188]; *City & County of San Francisco v. Industrial Acc. Comm. (Murdock)* (1953) 117 Cal.App.2d 455 [18 Cal.Comp.Cases 103].

Here, there is no medical evidence that supports causation of injury to the generator testing at Stanford Hospital. As discussed above, Dr. Greenberg's report was substantial medical evidence and he deferred issuing an opinion on causation until he was provided relevant information.

The Kaiser primary treating reports do not opine on causation nor do they indicate that the migraines or vertigo complaints are related to the incident on February 7, 2022. Dr. Greenberg commented that applicant's headaches were non-industrial and did not defer to a different specialty or ask for an industrial hygienist to evaluate the condition. Based on the statements that were admitted into evidence, it does not appear that the "smoke" was a frequent occurrence and would be easily replicated. Based on the opinions of the AME, Dr. Greenberg,

the undersigned did not deem it necessary to develop the record and order an industrial hygienist at this late stage of the case.

The undersigned has significant concerns regarding applicants' credibility while testifying including the fluctuation in her tone and voice when testifying to favorable aspects versus when she would testify regarding her complaints. Additional concerns regarding her testimony that the room filled with so much smoke that she was barely able to see and yet no alarm went off and no one else was able to substantiate. Notably, there were no objective findings that corroborate applicant's alleged injury.

Based upon the above, I recommend that the petition for reconsideration be denied.

Date: April 12, 2024

**Erin Finnegan**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE

**AMENDED OPINION ON DECISION**

**I.**

**RELEVANT FACTS**

On February 7, 2022, applicant alleged injury to her respiratory system after smoke allegedly filled up a patient lounge that she went to during her break. On March 21, 2022, Applicant obtained representation and filed a workers compensation claim. On May 3, 2022, the parties agreed to utilize Dr. Andrew McClintock Greenberg as an agreed medical examiner (hereinafter AME). Dr. Greenberg evaluated Ms. Reeves and issued the September 28, 2022 report (Exhibit A). Dr. Greenberg deferred causation pending an investigation and statements from coworkers. On June 14, 2023, Dr. Greenberg issued a reporting finding no industrial causation.

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On December 18, 2023, applicant requested the trial be taken off calendar for further discovery and to obtain new counsel. On December 26, 2023, WCJ Miller notated the trial would remain on calendar. On January 2, 2024, Applicant again requested the trial be taken off calendar. On January 8, 2024, Ms. Reeves reiterated her request for the January 17 trial to be taken off calendar.

On January 12, 2024, the parties had an informal discussion with Judge Miller the trial was continued and the matter set in front of myself for March 6, 2024. On February 27, 2024, Ms. Reeves requested the trial be taken off calendar. The request was denied.

On March 6, 2024, the parties had informal settlement discussions and were unable to come to an agreement and the matter was submitted. Due to a copy and paste error with the last paragraph, this amended opinion on decision is being issued.

**II.**

**DISCUSSION**

1. ADMISSIBILITY OF APPLICANT'S EXHIBIT I

Applicant submitted records from Kaiser which were submitted to the court and defense the day before trial. Kaiser records were listed as evidence by defendant who presumably knew



that is where Ms. Reeves obtained treatment. As they are relevant to the dispute, they are to be admitted.

## 2. AOE COE AND REQUEST FOR NEUROLOGY

The employee 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, 297298, 302 [80 Cal.Comp.Cases 489]; Lab. Code, §§ 3600(a); 3202.5.)

The opinions of an AME are entitled to substantial weight absent a showing that they are based on an incorrect factual history or legal theory, or are otherwise unpersuasive in light of the entire record. (See, e.g., *Power v. Workers' Comp. Appeals Bd.* (1986) 179 Cal.App.3d 775 [51 Cal.Comp.Cases 114]; *Siqueiros v. Workers' Comp. Appeals Bd.* (1995) 60 Cal.Comp.Cases 150 (writ denied).)

While it is clear the applicant is suffering, the link between a workplace incident and any injury has not been credibly established. The medical reports from the date of injury do not have any objective findings, the investigative statements do not corroborate smoke, especially to the point of being unable to navigate ones surroundings.

Dr. Greenberg noted "Lab work and a chest x-ray on 2/14/22 were normal" (Exhibit B). Dr. Greenberg further opined "without any substantial evidence, I cannot state within reasonable medical probability that the applicant's respiratory symptoms are industrial in causation. Ms. Reeves's shortness of breath (dyspnea) is non-industrial in causation. I can also not state within reasonable medical probability that the applicant's headaches and memory disturbance is due to smoke exposure; these diagnoses are also non-industrial in causation." (Exhibit B pg 4).

Ms. Reeves testified the vertigo began five months ago which is well over a year from the date of injury. The medical reports submitted by Ms. Reeves do not give any opinions as to the cause of any neurological issue any correlation.

Applicant did not establish a credible link between applicants' alleged injuries and the event on February 2, 2022. Further, there is no corroborating evidence that there was in fact smoke. It is unclear how the hospital hallway would be filled with smoke to the point of difficult navigating and yet no alarm would go off in the hospital. While Ms. Reeves appeared in distress, her testimony lacked credibility and inconsistent.

As applicant has not established a link or provided any contradicting medical, the undersigned has no choice but to find the case nonindustrial.

DATE: March 21, 2024

**Erin Finnegan**  
WORKERS' COMPENSATION  
ADMINISTRATIVE LAW JUDGE